

Ofcom broadcast bulletin

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Introduction

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

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

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

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

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

Broadcasting Code Guidance Update

Guidance for Rules 2.11 and 10.10 of the Ofcom Broadcasting Code

Previous bulletins have referred to the significant increase in the number of TV quiz channels, together with an increase in the number of complaints received. We reported in Bulletin 53 that ICSTIS had published *A Statement of Expectations on Call TV Quiz Services*.

We are now issuing guidance concerning Ofcom's role in this area, which also aims to ensure that consumers are protected – and are confident in using – this increasingly popular interactive medium. This will also appear in Ofcom's web-based Guidance which accompanies the Broadcasting Code.

The ICSTIS *Statement of Expectations for Call TV Quiz Services*, can be found at: http://www.icstis.org.uk/pdfs_news/QuizTVExpectations06.pdf.

Broadcasters should note that this guidance refers to all broadcast competitions:

Guidance to rule 2.11

Note: The following guidance refers to all competitions, including Call TV quiz services.

Competitions that use Premium Rate Entry

- Complaints to Ofcom alleging the broadcast of misleading information about premium rate charges and/or line availability will normally be referred to ICSTIS, since they are considered to be complaints about promotional material concerning the premium rate service (PRS) itself. ICSTIS has issued *A Statement of Expectations on Call TV Quiz Services*, which can be found at http://www.icstis.org.uk/pdfs_consult/QuizTvConResponse06.pdf and, where relevant, should be considered alongside its Code of Practice.
- Complaints concerning potential unfairness surrounding the conduct of a competition, or its solution and/or methodology, will normally be investigated by Ofcom.

Free Entry Route

- In the future, legislation will require that free entry routes (where required) should be given equal prominence with other routes. We would encourage broadcasters to adopt this as best practice now, in advance of all the provisions of the Gambling Act 2005 coming into force. Broadcasters should be aware of the Gambling Commission's requirements concerning free entry routes, when published.

Prizes

- Prizes should normally be despatched within a reasonable time (note: where relevant, ICSTIS' requirements may apply), unless indicated otherwise when the prize is described.

- If particular prizes become unavailable post-broadcast, we would expect comparable substitutes to be provided.
- We would strongly advise broadcasters not to present a monetary prize as a possible resolution of financial difficulty (e.g. as a means of paying off credit card debt). See also Rule 2.1.

Competition Rules

- To ensure clarity, we expect rules that limit those who can take part in a competition to be broadcast. (Note: Their broadcast is not expected if specific individuals – e.g. previous prize winners – have been informed directly). In particular, where such rules are considered to be significant (e.g. an age limit for entering a competition) broadcasters should air them orally each time a competition is run and on a regular basis throughout longer sequences.
- We strongly recommend that broadcasters produce written rules and/or terms and conditions that support all or specific competitions being broadcast by them. Where the competition is broadcast on television, details of where the relevant rules are available (e.g. on the channel/programme's website) ought to be aired regularly, while on radio, where competition strands are often shorter, we would normally expect such details to be mentioned at least occasionally. Broadcasters may also need to be aware of ICSTIS' requirements regarding this issue, including those in its *Statement of Expectations*.
- Competitions are sometimes run simultaneously on various local/regional services (e.g. on a radio network), and this may result in participation being spread wider (i.e. beyond the local area) than might be obvious to the viewer/listener in any one area. In such circumstances, and where the main prize is not awarded by each service, we would normally expect that, in order to be fair, it has to be made clear that other services are participating. This should be done both on air and in any written rules, whenever the competition or its results are run or trailed.

Solutions and Methodology

A cause of complaint has been that, at the end of a competition, the way in which the solution is reached ("methodology") has not been explained on air and, in some cases, the answer has not been given. As many competitions are cryptic, this leads some of the audience to doubt whether the solution given is correct and to question the legitimacy of the competition. This is often because the complainant cannot understand the methodology. A further concern expressed by complainants is that, as many competitions have more than one possible solution, the broadcaster may change the answer while a competition is on air, preventing it being solved too early. Sufficient transparency is therefore necessary in order to ensure that competitions are both conducted fairly and seen to be conducted fairly, to avoid unnecessary audience concern.

- We recognise that the methodology of a competition may be commercially sensitive. Broadcasters may choose to outline it on air but this is not a requirement to achieve fairness in competitions.

- However, where there is the possibility of more than one answer to a competition, or the nature of a competition is ambiguous, we expect broadcasters, when requested by Ofcom, to provide evidence that the competition has been run fairly. Broadcasters should be able to provide Ofcom with the correct answer and the methodology used to arrive at that answer, together with evidence that it could not have been changed after the competition started. For example, a broadcaster may choose, before a competition is run, to place its chosen methodology and/or answer with an independent professional third party (e.g. an auditor or solicitor).
- We recognise that competitions may be carried forward to another time/day. Appropriate transparency about this is important. However, where competitions form the essential feature of a programme (e.g. in the case of Call TV quiz services or similar) an audience should normally be able to expect the correct solution to be provided on air, with or without its associated methodology, when a competition ends.
- In order to conduct a competition fairly, we believe an audience should not be misled by a broadcaster stating or implying that a competition is simple if it is actually difficult/cryptic.

Repeat Broadcasts

- If a former live competition is re-run so that it is no longer possible for the audience to participate by ringing the number given on air then we would expect this to be made clear to the audience. On television, text stating “pre-recorded” is likely to be insufficient unless the phone line is also dead or the number on screen is also illegible. Broadcasters may also need to be aware of ICSTIS’ Code of Practice concerning this matter.

Winners

- As best practice and to forestall audience concern, broadcasters may wish to consider listing the names of all winners, with their permission, on an appropriate website as soon as possible after their wins.

Guidance added to Rule 10.10

See also guidance to Rule 2.11 concerning competitions that use premium rate services as the entry mechanism.

Standards cases

In Breach

Bernard

ITV 1, 23 January 2006, 16:20

Introduction

Bernard is a well established children's drama series set in a primary school. It features Bernard, his best friend Nathan and their encounters with class foe, Nicolette. In this episode, the schoolchildren re-enacted a medieval jousting tournament. Bernard is determined to prevent Nicolette from entering the tournament. A viewer complained about a scene in which Nicolette is seen tied to the coat rails in the school changing room with a gag in her mouth. The complainant felt the scene promoted bullying and could be easily emulated by children.

Response

ITV said that while it might have appeared that Nicolette was hanging from the coat hangers, in reality she was clearly standing on the bench. Although she was tied up with rope, it was not around her neck. The gag used on Nicolette was made of material similar to that of a girl's hair band and was secured around the back (though no knot was visible). In relation to bullying, ITV said that regular viewers of the programme would be aware that it was Nicolette who was the consistent bully, not Bernard.

Decision

Rule 1.13 of the Broadcasting Code states that "Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful must not be featured in programmes made primarily for children unless there is strong editorial justification.". (The guidance note that accompanies this Rule explains that: "Research shows that children may emulate what they see on television. This is mediated to a certain extent by factors such as a child's ability to distinguish between degrees of fantasy and reality and the identification with the character. Children have different stages of development and broadcasters should bear this in mind. Areas of concern include: certain material which may lead children to fail to recognise potentially dangerous play especially if there is no serious outcome....").

We do not believe Bernard's behaviour in this episode would encourage bullying, given his long established behaviour pattern in the series. The series makes clear that Nicolette constantly bullies Bernard and Nathan, trying to make their lives miserable. Their teacher is oblivious to this, instead perceiving Nicolette as a well-behaved child.

However, the scene where a child is seen tied up on a changing bench is problematic. *Bernard* is a drama set in a primary school and aimed at children of a similar age. As such, broadcasters should be aware of showing behaviour which is likely to be easily imitable and dangerous. Although ITV say that the actress was standing on a bench – and we have no reason to doubt this – this was not apparent from the footage. Nicolette appeared to be hanging directly from the coat hangers

with rope. Additionally, although the rope may not have been precisely positioned around her throat, its general position and the fleeting nature of the image meant that this may not be appreciated by most viewers and particularly children. Similarly, we consider that the fact that the gag was made of a material similar to a girl's hair band would be lost on most children. Gagging is an action that is easily imitable by children and potentially highly dangerous – particularly when combined with restraining material. Overall, we were concerned that children could imitate this behaviour, without recognising the consequences. Although the scene illustrated Bernard's success in foiling Nicolette's plans, this did not provide a sufficient editorial justification for this content.

Breach of Rule 1.13 (dangerous and imitable behaviour)

Tom Binns,
BRMB, 24 February 2006, 17:29

Introduction

A listener complained that a presenter said just before the news "They are still pulling survivors from the Moscow market that collapsed, the good news is that all the survivors are being given a blanket and 250 Clubcard points."

Response

GCap, the station's parent company told us that it agreed that the comment was both ill judged and insensitive. It wished to offer sincere apologies to the complainant and indeed anyone that may have been offended by his comments. It assured us that all possible steps have been taken to ensure that there will be no further occurrence of this kind in the future. The presenter has been reminded of his obligations under the Ofcom Broadcasting Code and, in particular, those relating to harm and offence.

Decision

Rule 2.3 of the Broadcasting Code states "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context." The meaning of context includes "the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in ... programmes of a particular description".

The incident in Moscow, in which a number of people were killed, occurred the day before the presenter's comment. We welcome the station's apology and assurance. However, although the presenter is new to this slot, he is an experienced comic and should have recognised that such a comment was not appropriate. In view of this, we thought that the comment was offensive in this context, particularly given its broadcast before the news bulletin.

Breach of Rule 2.3

Resolved

The Alan Brazil Sports Breakfast with Graham Beecroft

talkSPORT, 7 February 2006, 06:00

Introduction

During an investigation of a separate issue, we noted that the *Between the Posts* feature – a competition sponsored by Bibby Financial Services – required participants to text the word ‘Bibby’ before their answer. One of the presenters also appeared to promote the sponsor within the feature.

Rule 9.6 of the Broadcasting Code requires that “there must be no promotional reference to the sponsor” in programming and that “non-promotional references are permitted only where they are editorially justified and incidental.”.

We asked the broadcaster to comment on the matter.

Response

talkSPORT acknowledged that any promotion of the sponsor should have been limited to credits at the beginning and end of the feature. It accepted that the aired requirement to use the sponsor’s name in text entries was not editorially justified. The broadcaster assured us that its Sponsorship and Promotions Director would ensure the error was not repeated and added that it would welcome the opportunity of meeting Ofcom to discuss its Broadcasting Code obligations concerning sponsored competition mechanics and commercial references in programming.

Decision

We welcome the broadcaster’s acknowledgement of error, together with its assurance concerning future output and its desire to clarify its obligations concerning sponsorship and commercial references. We consider that on this occasion the matter is resolved.

Issue resolved

Steve Earl, Insomnia

Vibe fm 105-108 (East of England), 9 February 2006, 01:00

Introduction

During a discussion about fancy dress in this night-time show, a listener called in to say: "...me, my mate James and Cathy, we've dressed up as Pakis – by the way, I'm not racist", to which the presenter responded: "That's OK...". A little later the caller added: "...basically, we had, er, like, head gear on and that, and run in Tescos, and they chased us out. All I wanted was a Pot Noodle!".

As the conversation continued, the presenter said: "Oh dear ... Maybe they thought you were going to build a corner shop ... I don't know whether I should have said that or not.". When the conversation ended he played a record, after which he announced: "...if that last phone call offended anybody in any way ... I apologise..".

A listener found the caller's language offensive. He acknowledged the presenter's apology but believed the call should have been terminated.

Response

Vibe FM said that it viewed "any derogatory language, racist or otherwise, extremely seriously", adding that it neither condoned nor encouraged it.

Emap, the station's parent company said that the presenter had only hosted 5 programmes previously - hence the scheduling of his on-air shift which was designed to give him valuable experience of hosting a live music programme. Having decided to allow some listeners to come on-air he took the precaution of vetting them prior to doing so. However, this caller took the conversation into an area that had not been agreed or discussed beforehand. Rather than terminating the call as soon as the offending comment had been made, the presenter mistakenly decided to continue in the hope that he could defuse the situation with humour. Regrettably, his attempt backfired.

Realising the errors, he later apologised to listeners. The presenter showed signs of hesitation and uncertainty about how to deal properly on-air with events as they unfolded. His apology was intended to be sincere and cover any comments that may have caused offence but, again, his inexperience led to an announcement that may not have been as precise as his intention.

Subsequently, the station's Head of Programmes had spoken to the presenter, stressing the importance of terminating conversations in which racist or derogatory language is used.

Decision

We agree that the presenter should have ended the conversation when the direction that it was taking became clear. The offence that would have been caused by the caller's reference to being "dressed up as a Paki..." was compounded by the presenter's attempt to defuse the situation with his comment made about "opening a corner shop". This was misguided. Broadcasters should always be alert to the possibility of causing offence by the use of racist language – whatever the intent. Furthermore, offence can result from the use of stereotypes. We, therefore, believe

that his subsequent apology should have addressed both the caller's comments and his own.

However we recognise that this incident occurred with a trainee presenter with little experience of live radio. We welcome Vibe FM's acknowledgement of the presenter's misjudgement, the guidance that it has given to the presenter and the seriousness with which it has taken the issue. Given the action taken by the broadcaster, together with its apology and assurances concerning the presenter and future output, we believe the matter is on this occasion resolved.

Issue resolved

Rammstein - Mann Gegen Mann

MTV2, 6 March 2006, 17:00

Introduction

We received a complaint about the video for the track *Mann Gegen Mann*, by the German rock band Rammstein. The viewer said that the video featured naked men and was inappropriate for broadcast at 17:00.

Response

MTV explained that the video had been incorrectly scheduled, contrary to its post-19:00 restriction. As a result of the error, MTV broadcast an apology on 13 March 2006 at 17:10 on MTV2 in which it stated "MTV would like to apologise for the broadcast on 6 March of a video that contained inappropriate material. MTV apologises for any offence that this caused viewers"

Additionally, MTV said that it had extended its compliance procedures. An email system had been introduced to notify music schedulers of material scheduled contrary to any timing restriction. This system would help schedulers to rectify human errors before broadcast.

Decision

We understand that the broadcast of this video resulted from an error and welcome the steps taken by MTV to avoid a repeat. Although the video contained nudity, the images were not explicit and were highly stylised.

MTV2 is an alternative rock music channel that appeals to an older youth/adult audience. Such an audience is less likely to be offended by the broadcast of such material. Nevertheless, we agree that the video was unsuitable for broadcast at a time when young children could see it and support MTV's decision to show the video only after 19:00 on MTV2.

In view of MTV's actions, including an on air apology on its own volition, we consider the matter resolved.

Issue resolved

Judging Amy

Hallmark Channel, 16 February 2006, 08:00

Introduction

Judging Amy is a drama about a single mother, “Judge Amy”, who has left New York behind to raise her daughter and become a Family Court judge in Connecticut. Living again with her mother, the story is about three generations of women living together as they confront their personal and professional dilemmas.

A viewer considered that the sexual subject matter explored in this episode was unsuitable for scheduling at this time, especially during the schools’ half-term holidays.

Response

The Hallmark Channel said that it thought that the TV listing information and the Sky EPG both gave a clear indication of the subject matter and the fact that there would be sexual references in this episode. The series generally dealt with a wide range of social and moral issues. Nevertheless it regretted any offence caused and would, in future, ensure that subsequent broadcasts of this episode were preceded by an on-air announcement re-enforcing the nature of the storyline.

Decision

During part of the storyline which dealt with teenagers giving evidence in court, there were various references to oral sex and teenage sex-parties. Although the content was inexplicit, given both the episode’s scheduling at 08:00 and its broadcast during half-term, we welcome the broadcaster’s assurance that on-air announcements would be given in future. We consider the matter resolved.

Issue resolved

Not Upheld

Make Me Perfect

ITV 1, various dates in January 2006, 14:30

Introduction

Make Me Perfect was a new ITV series which took 15 women who suffered from low self-esteem because of the way they looked and offered to “change their lives” through cosmetic surgery and counselling. The programmes were an hour long and scheduled in the slot before CITV, ITV’s programming strand for children, which started at 15:30.

We received a total of 23 complaints about the series. Issues raised included:

- that the series somehow normalised cosmetic surgery or otherwise suggested it as a solution for low self-esteem. Complainants expressed concern about its possible impact upon vulnerable viewers.
- scenes of nudity.
- that the programmes contained scenes of cosmetic surgery that were too graphic to be scheduled in a pre-watershed time slot.

Response

Channel Television said that the series aimed to give the participants the physical, emotional and mental transformation of a lifetime, restoring their confidence, self-esteem and good looks. Applicants were subjected to psychological checks and many were rejected when the results suggested that their problems would not be resolved through the transformation process. The key aim of the show was to bring a holistic approach to the transformations, rather than concentrating solely on the purely physical changes. The transformation team included a psychologist and a psychotherapist, both with several years’ experience, who worked extensively with the participants and spent far more time with them than could be shown.

Normalisation of plastic surgery

In response to concerns that the series was irresponsible, Channel TV said that most of the participants were in their forties or upwards as the series aimed to transform the lives of women with some life experience who would really benefit from a renewed appreciation of themselves and their own potential. Footage of some of the extensive counselling was also incorporated. Channel TV hoped viewers would see there were no ‘quick fixes’.

Nudity

The broadcaster said that there was no sexual context in the way the programme showed participants’ bodies and it pointed out that the women were not shown in a state of undress after their successful transformations.

Scheduling and graphic images

Channel TV considered that the series was appropriately scheduled in that it was shown in term time, when very few children were in the audience. There was also a natural and distinct break between the end of each episode and the beginning of CITV programmes, in the form of a local weather bulletin together with commercial breaks and promotions for other programmes.

The broadcaster said that there was a presentation announcement before each episode that the programme included scenes of surgical procedures. In addition, the narration of each episode made it clear that these procedures would form part of the show. It was important that the series presented the realities of surgery to viewers; it would have been dishonest to gloss over the very real pain of surgery and recovery. However, the most graphic images were edited out from the surgical scenes. In addition, where it was necessary to include strong surgical images, these were shown in small boxes on screen whilst the main picture showed less graphic images.

Decision

Broadcasters may make programmes about any issue they choose, but it is expected that they will ensure that the treatment of subjects will comply with the Broadcasting Code.

Normalisation of plastic surgery

Cosmetic surgery is often an emotive and controversial subject and we understand that some viewers were concerned with the fundamental premise of *Make Me Perfect*. However, we do not believe that the series presented cosmetic surgery as a “quick fix” for self-esteem issues. Moreover, people considering cosmetic surgery as a result of watching the programmes would be required to be counselled by practitioners first. This element of the complaints was not in breach of the Code.

Nudity

The programmes featured scenes of women as they were being assessed for, or undergoing surgery - these included shots of their bodies. However the partial nudity was relevant to the context, non-sexual and justified. This element of the complaints was not in breach of the Code.

Scheduling and graphic images

Many of the complainants were concerned about the scheduling of the programmes before CITV. However, we noted that children under 15 formed only approximately 2% of the audience. Also, with the exception of the first episode, each programme was, as Channel TV said, preceded by an announcement about scenes of surgical procedures. Care had also been taken in editing these scenes to minimise the scenes of surgical procedures; for example the more graphic elements were obscured by means of camera angles and bright lights, and close-ups were avoided.

The majority of the shots used in the programme were acceptable for the time of broadcast. However, a scene of a facelift in which incisions were made around the ear and skin lifted away from the face gave us some concern. Nevertheless we decided that, on balance, this scene was not in breach of the Code as we noted that:

- this scene occurred at 15:06 – before the majority of younger children would

- have arrived home from school;
- it was presented to viewers as one of two different images on screen at the same time, lessening its impact;
- it did not portray the most graphic element of the surgery; and
- it was editorially justified and contextualised within the programme.

For these reasons, these scenes were not in breach of the Code.

Not in breach

Broadcasters should also refer to Bulletin 56 for another recent finding concerning cosmetic surgery on television.

Big Fat Quiz of the Year

Channel 4, 26 December 2005, 21:00

Introduction

This established quiz show reviews the year's events in a comedy format and features a celebrity panel. Towards the end of this programme, a clip of the now infamous *Big Brother* incident where Kinga purports to insert the neck of a wine bottle into her vagina was shown.

Six viewers complained that this material was inappropriate in a comedy quiz programme and/or offensive. Some also considered it unsuitable for any younger viewers.

Response

Channel 4 said that the programme was clearly aimed at an adult audience. The programme was broadcast after the watershed and this particular incident was transmitted about 23:00. The programme's presenter, Jimmy Carr, was well-known for his adult, sexual innuendo. By the end of the second hour, the nature of the humour would have been obvious. The incident had attracted national attention; its inclusion was therefore justifiably considered to have been an event which could form part of a news review quiz of the notable events of the year.

The programme was carefully reviewed both editorially and legally prior to transmission. As a result a clear and unambiguous warning preceded the programme: *'adult, provocative humour and strong language from the start'*.

Overall, the broadcaster felt that the material complained of would not have exceeded the expectations of the overwhelming majority of the programme's audience.

Decision

Rule 2.3 of the Broadcasting Code states "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context."

Rule 2.4 states "Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour."

In not upholding the transmission of these scenes in *Big Brother* (Bulletin 50, 19 December 2005) one of the important factors was the context in which the scenes were broadcast. The question in this instance was whether the context, although different, led to an equivalent justification for the further broadcast of this material.

The event was newsworthy and the inclusion of at least a question about it would be justifiable in an end of year quiz such as this. But that did not necessarily justify the inclusion of the actual clip. In assessing the context for the showing of this particular material it was clear, amongst other things, that:

- like *Big Brother*, this programme was also broadcast on a channel with a remit to provide alternative programming;
- it was preceded by a clear warning;
- the quiz was broadcast after the watershed;
- the clip came very late in the show; and
- the programme was adult in tone throughout.

As we noted in our decision about *Big Brother*, what appeared to happen in these scenes is not necessarily what actually happened. Although the discussion of the scenes in the *Big Fat Quiz of the Year* was graphic, the actual images were not explicit; the event being suggested rather than broadcast in any great detail.

In our view, the shock value of the material was reduced by its having been shown before. The original context of the scenes in a 'live' reality show would have had more impact on viewers than in a late night quiz show. Our main concerns for the *Big Brother* series were also of a different nature, given that *Big Brother* had a potentially younger audience – despite the time of broadcast – whereas this programme was more aimed at an adult audience.

Taking these factors into account, we do not consider that the broadcast of the material in this context breached generally accepted standards. Neither do we believe that it was in breach of Rule 2.4. However, as we explained previously, we do believe that the opportunities to broadcast such images remain limited.

Not in breach

Dispatches - The Dyslexia Myth

Channel 4, 8 September 2005, 21:00

Introduction

This edition of the Channel 4 current affairs strand analysed recent evidence concerning dyslexia. It featured Professor Julian Elliot of the University of Durham who questioned the scientific validity of the term/diagnosis 'dyslexia' to describe a range of children with poor reading skills. *Dispatches* examined his views through interviews with academics and professionals and a case study of a girl recently diagnosed as dyslexic. Professor Elliot believes that outdated views on dyslexia are holding back progress that would help the great majority of children with reading difficulties. A number of parents of children diagnosed as dyslexic and teachers who work in the area fundamentally disagree with this view.

The issues raised by complainants were that the programme:

- had a title which implied that dyslexia itself is a myth and that this was the programme's standpoint
- would have a negative impact upon those diagnosed as dyslexic
- concentrated on dyslexia solely in terms of poor reading skills
- argued that dyslexia is a condition caused by parents
- made no reference to adults with dyslexia

We asked Channel 4 to comment on whether the programme materially misled viewers. We also asked Channel 4 whether due impartiality was maintained on those parts of the programme that dealt with matters of current public policy.

Response

Channel 4 said there was a clear public interest in making the recent research findings – upon which Elliot's views are based and which represent the views of many researchers – available to the public at large. The channel rejected the idea that the audience was materially misled by the programme.

Channel 4 also said that the rules on due impartiality were preserved because whenever current public policy was discussed, any criticism was counteracted by comments from an appropriate Government spokesman.

Channel 4 responded in detail as follows:

The programme had a title which implied that dyslexia itself is a myth and that this was the programme's standpoint

The channel stated that the views expressed in the programme did not fundamentally conflict with the government view of dyslexia as based on the definition from the British Psychological Society. The programme's ambition was to tackle frequently repeated misconceptions surrounding dyslexia. Channel 4 said this was explicitly indicated from the very beginning of the programme where, without any ambiguity, it was clearly stated that the programme would tackle a misunderstanding of dyslexia.

The programme would have a negative impact upon those diagnosed as

dyslexic

Care was taken to make clear that those diagnosed as dyslexic may well be suffering from a specific disability. The impact on viewers was also explicitly dealt with within the programme itself. One teacher confronts Professor Julian Elliot and challenges him saying: "*Isn't this going to cause massive anxiety for parents who are going to watch this programme?*".

The programme concentrated on dyslexia solely in terms of poor reading skills

The programme's primary focus was reading problems and reading disabilities. The channel said that this was because while the popular view continues to see "dyslexics" as different to other poor readers, the scientific view has changed dramatically since the early 1990s and it is no longer accepted that there are meaningful differences between those diagnosed as dyslexic and other poor readers.

The programme argued that dyslexia is a condition caused by parents

Channel 4 said *Dispatches* reported the evidence that while the majority of children born with reasonable phonological skills will have little difficulty learning to read - however badly they are taught - the outcome for a substantial number of children born with weaker skills will depend largely upon their environment and instruction.

The programme made no reference to adults with dyslexia

Channel 4 said that although the programme did not deal with reading difficulties in adults directly much of what was said in the programme was relevant to adults who suffer from such a disability. By focussing on children the purpose was to highlight where interventions could usefully be conducted in order to alleviate the problems.

Decision

Our consideration of this programme focussed on two areas, as required by the Broadcasting Code. Firstly, whether the programme materially misled viewers and secondly, whether the programme was duly impartial.

Did the programme materially mislead viewers?

In considering this programme, we looked at the examination of dyslexia overall and also at certain specific concerns raised by complainants. In particular, that the programme argued that dyslexia is a condition caused by parents and that the programme made no reference to adults with dyslexia and concentrated on dyslexia solely in terms of poor reading skills.

The programme featured controversial new research in the area of dyslexia which was challenging to a number of viewers. Ofcom is not a fact finding tribunal and it is not for Ofcom to decide what are the causes of reading difficulties. However we are satisfied that Channel 4 based this programme on detailed research that is of public interest. Some may wish to challenge the evidence and the conclusions drawn from it but given the evidence on which the assertions in the programme were based, we do not believe the programme can be described as to be materially misleading so as to cause harm.

The sympathetic portrayal throughout the film of a schoolgirl who had been diagnosed as dyslexic highlighted the fact that she was suffering from a specific disability – her condition, and by extension the condition of interested viewers with

dyslexia or dyslexic family members, was not undermined.

It is for the broadcaster to decide editorially what should be kept in and what omitted as long as due impartiality is preserved and the audience is not materially misled so as to cause harm. *Dispatches* did not materially mislead viewers by omitting references to adults and dyslexia. Channel 4 made an acceptable editorial decision that there was little evidence concerning adults with reading problems that could usefully have been reported in the documentary. Nor did the programme materially mislead the viewer by concentrating on dyslexia in terms of poor reading skills. There was, in any event, an acknowledgment of the co-existence of issues associated with reading difficulties, including poor coordination and problems with memory and speed of information processing.

Furthermore, in Ofcom's view, the programme did not suggest that dyslexia is caused by parents - the parents featured were shown facing up to a difficult situation in relation to the learning abilities of their children. The programme suggested that many children are born with genetically caused phonological weaknesses which require school-based intervention. The programme therefore did not materially mislead viewers so as to cause harm or offence by suggesting parents were to blame for dyslexia.

Due Impartiality

The Code requires that due impartiality is preserved by the broadcaster on "matters of political...controversy and matters relating to current public policy".

"Due" is an important qualification to the concept of impartiality. "Due" means adequate or appropriate to the subject and nature of the programme. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signaled to the audience.

The *Dispatches* current affairs strand covers controversial topics. The expectations of regular viewers of *Dispatches* would be that the subject of learning disability when broached in a piece of television journalism like this will provoke forceful debate.

The title of the programme was clearly designed to cause a reaction among viewers but this is in keeping with the established tone of *Dispatches*. The opening words were:

"Tonight on Dispatches: new evidence which suggests that dyslexia, as commonly understood, is a myth"

An examination of the commentary shows that at no point was it stated that dyslexia itself was a myth and we note that the channel stated that the views expressed in the programme did not fundamentally conflict with the government view of dyslexia as based on the British Psychological Society's definition.

The final section of the programme examined the Government's Primary Literacy Strategy and therefore current public policy. Whilst the Director of the Strategy was given a lengthy opportunity to describe the benefits of the policy - these remarks were tempered by a critic of the government policy. In addition the Director himself did acknowledge that the policy was not without its shortcomings. Overall therefore these competing views led to an appropriately broad discussion of the matter of current public policy. This ensured that due impartiality was achieved.

Not in breach

Fairness and Privacy Cases

Not Upheld

Complaint by Mrs Shahin Soleymani on behalf of Kavosh Jalali

Kid Gang, Five, 3 February 2004

Summary: Ofcom has not upheld this complaint of unfairness and of unwarranted infringement of privacy. This observational documentary followed a group of teenagers over the course of a summer holiday. Kavosh Jalali was one of the boys featured in the group. The programme included an incident in which Kavosh Jalali was being bullied by some members of the group.

Mrs Soleymani, Kavosh Jalali's mother, complained that Kavosh Jalali had been treated unfairly in the programme as broadcast and that Kavosh Jalali's privacy was unwarrantably infringed in the making and the broadcast of the programme.

Ofcom recognised the difficulties faced by programme makers making an observational documentary and that it was possible for the nature and content of programmes to develop and change during the filming. Ofcom also believed that the particular circumstances of this case highlighted difficulties when seeking consent for the participation of minors where the consenting person may be at a disadvantage, for example where English is not their first language.

Ofcom found the following:

- a) The programme makers had not misled Mrs Soleymani about the likely nature and content of the programme or the context in which her son would appear. The programme makers behaved with integrity in the steps they took to seek informed consent of the parents concerned. Ofcom concluded that although there was a regrettable misunderstanding between the programme makers and Mrs Soleymani about the nature of the programme, it was however reasonable for the programme makers to believe that they had Mrs Soleymani's consent to film and broadcast footage of Kavosh Jalali in light of the steps they had taken.
- b) Ofcom was not persuaded that there was any evidence that the children (including Kavosh Jalali) were in any way coached or manipulated.
- c) Ofcom was satisfied that the programme makers in no way encouraged or facilitated the incident in which Kavosh Jalali was bullied.
- d) Ofcom was satisfied that the programme makers had given no undertaking that they would supervise the children and that there was no conclusive evidence that the programme makers had failed in their duty of care by not intervening during the fight or that they did not stop the filming when requested to by Kavosh Jalali.
- e) In Ofcom's view, Kavosh Jalali was not shown to be engaged in any antisocial activities; his place was very much on the fringes of the group and this was

apparent from the programme. He was depicted as having had only a semi-detached relationship with the “gang”.

- f) Ofcom considered that the programme makers genuinely believed that Mrs Soleymani and Kavosh Jalali had provided informed consent for the filming and broadcast of footage of Kavosh Jalali. In these circumstances, Ofcom considered that it was justifiable to film and subsequently broadcast the footage of Kavosh Jalali and it did not result in an infringement of his privacy.

Accordingly, the complaint of unfair treatment and unwarranted infringement of privacy was not upheld.

Introduction

Kid Gang was a documentary made by Shine Productions for Five. The programme observed a group of teenagers, who lived in the same locality in North London, over the course of the school summer holiday. Much of it was shot around a park where the teenagers gathered on a regular basis during the summer holiday and where territorial confrontations took place.

Kavosh Jalali and other individuals were accompanied by a camera crew and were referred to at times in the commentary as a “gang”. The relationships within the “gang” and between them and others were documented in the programme. The programme included occasional moments of physical and verbal aggression.

Kavosh Jalali was one of those featured in the “gang” and was interviewed at his home. He was described in the commentary as being one of the boys trying to prove themselves, and at another time, as one of two boys “still taking the beats”. Kavosh Jalali was racially taunted by other members of the “gang” at times and was shown being bullied by some of them, and eventually withdrawing from the “gang”.

Mrs Soleymani complained that Kavosh Jalali had been treated unfairly in the programme as broadcast and that his privacy was unwarrantably infringed in the making of the programme and in the programme as broadcast.

Ofcom held a hearing to consider the complaint. It was attended by Mrs Soleymani, Kavosh’s father Mr Jalali and representatives of Five.

Complaint

Mrs Soleymani’s Case

In summary, Mrs Soleymani complained that her son was treated unfairly in that:

- (a) She was told that the programme would be about the children’s activities in the summer, not highlighting antisocial behaviour or “gang” activity specifically. Insufficient information about the nature of the programme was provided prior to the filming but verbal progress reports requested from the programme makers, indicated all was well. She understood that the programme title she was given *City Kids* fitted that description, and had she known that her permission was being sought for her son’s involvement in a programme which might include gang activity and entitled *Kid Gang* she would not have given it. The film had been harmful to Kavosh Jalali who was still very upset about it and it had also caused the family problems in her Iranian community. Mrs Soleymani stated that

her understanding of the consent form that she signed was that it concerned the limitation of the film to UK screenings only. She received no written description of the programme. Mrs Soleymani also stated that she was not shown the test film that the programme makers made before the filming of the children began.

- (b) She believed that the programme was stage-managed rather than observational, as Five actively sought Kavosh Jalali for participation at various times, including when he was reluctant to speak with them subsequent to the “attack”.
- (c) The programme unfairly included footage of her son being “attacked” by the other boys in the park. During the attack Kavosh Jalali’s request that the programme makers stop filming was not complied with and the programme makers did not intervene in the attack or offer him any help once it was over. By not intervening the programme makers had effectively encouraged the attack on Kavosh Jalali. Mrs Soleymani said that the programme makers had also misled her about the nature of the violence in the programme and that they should have told her about the attack on her son at the time, not just before broadcast. Further, she believed that specific parental permission should have been sought for the use of the scenes where Kavosh Jalali was physically and verbally “attacked”.

Mrs Soleymani said that the programme inaccurately suggested that Kavosh Jalali was collected by his family after the attack on him occurred.

- (d) Mrs Soleymani claimed that she was misled about how her son would be cared for. She was under the impression that her son would be under some sort of adult supervision by the programme makers during the filming. She told the programme makers of her concerns about the behaviour of one of the group members and that she and her son did not know any of the other teenagers in the group or the area where the filming would take place. However, her son was enthusiastic to be involved in the filming and she was reassured by the presence of the programme makers.
- (e) Mrs Soleymani claimed that the programme makers misrepresented her son’s involvement in the “gang”.
- (f) Mrs Soleymani complained that her son’s privacy was unwarrantably infringed in the making and the broadcast of the programme in that the nature of the programme was misrepresented to Mrs Soleymani and that had she been aware of the true purpose of the programme, she would not have consented to her son’s appearance in it. The programme included footage, without her consent, of her son being attacked and humiliated in public and parts of the programme were clearly staged which amounted to an unwarranted and unacceptable intrusion into the private life of a minor.

Five’s Case

- (a) In summary, Five responded that the project was discussed with Kavosh Jalali’s mother before filming commenced and she was told that it would include both positive and negative aspects of the children’s behaviour, “warts and all”, over the summer holiday. Five stated that the purpose of the film was first explained to Mrs Soleymani (on the phone), the day before the test filming, and again in person two weeks later, when filming had already begun. The group were told that they would be filmed whatever they were doing, unless the behaviour was

so bad that the crew had to intervene or stop filming. Significantly more serious antisocial behaviour was filmed, than appeared in the programme.

Five went on to say that one of the production team had built up a relationship with Mrs Soleymani. They said that Mrs Soleymani “had engaged with and understood the project” and that the programme makers had spoken with her about the bad behaviour of children living on an estate close to her home. Five believed that Mrs Soleymani had given informed consent and said that it was not standard practice to provide participants with written confirmation of the arrangements when making films of this nature. They stated that Mrs Soleymani agreed to the filming of her son in the project and signed a consent form (on 20 August 2003) when filming was nearly completed.

Five said that they were unsure as to whether the change in programme title was communicated to Mrs Soleymani, though it was communicated to one parent. Five argued that the title was not significant and was changed to Kid Gang by the channel in post-production. Five added that the children often referred to themselves as a “gang”.

Five stated that the purpose of the test film was to see how comfortable the teenagers were in front of the camera, and it was shown to one parent who had concerns and asked to see it, but it was not requested by Mrs Soleymani or shown to her.

Five stated that it was not their policy to provide preview copies of programmes, but that the director had spoken to Kavosh Jalali’s father, Mr Jalali, before the broadcast and warned him that the scene where his son was bullied might be difficult because the teenagers had been cruel.

At the hearing Five made a verbal apology to Mrs Soleymani and Mr Jalali concerning the experiences they described and expressed their gratitude for Kavosh Jalali’s participation in the programme. Five also apologised in writing following the hearing.

- (b) Five denied the allegation that the film was “completely staged” and claimed that there was no pre-arranged slant, story or narrative to the film. Five stated that the programme makers were already very experienced in the techniques and requirements of observational film-making with children and young people before this project began. Five also argued that the rushes showed that the filming did not intrude on or affect the behaviour of the teenagers and contended that there was no evidence to suggest that Five incited or encouraged any particular behaviour. Five denied that the production team had requested Kavosh Jalali to come out to be filmed. Although they accepted that they had requested that he come out for a publicity photograph, which he did not ultimately attend. Five stated that the teenagers’ behaviour was completely “organic”. They were not summoned for filming, but Kavosh Jalali was contacted to ask where and when the group would meet as he tended to have a mobile phone which was charged up more reliably than some of the children.
- (c) Five stated that Kavosh Jalali’s request for filming to stop came after the incident where he was bullied and they complied with it at that point. Five stated that the incident involving him was part of the normal pattern of behaviour of the teenagers, and though it was a bit more sustained on the day in question than previously, they did not believe that he was in genuine physical danger warranting intervention. Five did not believe that filming the incident encouraged

the perpetrators.

Five stated that the programme makers were concerned about Kavosh Jalali immediately following the incident and offered to accompany him out of the park. He declined the offer and remained in the park for some time so Five did not feel it was necessary to inform his parents about the attack. Further Five claimed that the subsequent interview with Kavosh Jalali demonstrated that he felt the incident was minor, and therefore it would not be inappropriate to include it in the film. The programme makers did not report the incident to Kavosh Jalali's family as they had agreed with the teenagers not to report to their parents about them. Five felt it was, therefore, Kavosh Jalali's decision whether or not to tell his parents about the incident in the park.

Five stated that Kavosh Jalali left the park, and got into a black Volvo which the programme makers had seen before and presumed belonged to his family.

- (d) Five submitted that any supervision of the children by the programme makers, in a parental or authoritative role would have undermined the relationship of trust they had built up with the children. Five further stated that duty of care decisions would be made as the occasions arise during filming, but that they made no promise to Mrs Soleymani to supervise the children.
- (e) Five maintained that although Kavosh Jalali was not central to the group, he was part of the group of friends during the summer holiday and as such it was fair and appropriate to include him in the film in the way that they did.
- (f) The programme makers believed that they had explained the nature of the project to Mrs Soleymani and she was not misled. Five contended that what was shown in the film reflected the normal behaviour of the group and that Kavosh Jalali was not shown to be engaged in any antisocial activities. In the circumstances, and given that they did not believe that Mrs Soleymani objected to the film being broadcast, Five felt that Kavosh Jalali's privacy was not infringed in either the making or broadcast of 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 infringements of privacy in programmes included in such services.

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

The Fairness Committee recognised the difficulties faced by programme makers when producing an observational documentary of this nature. It required them to avoid encouraging antisocial or criminal behaviour. However, it also required a degree of detachment from their subjects to enable events to unfold. In certain circumstances (when dealing with vulnerable individuals) there may also be instances where they will need to take responsibility for the welfare of those being filmed. This was a difficult balance to achieve. Further, the nature of observational documentaries meant that it could be difficult to anticipate events before they

unfolded and the likely nature and content of the programme developed and changed as the behaviour and activities of those being filmed developed.

The Committee also believed that the particular circumstances of this case highlighted the sensitivities and difficulties facing programme makers when seeking consent for the participation of minors and also dealing with circumstances where the person from whom consent is being sought is likely to be at a disadvantage, for example where, as in this case, English may not be their first language.

- (a) The Committee first considered whether Five had taken sufficient steps to inform Mrs Soleymani about the nature of the programme, and if they had not, whether that resulted in unfairness to her son in the programme as broadcast. The Committee was mindful that contributors should be given a clear explanation of why they were contacted by the programme makers; told what the programme is about and nature of the contribution they are required to make; and where possible, they should be informed about the nature of other likely contributions.

Based on the written submissions and her oral testimony given at the hearing it was clear that Mrs Soleymani genuinely now believed that she was not given sufficient information to have understood the context in which her son might appear in the programme and had she done so would not have consented to his participation. Further, she felt strongly that had she been told the final title of the programme Kid Gang she would have refused to provide consent for her son's participation.

The Committee considered that it would have been preferable if the programme makers had informed Mrs Soleymani of the final title Kid Gang (as, according to their submissions, they had done with one parent) before transmission as this was likely to have indicated to her that the programme might contain anti-social behaviour or gang related activities. However, the title should not be considered in isolation and must be considered in light of all the information provided to a participant about the likely nature and content of the programme and also the treatment of the participant in the programme as broadcast. Importantly, the title of the programme was not deliberately withheld from Mrs Soleymani but in fact genuinely changed after filming and during the post production period.

It was equally clear from the hearing that the programme makers truly believed that they had taken sufficient steps to gain informed consent from Mrs Soleymani for her son's participation in the programme. The Committee were not persuaded that the programme makers had misled Mrs Soleymani about the likely nature and content of the programme and the context in which her son would appear. The Committee considered that the programme makers behaved with a degree of integrity during the making of the programme. In particular the Committee considered that:

- the programme makers took a number of steps, both during and post production, to discuss the programme with the parents and maintained regular contact with Mrs Soleymani;
- the programme makers made clear to the children participating and the parents at the outset that this was an observational documentary and that both good and bad behaviour would be filmed;
- the very nature of an observational documentary of this kind (referred to above) meant that it would have been difficult for the programme makers

to anticipate events before they unfolded and the likely nature and content of the programme would have developed as filming proceeded. With this in mind the programme makers waited until filming had concluded before seeking written consent from the participants' parents; and

- the programme makers telephoned each of the parents (including Kavosh Jalali's parents) prior to transmission to discuss aspects of the film that they were likely to find difficult (please also see finding c) below).

The Committee considered that it was not incumbent on the programme makers in the interests of fairness to allow Mrs Soleymani to preview the test film of the programme.

It was apparent that there was a regrettable misunderstanding between the programme makers and Mrs Soleymani and that Mrs Soleymani felt considerable distress (for which Five had subsequently apologised). However, it was reasonable for the programme makers to believe that they had Mrs Soleymani's consent to film and broadcast footage of Kavosh Jalali in light of the steps they had taken. In the circumstances, the Committee found no unfairness to Kavosh Jalali as a result of his inclusion in the programme (see also findings b), c), d) and e) below).

- (b) The Committee then considered whether the programme was "stage-managed" rather than observational and whether that approach resulted in unfairness to Kavosh Jalali in the programme as broadcast. The Committee were mindful that broadcasters should ensure that contributors are not coached, pushed or improperly induced into saying anything they know to be untrue. The Committee were not persuaded that there was any evidence that the children (including Kavosh Jalali) were in any way coached or manipulated and did not consider that telephoning Kavosh Jalali to enquire where the children were meeting amounted to coaching or manipulation. The Committee found no unfairness in this respect.
- (c) The Committee considered whether it was fair to include footage in the programme of Kavosh Jalali being bullied and whether any lack of intervention from the programme makers encouraged the children engaged in the bullying incident and resulted in unfairness to him.

The Committee noted that Kavosh Jalali had subsequently played down the seriousness of the incident and did not appear to be concerned by it. Also, the programme makers had informed his parents of the incident prior to broadcast and they had raised no concerns at any point. In the circumstances, the Committee considered that it was reasonable for the programme makers to include the incident in the programme as broadcast.

Having seen the programme and the untransmitted footage of the incident the Committee were satisfied that the programme makers in no way encouraged or facilitated the incident. Further, the Committee took the view that the incident was not such that it would have necessitated intervention by the programme makers. This was supported by Kavosh Jalali's own reaction (referred to above) after the incident. However, as indicated in the introduction to the "Decision" above, programme makers must be alert to their obligation of a general duty of care when dealing with minors or those who are vulnerable, whether because English is not their first language or for other reasons (see also finding d) below).

The Committee was persuaded by the testimony of Mrs Soleymani and Mr Jalali at the hearing that they did not collect their son after the incident. However, the Committee noted that the programme did not state that Kavosh Jalali was collected by his parents and the Committee did not believe that the programme's presentation of the aftermath of the incident was in any way unfair to Kavosh Jalali.

The Committee found no unfairness in these respects.

- (d) The Committee was satisfied that the programme makers had given no undertaking that they would supervise the children. Mrs Soleymani stated that she was reassured by their presence and it was clear from this that she had therefore assumed that the programme makers would supervise the children. Nonetheless, the Committee considered that the programme makers had a certain duty of care towards Kavosh Jalali as a minor. The Committee were satisfied that there was no conclusive evidence that Five had failed in that duty of care by not intervening during the fight or that they did not stop the filming when requested to by Kavosh Jalali. The Committee therefore found that there was no unfairness to Kavosh Jalali in this respect.
- (e) Mrs Soleymani claimed that the programme misrepresented her son's role in the "gang". In the Fairness Committee's view, Kavosh Jalali was not shown to be engaged in any antisocial activities; his place was very much on the fringes of the group and this was apparent from the programme. He was depicted as having had only a semi-detached relationship with the "gang". The Committee therefore found that there was no unfairness to Kavosh Jalali in this respect.
- (f) In considering the complaint of unwarranted infringement of privacy, the Committee addressed itself to two distinct questions, first was Kavosh Jalali's privacy infringed and second, if so, was the infringement warranted?

For the reasons set out above at finding a) the Committee considered that the programme makers genuinely believed that Mrs Soleymani and Kavosh Jalali had provided informed consent for the filming and broadcast of footage of Kavosh Jalali. In these circumstances, the Committee considered that it was justifiable to film and subsequently broadcast the footage of Kavosh Jalali and it did not result in an infringement of his privacy.

Accordingly, the complaint of unfair treatment and unwarranted infringement of privacy was not upheld.

Complaint by Charles Russell (solicitors) on their own behalf and on behalf of the Trustees of the vCJD Trust

Newsnight, BBC2, 10 May 2004

Summary: Ofcom has not upheld this complaint of unfair treatment. This edition of the news and current affairs programme included a report on the concerns of some families of victims of the variant Creutzfeldt Jakob Disease (“vCJD”) about the work of the vCJD Trust (“the Trust”). Concerns were also raised about Charles Russell, the solicitors who administer the Trust on behalf of the Trustees. The programme said that some of the relatives believed that the fund was “delaying payments to families while paying over a million pounds a year to lawyers [Charles Russell]”. It also said that the Government was “so concerned that a health minister is to meet the Trust shortly to discuss how they can speed up payments and cut administration costs.” Charles Russell complained on its own behalf and on behalf of the Trustees that they were treated unfairly in the programme.

Ofcom found as follows:

- a) Ofcom considered that Charles Russell and the Trust were given an appropriate opportunity to respond to the allegations included in the programme.
- b) The statement provided by the complainants for inclusion in the programme, although edited for broadcast, was presented in a fair and appropriate manner and tone.
- c) The programme’s inclusion and presentation of the statement “The Government is so concerned that a Health Minister is to meet the Trust shortly to discuss how they can speed up payments and cut administration costs.” was not materially misleading or likely to have affected viewers understanding of the situation in a way that was unfair to the complainants.
- d) It was legitimate for the programme to examine concerns raised by some families about the effectiveness of the trust and their own experiences and it was reasonable for the programme to include and reflect the testimony and opinion of those people who believed that the trust was not working effectively and not meeting all their claims to their satisfaction.
- e) It was legitimate for the programme to examine costs for administering a publicly funded scheme of this nature. There was an obvious public interest in ensuring public money was used appropriately to compensate families who have suffered as a result vCJD. The programme presented concern at the level of the fees involved in administering the scheme but this was balanced by the programme making clear the complainant’s view that the complexity of the trust deed had contributed to costs of implementing the scheme and that the costs were not disproportionate.
- f) The programme makers took all reasonable care to ensure the accuracy and fairness of the presentation of these cases by offering the complainants an opportunity to contribute to the programme by way of interview (which they declined) and providing the complainants with a full transcript of the programme’s contents (this would have enabled them to counter, where and if necessary, the allegations made in relation to these cases).

In the circumstances, Ofcom found no unfairness to the complainants.

Introduction

This edition of the news and current affairs programme included a report on the concerns of some families of victims of the variant Creutzfeldt Jakob Disease ("vCJD") about the work of the vCJD Trust ("the Trust"). The Trust is a Government funded compensation scheme for victims of vCJD and their families. Concerns were also raised about Charles Russell, the solicitors who administer the Trust on behalf of the Trustees.

The programme examined three cases, of Claire McVey, Nina Sinnott and that of a child who could not be named as a result of an injunction issued on behalf of the Official Solicitor. It included interviews with Claire McVey's mother, Annie McVey, and Nina's Sinnott's stepfather, Michael Sinnott. An interview with a solicitor, Jonathan Green, who represents some of the families concerned about the Trust and Charles Russell was also included in the programme. The programme said that some of the relatives believed that the fund was "*delaying payments to families while paying over a million pounds a year to lawyers [Charles Russell]*". It also said that the Government was "*so concerned that a health minister is to meet the Trust shortly to discuss how they can speed up payments and cut administration costs.*"

Charles Russell complained on its own behalf and on behalf of the Trustees that they were treated unfairly in the programme.

The Complaint

The Complainants' Case

In summary Charles Russell complained that they and the Trust were treated unfairly in that:

- a) Charles Russell and the Trustees were not given a timely and proper opportunity to contribute to the report. The story was not urgent and the report was put together at a relatively leisurely pace, so there was ample opportunity for Charles Russell and the Trustees to be actively involved in its making. On 19 April 2004, Meirion Jones of the BBC spoke to Richard Vallance (the partner at Charles Russell who supervises the provision of a Secretariat to the Trustees) and discussed concerns raised by some of the families. Mr Vallance invited Mr Jones to discuss with him the likely content of the report, when this became known, so that the Trustees, through him, could have some input. Mr Vallance then received an email on 5 May 2004, informing him that the report would go out the following night and stating that the BBC would like to put some of the concerns raised to him or the Trustees, "ideally live in the studio". No script was received, despite a promise to make one available and, in the event, the report was not broadcast on 6 May 2004. Charles Russell and the Trustees reasonably expected a detailed letter or fax or email from the programme makers setting out the nature of the programme and a series of questions. No such document was ever sent. When it was indicated that it was likely to be broadcast on 10 May 2004, Mr Vallance emailed Mr Jones asking for a script. Until they were provided with a script on 10 May 2004, Charles Russell did not know which families Newsnight had spoken to, apart from Mrs McVey, and therefore what concerns might be raised. Having seen the script, Charles Russell and the Trustees

decided not to participate in the programme. This was because they took the view that the report had not been researched so as to help an informed debate, because of bias and because of the line taken on legal costs. Mr Vallance therefore indicated that, rather than an interview, he would provide a short statement in response. Charles Russell and the Trustees could reasonably have expected the programme makers to have sent them, in written form, what the allegations and issues were and to have allowed them several days to provide a response. In the circumstances, Charles Russell and the Trustees were not provided with an appropriate and timely opportunity to respond.

- b) The Newsnight report was long and there was no good reason why the short response provided could not have been read out in full. Instead it was selectively edited to omit some of the most important points: namely that two of the Trustees are 'family representatives', almost all the substantial claims for financial awards had been processed and that £27 million had already been paid to more than 133 families and the level of compensation paid was higher than awards likely to be made by the courts.
- c) The programme unfairly suggested that the Trust was delaying making compensation payments to victims' families and that the Government was 'so concerned' with the Trust that a health minister was to meet with the Trust to discuss how to speed up payments and reduce administration costs. The Trustees can only proceed in accordance with the terms of the Trust Deed, which was prepared before they were appointed. It incorporates the settlement agreed between the families and the Department of Health. Notwithstanding, most claims have been met (see d) below). In relation to the Trust meeting with the Health Minister, the BBC had already been informed that the Department of Health had not expressed concern and had not called for a meeting with the Trustees. A meeting with the Minister had been requested by the Trustees to ask for an additional amount to be paid into the Discretionary Fund.
- d) The programme unfairly stated that "the Trust simply isn't working" and that "many of their claims still haven't been met". The huge majority of claims have been met. Where claims have not been met, this is because claim forms have not been finalised, information has not been provided or there are other deficiencies. The programme did not reflect the complexity of the Trust Deed (which was available in full on the Trust website and had been explained to the programme makers by Charles Russell).
- e) The programme criticised the Trust's lawyers, Charles Russell, for its professional charges. The BBC was well aware that the professional fees of lawyers can appear to be substantial but that does not necessarily make them improper. Charles Russell also noted that the amount paid into the Main Fund included provision for legal costs, and the substantial legal costs caused by the complexity of the Scheme did not reduce any payments to be made to families. The statement provided by Charles Russell to the programme makers referred to the above fact and also that Charles Russell's costs are carefully monitored. However, this final point was not reflected in the edited statement used in the programme.
- f) The programme included inaccuracies regarding the cases featured. In the case of Mr Sinnott, it was suggested wrongly that no compensation had been paid and that the claim had gone on for seven years. The figure quoted by Mrs McVey as the hourly rate at which she was compensated for loss of earnings when caring for her daughter was also incorrect. The third case study, the child

who could not be named because of an injunction, was presented in a sensationalist and misleading way. The injunction was granted on behalf of the Official Solicitor and had nothing to do with Charles Russell or the Trustees. The BBC should have made this clear. Had these contributions been put to the Trustees, errors could have been pointed out or further information provided. Statements by Jonathan Green (a solicitor acting on behalf of some of the dissatisfied families) did not reflect accurately the Trust Deed and should have been put to Charles Russell and the Trustees or not included.

The BBC's Case

In response to Charles Russell and the Trustee's complaint of unfair treatment the BBC responded as follows:

- a) Newsnight's approach in asking Charles Russell's contribution was proper and timely. The original approach to Mr Vallance was made three weeks before transmission. The issues to be raised were well known to Charles Russell from their dealings with the families and with Mr Green. Three days before the broadcast, the Trust had itself minuted, during a meeting of the Trustees, growing concern among families of earlier victims about the way they were being treated. Mr Vallance was repeatedly asked to give an interview himself or put up someone else. He finally refused and failed to identify any supposed inaccuracies in the script before transmission. Mr Vallance's emails before transmission do not ask for more time or complain about the propriety of the approach. They show he decided not to appear because he thought the programme was biased and because he anticipated difficulty in justifying his firm's costs in an interview. If Mr Vallance had asked for a delay of a few days, the programme makers would have been happy to oblige. On a news programme such as Newsnight, scripts of films are not available until the day of transmission. Most interviewees who appear live do so at between a few hours' and a day's notice.
- b) The BBC said that the response provided by Charles Russell was not short and did not respond to any alleged inaccuracies. Mr Vallance acknowledged in an email of 10 May 2004 in the evening that the statement was too long to be read out in full. The statement he provided was contentious: it was disputed that every effort had been made to simplify the process for payments to the victims and their families, that costs were carefully monitored and that they did not diminish awards to claimants. The statement was also misleading in one respect, in that it implied that Charles Russell had paid out £27 million, when half of that amount was paid out before Charles Russell took over. A comparison with court payments was irrelevant, since vCJD is not a normal disease.
- c) The Department of Health told the programme makers that the health minister, Melanie Johnson, was to have a meeting with the Trustees to discuss concerns about high legal costs and the backlog of claims. While these concerns were not new to Charles Russell and the Trustees, they were new to the programme makers and the general public. The BBC accepted that they could have worded this part of the report with a better emphasis, by not referring to the Government being "so concerned" about the Trust that it wanted a meeting with the Trustees. (Please see 'Additional Information' below.)
- d) The BBC said that the wording of the programme was misquoted in the complaint. Newsnight actually said that "there are complaints that the Trust simply isn't working" and not as Charles Russell stated simply that "the Trust

simply isn't working". Similarly, the programme did not allege that "many of their claims still have not been met", it was made clear that this is what some families had argued. The programme's statements were accurate and would have come as no surprise to Charles Russell and the Trustees. They were relevant in a film about the families that were unhappy about the way the Trust was dealing with their problems. Charles Russell's interpretation of the Trust Deed was being disputed not just by victims' families and journalists, but also by other lawyers. The programme was entitled to include Mr Green's views on the Trust Deed, as he represents some of the families with concerns. Charles Russell were given an opportunity to respond to this. As Charles Russell acknowledged, they did not draw up the Trust Deed, so they themselves are also interpreting it.

- e) Charles Russell accepted that their costs for administering the Trust were higher than anticipated. Although they said in the statement, provided for the programme, that their costs were carefully monitored, information about their hourly rates and how many hours' work they devoted to the Trust's business was being kept secret from the families concerned and from the taxpayers. The sum of £67.5 million was allocated by the Secretary of State to compensate the first 250 cases of vCJD and their families and carers. The only way that Charles Russell's higher than expected legal costs could not affect payments to families would be if there was some secret agreement reserving a specific sum for lawyers and costs. The BBC in response to Charles Russell's comments later noted that payment of Charles Russell's costs comes out of the total Fund and that this has to be allowed for in budgeting for future discretionary claims. Less money is therefore available for victims. There was no accusation that Charles Russell were doing anything illegal. The BBC accepted their charges are not unusual for a large City firm. However the criticism is that they are overly legalistic and that their way of doing things increases delays and costs, at the expense of the victims.
- f) As regards the three case studies, the family members concerned were entitled to express their views, and the programme was entitled to include them. It was clear from the programme that the interim trust had made payments but that Mr Sinnott and his family were facing psychiatric tests if they wanted to continue with their claim for compensation for the care they gave to Nina. The figure quoted by Mrs McVey for the amount paid to carers was the amount indicated on the vCJD website and in a letter to victims from the Trust. In the case of the child who could not be named, it was made clear in the programme that the injunction was issued on behalf of the Official Solicitor. If Mr Vallance felt that it was unfair of the victims' families to criticise the way Charles Russell operated, he was given every opportunity to appear on the programme and rebut the criticisms or to point out any inaccuracies to Mr Jones prior to broadcast.

Additional Information on head c)

The BBC wrote to Ofcom following the close of the written stages of the consideration of this complaint making representations relating to head c) (as detailed in this adjudication). The BBC enclosed documentation which they believed had a bearing on this issue. Ofcom considered that the material was relevant, significant and could not reasonably have been produced earlier. Ofcom decided to admit the material for consideration and gave Charles Russell the opportunity to provide a written statement in response.

The BBC's Case

The BBC wrote that:

In the introduction to the item on 10 May 2004, the presenter said that:

“Newsnight has learned that some of the relatives believe the Fund is delaying payments to the families while paying over a million pounds a year to lawyers. The Government is so concerned that a Health Minister is to meet the Trust shortly to discuss how they can speed up payments and cut administration costs.”

The complainants objected to the passage on the grounds that *“the Department of Health had not expressed concern and had not called for a meeting with the Trustees. A meeting with the Minister had been requested by the Trustees to ask for an additional amount to be paid into the Discretionary Fund.”* The BBC claimed that documents now released by the Department of Health (Dept of Health) under the Freedom of Information Act showed that this statement by the complainants was untrue.

A Dept of Health memo of 24 February 2003, noting a meeting with the vCJD Trust Secretariat two weeks earlier, showed that concern about delay in compensating families and administrative costs predated the broadcast by well over a year. The memo went on to recommend that the Dept of Health's concerns be put in writing. The resulting letter of 7 March 2003 to Charles Russell raised an explicit concern about *“the high level of administration costs”*, and offered suggestions about aspects of the Trust's discharge of its responsibilities which had contributed to delay. These two documents made clear that Charles Russell were incorrect to suggest that *“The Department of Health has not expressed concern”*.

On 7 May 2004 the Dept of Health became aware, through an approach to its press office by *The Sunday Times*, that *Newsnight* was intending to report on concerns about the Trust on the following Monday, 10 May 2004. This led to discussions within the Dept of Health. A record of the discussions noted that *“We discussed and agreed that, as the Trust Chairman Sir Robert Owen has still not written (as promised) to SoS [the Secretary of State] to request a meeting, we should now consider a submission to John Reid [the then Secretary of State] suggesting he takes the initiative.”*

This made clear that the complainants were incorrect in suggesting that it was the Trust which had requested a meeting. On the contrary, the Trust had evidently failed to make good its promise to do so.

Following the broadcast of *Newsnight* on 10 May 2004, Sir Robert Owen wrote to *The Times* and Charles Russell wrote to the families whose claims were under consideration by the Trust. This resulted in a response from Dept of Health to Charles Russell on 21 May 2004 which set out the Dept of Health's concerns about disproportionate administrative costs. In particular it stated:

“Contrary to what is said in your own letter to the families, the Department has most definitely expressed concern about the high level of costs involved in the administration of the Trust...Equally, the Department has not pressed for a meeting between the Trustees and the Secretary of State on the basis of your assurances that such a meeting was being sought by the Trustees and that a formal request from them was to be expected at any moment. To date however, no formal, specific request for a meeting has been received from

the Trustees.”

A meeting eventually took place, on 25 October 2004 (approximately three months after the complaint was lodged with Ofcom). A Dept of Health internal briefing for that meeting stated that:

“A meeting with Sir Robert is perhaps overdue. The vCJD Trust has been in operation since 15 March 2002 and, since autumn 2003, we understood from the Trust’s administrators, Charles Russell Solicitors, that Sir Robert intended to write to SofS to request a meeting and to present the Trustees first annual report. This summer in the absence of the anticipated letter, PS(PH) [Parliamentary Under Secretary of State for Public Health] wrote to invite Sir Robert to meet. It was subsequently agreed that both PS(PH) and SofS would meet with him. However, Ministers will wish to be aware that Sir Robert’s perception is that he has instigated this meeting.”

This document made clear that the purpose of the meeting was the *“Disappointment that no claims have yet been settled in full (but note that Sir Robert will be explaining the reasons for this) and concern at the level of costs in administering the scheme...”*

The BBC stated that the documents provided established that the Dept of Health had indeed expressed concern, precisely as stated by *Newsnight*; that a meeting with the Minister had not in fact been requested by the Trustees (though they had expressed the intention of asking for such a meeting); and, that the Dept of Health was *“so concerned that a Health Minister is to meet the Trust...to discuss how they can speed up payments and cut administration costs”*.

The Complainant’s Case

In response, Charles Russell wrote that:

The supply of documents by the BBC, from the bundle provided by the Dept of Health was very selective. For example, the BBC had not produced the Note of the Meeting with the Secretary of State dated 25 October 2004. They had only produced a copy of the Briefing Note for that meeting and this was both misleading and unfair.

With regard to the expression of concern about delay and administration costs, the BBC relied on documents concerning the situation in early 2003 whereas the complaint relates to a broadcast in May 2004. The BBC was not able to rely on any documents expressing concern for the period between 8 March 2003 and the day of the *Newsnight* broadcast on 10 May 2004 because there were none in the Dept of Health bundle.

The true position at the time of broadcast was as stated in the penultimate paragraph of Charles Russell’s letter to the Dept of Health dated 28 May 2004:

“The Dept has not in recent times expressed concern, nor has it called for a meeting between a Minister and the Trustees. It was at a much earlier stage that [you] expressed concern when costs were disproportionate to payments of compensation, a concern which we shared at the time.”

The meeting eventually held with the Secretary of State on 25 October 2004 had been requested by Sir Robert Owen for the main purpose of seeking a transfer of funds into the Discretionary Fund. The Dept of Health confirmed that this request would be granted but arrangements were put on hold because the Dept of Health

asked for financial projections. The procedure required him, when ready, to submit a formal letter of request addressed to the Secretary of State.

It could also be seen from the internal documents of the Dept of Health produced by the BBC that it was after the inquiry of a reporter from the *Sunday Times* and the broadcast of the *Newsnight* programme that civil servants at the Dept of Health became anxious about media interest in the costs of the Scheme, and on the night of the programme were suggesting that the Secretary of State should take the initiative.

Charles Russell did not agree with the interpretation which the BBC had put on the letters dated 11, 21 and 28 May 2004 (referred to above). So far as the Trustees and Charles Russell were concerned, the letters dated 11 May and 28 May 2004 (also referred to above) stated the true position. The Secretary of State had since agreed that it was inevitable that such a Scheme (as it was set up) would be costly to administer.

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 infringements of privacy in programmes included in such services.

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

The case was referred to Ofcom's Fairness Committee ("the Committee") for consideration.

The Committee found as follows:

- a) Charles Russell and the Trustees complained that they were not given a timely and proper opportunity to contribute to the report. Where a programme alleges wrongdoing or contains a damaging critique of an individual or organisation, those criticised should normally be given an appropriate and timely opportunity to respond to the arguments and evidence contained within that programme. The Committee first considered whether or not the programme amounted to a damaging critique. In the Committee's view, the programme was capable of adversely affecting the reputations of both the Trust and Charles Russell. In particular, it considered that claims that some of the relatives of those who had died as a result of vCJD believed that the fund was "delaying payments to families while paying over a million pounds a year to lawyers" and that the Government was "so concerned that a health minister is to meet the trust shortly to discuss how they can speed up payments and cut administration costs" were likely to have led viewers to react critically to Charles Russell and the Trust.

Taking this into account, the Committee then considered whether or not Charles Russell and the Trust were given an appropriate opportunity to respond to the allegations included in the programme. The Committee took into account the timeliness of the offer, the sufficiency of the information provided and the nature of the opportunity offered. The Committee also had regard to the type and nature of the programme.

On the evidence available to the Committee it considered that Charles Russell and the Trust were given an appropriate opportunity to respond to the allegations included in the programme. In reaching this decision the Committee had regard to the following:

- the programme makers first contacted the complainants three weeks before transmission (at which point concerns, raised by some of the families and likely to be referred to in the programme, were discussed);
- a transcript of the programme detailing its full contents (including the case studies) was provided to the complainants on the morning of the broadcast. The Committee recognised that it was not unusual for a news programme of this nature to finalise items for broadcast shortly before their intended transmission;
- the complainants were offered the opportunity to take part in an interview which they declined;
- having had sight of the transcript and so with full knowledge of the programme's contents the complainants prepared a statement in response which was provided to the programme makers. A summary of that statement was included in the programme; and,
- it also appeared from the evidence before the Committee that the issues raised in the programme were well known to Charles Russell from their dealings with the families and with Mr Green. The Committee noted that three days before the broadcast, the Trust had itself minuted in a meeting of the Trustees growing concern among families of earlier victims about the way they were being treated.

In the circumstances, the Committee found no unfairness in this respect.

- b) Charles Russell and the Trustees claimed that it was unfair for the programme not to have read out their statement (in response to the allegations in the programme) in full. The Committee believed that it was not incumbent upon the programme, in the interests of fairness, to present the statement from Charles Russell in full. On balance the Committee considered that the statement, although edited for broadcast, was presented in a fair and appropriate manner and tone. In particular it made clear the complainant's view that the complexity of the trust deed had contributed to costs of implementing the scheme and that the costs were not disproportionate.

Furthermore, other relevant elements of the statement, although not read out by the presenter, were appropriately reflected elsewhere in the programme. In particular, it was clear from the small number of cases examined that it was only a limited number of individuals who were openly critical of the administration of the scheme (please see finding d) below). It was also clear that the trust had compensated a number of families.

The Committee found no unfairness in this respect.

- c) Charles Russell and the Trustees suggested that the statement in the programme that the Government was "so concerned that a health minister is to meet the trust shortly to discuss how they can speed up payments and cut

administration costs” was unfair. Charles Russell stated that they had already informed the BBC that the Department of Health had not expressed concern and had not called for a meeting with the Trustees.

The Committee took into account the need for special care to be taken when programmes are capable of adversely affecting the reputation of individuals or organisations. As noted above, in the Committee’s view this particular statement in the programme was capable of adversely affecting the reputations of both the complainants. Programme makers should also avoid unfairness to the individuals or organisations through the use of inaccurate information which is likely to mislead the audience in a way that is unfair to the participants.

In these circumstances, the Committee considered whether the programme makers took all reasonable care to satisfy themselves that the particular facts had been considered before transmission and so far as possible fairly presented. The Committee were satisfied that the programme makers had taken all reasonable care by offering the complainants an opportunity to contribute to the programme by way of interview (which they declined); providing the complainants with a full transcript of the programme’s contents (this would have enabled them to counter, where and if necessary, this statement and any other allegations that appeared in the script and were to be included in the programme); and, by presenting a summary of the statement in the programme. The Committee also noted that the information reflected in this statement appeared to come from an authoritative source, the Dept of Health, and was supported by material subsequently submitted by the BBC (please see below).

The Committee then addressed itself to the question of whether the statement would have materially misled viewers about the situation or materially affected their opinion of Charles Russell and the Trust in a way that was unfair to either Charles Russell or the Trust in the programme as broadcast. In doing so the Committee examined the submissions on this issue. In particular it noted that the Dept of Health’s letter of 21 May 2004 made clear that Dept of Health had “most definitely expressed concern about the high level of costs involved in the administration of the Trust”. This letter also made clear that the Dept of Health was hoping to meet with the Trust to discuss these concerns and that by the time of broadcast no formal request for meeting had been made by the Trust.

Although originally the concerns were expressed some time before the broadcast of the programme at no point had they been addressed or resolved before broadcast and as such were outstanding. Indeed, after broadcast the concerns remained as evidenced by the fact that during the meeting between Sir Robert Owen and the Secretary of State on 25 October 2004 (five months after the broadcast) during which the Secretary of State made clear that he had intended to reprimand “lawyers for the delay and the fees”.

In the circumstances, the Committee considered that the programme’s presentation of this issue was not materially misleading or likely to have affected viewers understanding of the situation in a way that was unfair to the complainants.

The Committee found no unfairness in this respect.

- d) Charles Russell and the Trustees complained that the programme unfairly stated that “the Trust simply isn’t working” and that “many of their claims still haven’t been met”. The Committee noted that the programme actually stated

that “there are complaints that the Trust is simply not working. Some of the families... argue that many of their claims have still not been met”.

Ofcom considered that it was legitimate for the programme to examine concerns raised by some families about the effectiveness of the trust and their own experiences and it was reasonable for the programme to include and reflect the testimony and opinion of those people who believed that the trust was not working effectively and not meeting all their claims to their satisfaction. The Committee noted that these allegations were clearly attributed to those dissatisfied families.

In Ofcom’s view it was likely to have been clear to viewers that the programme presented a limited number of cases where, in the personal opinion of those featured, the trust had not effectively compensated them. The programme did not present this as evidence that it was established as fact that the trust “simply isn’t working” as claimed by the complainants.

The Committee found no unfairness in this respect.

- e) The complainants stated that the programme criticised Charles Russell for their professional charges without reflecting that the substantial legal costs caused by the complexity of the Scheme did not result in a reduction of any payments to families. The complainants also said that Charles Russell’s costs were carefully monitored. The Committee was not able to determine whether or not the legal costs (which the complainants accepted were higher than expected due to the complexity of the Scheme) resulted in a reduction in the payments to families. The Committee noted that the parties’ representations on this issue conflicted. However, in the Committee’s view it was legitimate to examine costs for administering a publicly funded scheme of this nature. There was an obvious public interest in ensuring public money was used appropriately to compensate families who have suffered as a result vCJD. In examining the programme transcript it was evident that there was concern at the level of the fees involved in administering the scheme but this was balanced by the programme making clear the complainant’s view that the complexity of the trust deed had contributed to costs of implementing the scheme and that the costs were not disproportionate.

The Committee found no unfairness in this respect.

- f) The complainants stated that the programme included inaccuracies regarding the cases featured. As regards the programme’s presentation of the case studies, and as already noted above at finding d), the Committee considered that the programme makers took all reasonable care to ensure the accuracy and fairness of the presentation of these cases by offering the complainants an opportunity to contribute to the programme by way of interview (which they declined) and providing the complainants with a full transcript of the programme’s contents (this would have enabled them to counter, where and if necessary, the allegations made in relation to these cases).

As also noted above at finding d) Ofcom considered that it was legitimate for the programme to examine concerns raised by some families, including these specific cases, about the effectiveness of the trust and their own experiences and it was reasonable for the programme to include and reflect the testimony and opinion of those people who believed that the trust was not working effectively and not meeting all their claims to their satisfaction.

The Committee found no unfairness in this respect.

Accordingly, the complaint of unfair treatment was not upheld.

Complaint by The Right Reverend Sean Manchester

101 Things To Do When You're Dead, Channel 4, 19 July 2004

Summary: Ofcom has not upheld this complaint of unfair treatment. The Right Reverend Sean Manchester was featured briefly in a programme, which was one in a short series of "list" programmes that took a humorous look at things that could happen to you after you had died. One of the things that was listed was being pursued by vampire hunters. The programme included footage of Bishop Manchester from a BBC programme broadcast in 1970 and featured his activities while hunting a vampire in Highgate Cemetery in North London when he was head of the British Occult Society. He complained that he had been treated unfairly in the Channel 4 programme.

Ofcom found as follows:

Ofcom found no unfairness in the programme's implication that Bishop Manchester was one of a number of "1970's weirdos" given the light-hearted nature of the programme and taking into account that the majority of people would not consider vampire hunting to be a normal activity.

Ofcom was satisfied, having viewed the programme and examined the transcript of it, that the footage from the original BBC programme referred to above did not appear to have been distorted or manipulated. The manner of its inclusion was not likely to have misled viewers in a way that would have created material unfairness to Bishop Manchester.

Intercutting footage of Bishop Manchester and an unidentified ex-offender did not have a negative impact on the portrayal of Bishop Manchester.

Although the programme said that Bishop Manchester had broken into a tomb and beheaded a corpse at Highgate Cemetery after performing an exorcism, Ofcom noted that Bishop Manchester had not denied that he had, in the past, carried out an exorcism using "the traditional and approved manner" (i.e. stake through the heart, burning of remains etc). Ofcom was satisfied that this brief reference was unlikely to have materially affected viewers' impression in a way that resulted in unfairness to Bishop Manchester.

Ofcom considered that the broadcaster made sufficient effort to contact Bishop Manchester prior to transmission.

Introduction

This programme was one in a short series of "list" programmes broadcast on Channel 4. It illustrated things that, as Channel 4 claimed, "might happen to you after you are dead". One of the things listed was being hunted down by vampire hunters. The programme included footage of Bishop Manchester taken from a BBC programme, *24 hours*, broadcast in 1970. At the time he was involved in vampire hunting at Highgate Cemetery in North London and was head of the British Occult Society. Bishop Manchester complained to Ofcom that he had been treated unfairly in the programme.

Ofcom's Executive Fairness Group originally considered and provisionally adjudicated on this complaint finding. It had found that that part (d) and consequently (e) was unfair to Bishop Manchester (see below).

Channel 4 requested and was granted a review of the provisional adjudication.

Ofcom's Fairness Committee (its most senior decision making body with regard to fairness and privacy complaints) was asked to reconsider the original complaint in its entirety. This was because of the risk that the remaining element of the decision (which had not been the subject of the review request i.e. section (e)) might not stand in the event that the Fairness Committee overturned the parts of the complaint that Channel 4 had requested be reviewed (these were the parts that related to the severity of the allegation made against Bishop Manchester).

The complaint

Bishop Manchester's case

In summary, Bishop Manchester complained that:

- (a) He was referred to in the programme as a "1970's weirdo".
- (b) The item relied on footage taken from *24 hours*, a programme broadcast by the BBC in 1970 in which he re-enacted a spoken exorcism he had performed at Highgate Cemetery. Bishop Manchester said that the footage from *24 hours* was distorted and manipulated in the Channel 4 programme in a way that was unfair to him.
- (c) The programme included images of him that were intercut with images of another person, who, unlike him, was not identified by name, and who had criminal convictions in relation to the events in Highgate Cemetery in 1970. All the footage had originally been filmed for *24 hours*. This had the effect of attributing, falsely, to Bishop Manchester the satanic sacrilege that occurred in the cemetery in 1970. Bishop Manchester said that he was featured in the BBC programme because of the spoken exorcism that he had performed, whereas the other person was included because of his arrest for activities in the cemetery.
- (d) The programme stated, falsely, that he had broken into a tomb and beheaded a corpse, an action that would be a criminal offence. The programme said he had "performed a spoken exorcism and when that didn't work he broke into some poor sod's tomb and beheaded him". However, *24 hours* had not suggested this. Bishop Manchester said that a corpse was beheaded at Highgate Cemetery in 1970 and the police had agreed with his assessment that it had been the work of "black satanic devotees". He had never claimed to have beheaded a corpse in Highgate Cemetery or any other consecrated ground, nor had it been claimed elsewhere, until the Channel 4 programme, that he had done so.
- (e) The programme makers did not contact him prior to broadcast of the programme.

Channel 4's case

In summary, Channel 4 responded that:

- (a) The description of Bishop Manchester as a "1970's weirdo" was justified. The events referred to in the programme had taken place between 1970 and 1974 and the dictionary defined "weird" as meaning "suggestive of or relating to the supernatural" or "strange or bizarre". In view of Bishop Manchester's involvement in a vampire hunt, the description of him as being weird was

justified.

- (b) The programme did not rely solely on the BBC's *24 hours* programme. It also used information from Bishop Manchester's own website about events that happened after *24 hours* was made. Channel 4 denied that the footage from the BBC programme as used in the Channel 4 programme was distorted or manipulated.
- (c) Bishop Manchester was captioned and identified in the programme because it included footage of him speaking. He was also identified because of his role as the then head of the British Occult Society and because of his claim to have despatched the "undead", which he described on his website as the Highgate Vampire, the subject of this part of the programme. Channel 4 said that the other, unidentified, individual was also included in the programme because he too had been hunting the Highgate Vampire and claimed to have seen it. This other individual did not speak in the programme and did not claim to have despatched the vampire. *24 hours* only referred to the acquittal of this other person of the charge of "being in an enclosed place for an unlawful purpose". Neither Channel 4 nor the programme makers were aware of any other criminal proceedings or convictions relating to this person. The matters to which Bishop Manchester referred had occurred after the *24 hours* programme was made. The programme broadcast on Channel 4 did not make any claim or assertion that Bishop Manchester had any criminal convictions.
- (d) The *24 hours* programme only referred to a spoken exorcism because the events when Bishop Manchester broke into a tomb and staked and incinerated a corpse happened after it was made. However, material on Bishop Manchester's website and in his book "The Highgate Vampire" clearly implied that he staked, beheaded and incinerated the corpse he thought was the Highgate Vampire. He also implied in *24 hours* that this was the method of exorcising a vampire. Extracts from Bishop Manchester's book also described him breaking into tombs of those he believed to be the "undead" and seeking to despatch the contents.
- (e) The programme makers were not able to contact Bishop Manchester through his website, nor were they able to obtain a copy of his book until after the broadcast. They therefore relied on information taken from the website and the *24 hours* programme.

Channel 4's additional comments

Channel 4 challenged Ofcom's provisional adjudication in that it considered it was flawed on judicial review grounds. In particular, Channel 4's representations were made in relation to head (d) as detailed in this adjudication. In summary, Channel 4 said that:

Ofcom misdirected itself by making a finding on the illegality of an act referred to in the programme, namely breaking into a tomb and beheading a corpse. Ofcom was not empowered to make a finding of illegality or otherwise and such a finding was invalid. Neither Channel 4 nor the programme makers were given the opportunity to respond to, or answer, any complaint which alleged the commission of a particular offence that had not been referred to in the complaint.

Channel 4 said that insofar as the programme [made] any suggestion about the complainant, it [was] about the "Highgate Vampire" and that the complainant had been prepared to violently despatch a corpse he believed to be an "undead". That

meaning was fully justified by the complainant's own claim, from his book, to have violently despatched the Highgate Vampire by tracking it down, kicking "the lid off the coffin", driving "a stake through the creature's heart" and "burning the remains". Therefore, by implication, Channel 4 sought to argue that Ofcom had failed to take relevant considerations into account as a result of not attributing due weight to these issues.

Channel 4 said that Ofcom should have taken into account the fact that Bishop Manchester had explicitly admitted to having violently despatched the supposed Highgate Vampire. Ofcom did not take proper account of the fact that Bishop Manchester was a "self-styled vampire hunter and slayer and had been and continued to allow publicity for his 'achievements' to appear on the website run by his society". This website, Channel 4 asserted, indicated that he despatched the Highgate Vampire by the "ancient and approved remedy" and that elsewhere in the website Bishop Manchester was quoted as saying "we would like to exorcise the vampire by the traditional and approved manner – drive a stake through its heart with one blow just after dawn, chop off the head with a grave digger's shovel and burn what remains".

Bishop Manchester's additional comments

Bishop Manchester responded to Channel 4's representations. In summary, he said that:

It was because he was falsely accused of an illegal act in the programme that it was unfair. Whether or not such an act was deemed illegal, the important point was that he did not do what was claimed. Both the police and Bishop Manchester attributed the decapitated corpse found in the summer of 1970 at Highgate Cemetery to the activities of "black magic devotees".

The despatching of the supposed Highgate Vampire had no relation in time and place to the allegations made in the programme.

Further additional comments from Channel 4

Channel 4 submitted further comments in response to Bishop Manchester's comments. In summary, Channel 4 said that:

Bishop Manchester's comments on his claimed despatch of the "Highgate Vampire" were abstruse. The "traditional method" by which a "vampire" is dispatched had been described by the complainant himself. He had accepted, as true, Ofcom's observation that he had not denied employing the traditional method. However, he went on to say that he had "always denied decapitating a corpse" and "an actual corpse in an actual graveyard".

Quotations from Bishop Manchester's book recounted a number of incidences where he claimed to have gained entry to tombs by climbing through a hole in its roof, for example, and how he had been prepared to impale a stake into what he described as an "undead".

Further additional comments from Bishop Manchester

Bishop Manchester submitted a final response to Channel 4's comments. In summary, he said that: material that came about after 1970 was irrelevant. His principal complaint was that he had never broken into a tomb in Highgate Cemetery

and decapitated a corpse, nor had he claimed to have done so, or been accused of doing so, before the Channel 4 programme was broadcast. Such a malicious and false allegation could be nothing but unfair.

Bishop Manchester maintained that the programme misinformed viewers and gave the impression that he had broken into a tomb and decapitated a corpse, an act that he did not do.

Decision

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

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

The case was referred to Ofcom's Fairness Committee for re-consideration in its entirety.

The Committee found that:

- (a) Bishop Manchester complained that he was referred to in the programme as a "1970's weirdo". Having examined the transcript the Committee noted that the programme actually referred to "1970's weirdos" and did not refer specifically to Bishop Manchester. In Ofcom's view, it was not unreasonable for the programme to have referred to "1970's weirdos". The part of the programme that featured Bishop Manchester concerned vampire hunting, included footage taken in 1970 and referred to events that occurred in the early 1970s. As stated above, the comment did not refer specifically to Bishop Manchester although it was clearly intended to include him. Whilst the term was perhaps an emotive one and, by implication, may have been unsympathetic towards him, the Committee considered that the comment was not unfair to Bishop Manchester. This takes into account the light-hearted nature of the programme within which such comments were made and acknowledging that the majority of people would not consider vampire hunting to be a normal activity. The Committee, therefore, considered that this was not unfair.

The Committee found no unfairness in this respect.

- (b) Bishop Manchester claimed that the footage upon which this programme relied, (taken from the earlier programme, *24 hours*) had been distorted and manipulated. The Committee noted that the programme did not rely entirely on the BBC programme, *24 hours*, but also took material from websites that referred to Bishop Manchester. The Committee was mindful that broadcasters should take special care that the use of material obtained for one purpose and then used in a later or different programme does not create material unfairness. In the circumstances of this case, the Committee took the view that, although the footage had been edited for this programme, it did not appear to have been "distorted" or "manipulated" as claimed by Bishop Manchester. Further, the

Committee was not persuaded that the programme's presentation of the footage would have misled viewers or materially affected viewers' opinion of Bishop Manchester in a way that was unfair to him (see findings (c) and (d) below).

The Committee found no unfairness in this respect.

- (c) Bishop Manchester complained that the programme included images of him that were intercut with images of another unidentified individual, with criminal convictions. The Committee accepted that the intercutting of footage of Bishop Manchester and this other person was perhaps confusing, particularly as Bishop Manchester was captioned and the other person was not (making it unclear how the other person fitted into the piece or indeed who he was). However, the Committee took the view that this did not have any negative impact on the portrayal of Bishop Manchester. In view of the fact that he was featured speaking on the programme and taking into account his role in the vampire hunt in the 1970s, it was reasonable to have identified Bishop Manchester. However, the fact that the programme did not also identify the other person (who, unlike Bishop Manchester, did not say anything in the clip that was shown) did not, in the Committee's view, lead to unfairness to Bishop Manchester. The Committee was satisfied that the programme did not say that Bishop Manchester had any criminal convictions nor that he had played any part in the "satanic sacrilege" that occurred in Highgate Cemetery in 1970. The Committee did not consider that this would have been inferred by viewers as a result of the inclusion of the other person. In fact, most viewers of this programme were unlikely to know who the other person was and were equally unlikely to know the fact of his conviction and the events (which occurred over thirty years before the programme) that it related to.

The Committee found no unfairness in this respect.

- (d) Bishop Manchester complained that the programme stated, falsely, that he had broken into a tomb (on consecrated ground) and beheaded a corpse, an action that would be a criminal offence. Channel 4 responded that material on Bishop Manchester's website and in his book "The Highgate Vampire" clearly implied that he staked, beheaded and incinerated the corpse he thought was a vampire in Highgate Cemetery. Ofcom is not a fact finding tribunal and the Committee was not able to resolve this conflict. The Committee's function was to consider whether, notwithstanding the conflict, the programme's presentation of this matter was likely to have resulted in unfairness to Bishop Manchester in the programme as broadcast.

The Committee considered that the programme's presentation of this matter was unlikely to have materially affected viewers' understanding of the issue or influenced their opinion of Bishop Manchester in a way that was unfair to him. In reaching this conclusion the Committee took into account the following:

Bishop Manchester had not denied that he had, in the past, carried out an exorcism and he was published describing the traditional method of despatching a vampire as being to drive a stake through its heart before beheading it and incinerating the remains. Bishop Manchester's main contention appeared to be that he had never carried out (nor been accused of carrying out) such an act in Highgate Cemetery nor indeed on any other consecrated ground. In the Committee's opinion, viewers would have been unlikely to have understood the significance of this distinction;

Bishop Manchester had himself claimed, in his own book, to have violently

despatched the Highgate Vampire by tracking it down, kicking “the lid off the coffin”, driving “a stake through the creature’s heart” and burning the remains”;

the Vampire Research Society’s website also appeared to indicate that Bishop Manchester had despatched the Highgate Vampire by the “ancient and approved remedy”; and,

the programme was light hearted and irreverent and clearly not intended to make a serious allegation of criminality on the part of Bishop Manchester.

In all the circumstances, the Committee was satisfied that this brief reference was unlikely to have materially affected viewers’ opinion of Bishop Manchester in a way that resulted in unfairness to Bishop Manchester.

The Committee found no unfairness in this respect.

- (e) Bishop Manchester complained that the programme makers did not contact him prior to broadcast of the programme. The Committee acknowledged that the programme makers had made an attempt to contact Bishop Manchester by emailing a website which he was associated with, but were unable to make contact with him. Whether or not they might have succeeded in contacting him via other websites which were available, the Committee considered that the broadcaster, in the circumstances, had made sufficient effort. This was in view of the Committee’s findings in relation to the other heads of complaint and the fact that the programme did not contain a damaging critique of Bishop Manchester. The failure to contact Bishop Manchester did not therefore result in unfairness to him in the programme.

The Committee found no unfairness in this respect.

Accordingly, the complaint of unfair treatment was not upheld.

Complaint by Advokaterna Bring & Bergkvist HB on behalf of Mr Axel Fondén

Insider, TV3, 25 & 28 November 2004

Summary: Ofcom has not upheld this complaint of unfair treatment. Advokaterna Bring & Bergkvist HB ("Bring & Bergkvist") complained on behalf of Axel Fondén that he was treated unfairly in this edition of Insider. The programme looked at the suspected murder in Spain in 1997 of a Swedish businessman, Jan Nylander. It investigated suspicions that a group of fellow businessmen were involved in the murder and included allegations about Mr Fondén. The programme stated that the murder remained unsolved.

Ofcom concluded that:

- a) The programme makers were entitled to rely on information provided by the Spanish police, as they were conducting the murder investigation. Mr Fondén was not the sole focus of the programme, but the suggestion that he might have played an important role in the murder was justified by information provided by the Spanish police. It was clear that no one has been convicted for the murder and that there may be other explanations for Mr Nylander's death.
- b) A reference to Mr Fondén being on bail was a quotation from the Spanish police. The programme makers were entitled to rely on information provided by an authoritative source such as the police. It was apparent from the programme that Mr Fondén is not in custody and that he remains a suspect as far as the Spanish police are concerned.
- c) It was made clear in the programme that no one has been convicted for the murder. It was also clear that it was the opinion of the Spanish police that Mr Fondén was involved and not a statement of fact.
- d) The information that Mr Fondén provided fellow businessman Bengt Briscoff with a pistol used in the murder came from a report by the Spanish police, on which the programme makers were entitled to rely, as a reliable source of information.
- e) The programme makers were entitled to protect the anonymity of a source. Viewers were informed that the source was anonymous and the information he provided suggested that he might be an associate of Mr Fondén and Mr Briscoff. They were, therefore, able to reach a sufficiently informed view as to the weight they wished to give to the information provided by the source.
- f) The cause of Mr Nylander's death was referred to in the programme both by the Spanish police officer who was interviewed and by the anonymous source. The cause of death referred to was as set out in the report of the Spanish police, an authoritative source on which the programme makers were entitled to rely.

Introduction

This edition of TV3's investigative programme looked at the suspected murder in Spain in 1997 of a Swedish businessman, Jan Nylander. It investigated suspicions

that a group of fellow businessmen were involved in the murder and included allegations about Axel Fondén. The programme stated that the murder remained unsolved.

The solicitors, Advokaterna Bring & Bergkvist HB, complained on behalf of Mr Fondén that he was treated unfairly in the programme as broadcast.

Complaint

Mr Fondén's case

In summary, Advokaterna Bring & Bergkvist HB complained that Mr Fondén was treated unfairly in that:

- a) Mr Fondén was singled out as a criminal.
- b) The programme incorrectly stated that Mr Fondén was on bail in connection with the murder of Jan Nylander.
- c) It was not clear that a statement that the Spanish police considered the perpetrators of the murder to be Mr Fondén and another Swedish businessman was the opinion of the Spanish police, rather than a statement of fact.
- d) The programme included an untrue statement that Mr Fondén provided a fellow businessman Bengt Briscoff with a pistol used in the murder.
- e) The programme included an untrue statement that Mr Fondén ordered Mr Briscoff to kill Mr Nylander.
- f) It was not made clear that the cause of Mr Nylander's death remained uncertain.

TV3's case

In response, TV3 said:

- a) The programme concerned a crime committed in Spain and did not deal with the Swedish prosecutor. Mr Fondén was not singled out in the programme, but was presented as one of the four suspects identified by the Spanish police as being somehow involved in the death of Jan Nylander. It was made clear throughout and at the end of the programme that no one had been convicted for the murder of Mr Nylander.
- b) The information that Mr Fondén was on bail for the murder came from a recorded interview with Spanish police officer, who according to the production company, was also the Chief of Information/press at the Guardia Civil. Due to time restraints, this interview did not appear in the programme.
- c) It was clearly stated on the programme that it was the opinion of the Spanish police that Mr Fondén and Mr Briscoff were somehow involved in the death of Mr Nylander. The narrator also stated that the murder could have been ordered by the mafia in Sweden and that the four suspects may be innocent.
- d) The reference to Mr Fondén having provided Mr Briscoff with the pistol used in the murder was a direct quotation from the Spanish police report.

e) The statement in the programme that Mr Fondén ordered Mr Briscoff to murder Mr Nylander was made during an interview with a reporter and an anonymous person. It was clear in the programme that this source was anonymous, since the person was not named or shown in the programme. The production company is unwilling to reveal the identity of this source.

f) As regards the cause of death, the programme quoted from the Spanish police report.

In addition TV3 said that the programme makers wanted Mr Fondén to participate in the programme and forwarded a set of questions to Mr Fondén's Spanish lawyer. Later on, the programme makers received an email from the lawyer indicating that Mr Fondén would not answer any of the questions or appear on the programme.

Decision

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

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

Ofcom concluded that:

a) The complainants suggested that Mr Fondén was unfairly singled out as a criminal. Ofcom took the view that as the murder investigation was being conducted by the Spanish police, the programme makers were entitled to rely on information provided by them. There was no similar information from the Swedish authorities. Ofcom did not consider that Mr Fondén alone was singled out in the programme, as other people were referred to as being suspected of involvement with the murder of Mr Nylander. Although the programme suggested that Mr Fondén might have played an important role in the murder, this was justified by information provided by the Spanish police. In any event, it was made clear that no one has been convicted for the murder and that there may be other explanations for Mr Nylander's death.

Ofcom found no unfairness in this respect.

b) In considering the complainant's claim that the programme incorrectly stated that Mr Fondén was on bail for the murder Ofcom noted that, although there was some ambiguity regarding what the programme said about Mr Fondén's status within the Spanish criminal justice system, the reference to him being on bail was a direct quotation from the Spanish police. The programme makers were entitled to rely on information provided by an authoritative source such as the police. Viewers were not, in any event, likely to be misled by the ambiguous wording, as it was clear from the programme that Mr Fondén was not in custody and also that he remains a suspect as far as the Spanish police are concerned.

Ofcom found no unfairness in this respect.

c) The complainant claimed that it was not clear that a statement that the Spanish

police considered the perpetrators of the murder to be Mr Fondén and another Swedish businessman was the opinion of the Spanish police. Ofcom considered that the programme referred to suspicions by the Spanish police that Mr Fondén and another Swedish businessman were the perpetrators of the murder. In Ofcom's view it was clear, both from the wording and from the context provided in the programme, namely that no one has been convicted for the murder, that this was the opinion of the Spanish police and not a statement of fact. Further, the programme put forward an alternative theory that the murder could have been ordered by the Swedish mafia and that Mr Fondén and the other men named in the programme were innocent. It was also made clear at the end of the programme that the case remains open and no one has been convicted for the murder.

Ofcom found no unfairness in this respect.

d) Mr Fondén's solicitors complained that the programme included an untrue statement that Mr Fondén provided fellow businessman Bengt Briscoff with a pistol used in the murder. Having examined the programme transcript Ofcom acknowledged that the programme did include this claim. However, Ofcom was not in a position to determine whether the statement that Mr Fondén provided fellow businessman Mr Briscoff with a pistol used in the murder was true or not. Nevertheless, Ofcom noted that this information came from a report by the Spanish police, an authoritative source. In Ofcom's view, the programme makers were entitled to rely on this as a reliable source of information.

Ofcom found no unfairness in this respect.

e) With regard to the complaint that the programme included an untrue statement that Mr Fondén ordered Mr Briscoff to kill Mr Nylander, Ofcom noted that the statement came from an anonymous source. In Ofcom's view the programme makers were entitled to protect their source. Where programme makers rely on such sources, it is for viewers to weigh up the extent to which they find the source credible. In this case, it was made clear that the source was anonymous and the information provided suggested that he was an associate of Mr Fondén and Mr Briscoff. Viewers would therefore have been able to reach a sufficiently informed view as to the weight they wished to give to the information provided by the source.

Ofcom found no unfairness in this respect.

f) The complainant claimed that it was not made clear that the cause of death remained uncertain. The cause of Mr Nylander's death was referred to in the programme both by the Spanish police officer who was interviewed and by the anonymous source. The cause of death referred to was as set out in the report of the Spanish police, an authoritative source on which the programme makers were entitled to rely.

Ofcom found no unfairness in this respect.

Accordingly, the complaint of unfair treatment was not upheld.

Other programmes not in breach/out of remit

15 March – 28 March 2006

Programme	Trans Date	Channel	Category	No of complaints
9/11: The Falling Man	16/03/2006	Channel 4	Generally Accepted Standards	1
99 Ways to Lose Your Virginity	23/03/2006	Channel 4	Scheduling	1
A Good Murder	13/03/2006	ITV1	Sex/Nudity	2
Alan Brazil Sports Breakfast	09/03/2006	Talksport	Generally Accepted Standards	1
Alex Dyke Show	10/03/2006	Isle of Wight Radio	Generally Accepted Standards	2
Artshock: The Human Canvas	14/03/2006	Channel 4	Generally Accepted Standards	2
Autopsy: Life and Death	11/01/2006	Channel 4	Other	1
Autopsy: Life and Death	14/01/2006	Channel 4	Other	1
Autopsy: Life and Death	19/01/2006	Channel 4	Other	1
Autopsy: Life and Death	18/01/2006	Channel 4	Other	1
BBC News 24	13/03/2006	BBC News 24	Inaccuracy/Misleading	1
BBC Radio Lancashire	13/03/2006	BBC Radio Lancashire	Inaccuracy/Misleading	1
C4 Promo	01/01/2005	Channel 4	Offence	1
C4 Promo	20/03/2006	Channel 4	Crime Incitement	1
Channel 4 News	29/01/2006	Channel 4	Other	1
Channel 4 News	16/02/2006	Channel 4	Inaccuracy/Misleading	1
Channel 4 News	10/03/2006	Channel 4	Generally Accepted Standards	1
Channel 4 News	22/03/2006	Channel 4	Generally Accepted Standards	2
Channel 4 News	22/03/2006	Channel 4	Animal welfare	1
Channel S	19/03/2006	Channel S	Advertising	1
Charlie's Angels	22/03/2006	Five	Sex/Nudity	1
Clive Bull	07/03/2006	LBC97.3	Advertising	1
Cold Case	03/03/2006	Sky Two	Offensive language	1
Colin and Justin's How Not to Decorate	23/03/2006	Five	Sex/Nudity	4
Commonwealth Games 2006	16/03/2006	BBC1	Scheduling	1
Coronation Street	17/03/2006	ITV1	Generally Accepted Standards	1
Coronation Street	20/03/2006	ITV1	Inaccuracy/Misleading	1
Danny and Nicky in the Morning	06/03/2006	Southern FM	Generally Accepted Standards	1
Deep Throat	16/03/2006	Telewest	Sex/Nudity	1
Derren Brown: The Heist	05/01/2006	Channel 4	Offence	1
Disaster Masters	22/03/2006	BBC1	Undue prominence	1
Dog Borstal	20/03/2006	BBC3	Animal welfare	1
E.T. The Extra Terrestrial	07/01/2006	ITV1	Offensive language	1

Eastenders	09/12/2005	BBC1	Offensive language	1
Eastenders	03/01/2006	BBC1	Violence	1
Eastenders	16/03/2006	BBC1	Sex/Nudity	2
Eastenders	20/03/2006	BBC1	Sex/Nudity	2
Eastenders	22/03/2006	BBC1	Sex/Nudity	1
Emmerdale	09/01/2006	ITV1	Sex/Nudity	1
Emmerdale	27/12/2005	ITV1	Sex/Nudity	1
Emmerdale	20/02/2006	ITV1	Generally Accepted Standards	1
Emmerdale	14/03/2006	ITV1	Undue prominence	1
Emmerdale	17/03/2006	ITV1	Due Impartiality	1
Everybody Hates Chris	19/03/2006	Five	Offensive language	1
Fat Pets	15/03/2006	Channel 4	Animal welfare	1
Final Destination 2	19/02/2006	Channel 4	Violence	1
Five News	13/03/2006	Five	Generally Accepted Standards	1
Footballers' Wives	09/03/2006	ITV1	Sex/Nudity	1
Footballers' Wives	21/03/2006	ITV1	Sex/Nudity	1
FTN - Quiz Night Live	08/02/2006	FTN	Competitions	1
Girls at the Playboy Mansion	11/03/2006	Sky Two	Sex/Nudity	1
GMTV	01/03/2006	ITV1	Dangerous behaviour	1
GMTV	13/03/2006	ITV1	Violence	1
Going Cold Turkey	23/03/2006	Channel 4	Generally Accepted Standards	1
Harry Hill's TV Burp	18/03/2006	ITV1	Generally Accepted Standards	2
Holly and Stephen's Saturday Showdown	11/03/2006	ITV1	Violence	1
Hustle	17/03/2006	BBC1	Crime Incitement	1
Iain Lee	28/02/2006	LBC97.3	Sex/Nudity	1
In On the Lake	15/03/2006	Capital Disney	Generally Accepted Standards	1
ITV News	05/09/2005	ITV1	Impartiality	1
ITV News	28/01/2006	ITV1	Other	2
ITV News	22/01/2006	ITV1	Other	1
ITV News	03/03/2006	ITV1	U18s in programmes	1
James O'Brien	10/03/2006	LBC97.3	Animal welfare	1
John Turner	13/03/2006	BBC Radio Bristol	Generally Accepted Standards	1
Johnny Vaughan Breakfast Show	03/03/2006	95.8 Capital FM	Generally Accepted Standards	1
Jonathan Ross	18/03/2006	BBC Radio 2	Sex/Nudity	2
Jordan and Peter: Marriage and Mayhem	15/03/2006	ITV1	Dangerous behaviour	2
Ken Bruce	16/03/2006	BBC Radio 2	Generally Accepted Standards	1
Kill or Cure?	08/12/2005	Channel 4	Inaccuracy/Misleading	1
Kirsty's Home Videos	20/02/2006	Sky Two	Generally Accepted Standards	1
Late Night Raw	09/03/2006	Sky Sports	Crime Incitement	1
Learning	22/03/2006	Channel 4	Sex/Nudity	1
LK Today	22/03/2006	ITV1	Generally Accepted Standards	1

Men and Motors	07/02/2006	Men & Motors	Sex/Nudity	1
Metro Radio	16/02/2006	Metro FM	Competitions	1
Mike Dickin	03/03/2006	Talksport	Due Impartiality	1
Money with Menaces	02/03/2006	BBC Radio 4	Scheduling	1
Moto sponsorship of ITV films	25/03/2006	ITV1	Violence	1
Movie Lounge	22/03/2006	Five	Generally Accepted Standards	1
MTV2	07/03/2006	MTV2	Dangerous behaviour	1
My Parents Are Aliens	09/03/2006	ITV1	Religious Offence	1
My Parents Are Aliens	14/03/2006	ITV1	Religious Offence	2
New Tricks	18/03/2006	BBC1	Other	1
Newsnight	20/03/2006	BBC2	Generally Accepted Standards	1
Over There	10/03/2006	Sky Two	Generally Accepted Standards	1
Passion 107.9	12/12/2005	Passion 107.9	Other	1
Pete Price	13/03/2006	Radio City 96.7	Generally Accepted Standards	1
Peugeot Film Sponsorship on five	18/03/2006	Five	Generally Accepted Standards	1
Porn Week	26/02/2006	Bravo	Sex/Nudity	1
Prison Break	09/02/2006	Five	Violence	1
Prison Break	16/03/2006	Five	Generally Accepted Standards	1
Pure Inventions	15/03/2006	Discovery	Dangerous behaviour	1
QI	19/11/2004	BBC2	Offence	1
Radio City	03/02/2006	Radio City 96.7	Competitions	1
Radio Clyde	07/03/2006	Clyde 1FM	Inaccuracy/Misleading	3
Ramsay's Kitchen Nightmares	14/03/2006	Channel 4	Offensive language	2
Richard and Judy	14/03/2006	Channel 4	Due Impartiality	3
Road Raja	13/02/2006	Sky Three	Crime Incitement	1
Rome	30/11/2005	BBC2	Sex/Nudity	1
Rome	11/12/2005	BBC1	Offence	1
SCRatch Radio 87.7FM	09/03/2006	SCRatch Radio 87.7FM	Dangerous behaviour	1
Shipwrecked	08/01/2006	Channel 4	Language	2
Shipwrecked	14/01/2006	Channel 4	Language	1
Shipwrecked	18/03/2006	Channel 4	Sex/Nudity	1
Sky News	08/02/2006	Sky News	Undue prominence	1
Sky News	10/02/2006	Sky News	Generally Accepted Standards	1
Sky News	16/03/2006	Sky News	Generally Accepted Standards	1
Sky Sports	05/02/2006	Sky Sports	Inaccuracy/Misleading	1
Smooth FM	07/03/2006	102.2 Jazz FM	Generally Accepted Standards	1
Start the Week	27/02/2006	BBC Radio 4	Religious Offence	1
Steve Allen Show	19/12/2005	LBC97.3	Other	1
Steve Allen Show	22/12/2005	LBC97.3	Religious Offence	1
Steve McKenna	27/02/2006	100-101FM Real Radio	Inaccuracy/Misleading	1
T4	04/03/2006	Channel 4	Generally Accepted	1

				Standards
Talksport	22/03/2005	Talksport	Offence	1
			Generally Accepted Standards	1
Test Drive My Girlfriend	17/03/2006	ITV2		
The Adventures of Sinbad	21/01/2006	Five	Violence	1
The Apprentice	25/02/2006	BBC2	U18s in programmes	1
The Apprentice	22/03/2006	BBC2	Undue prominence	1
The Bill	12/01/2006	ITV1	Misleading	1
The Chris Moyles Show	15/03/2006	BBC Radio 1	Undue prominence	1
The First Emperor	16/02/2006	Channel 4	Flashing images	1
The Gadget Show	25/02/2006	Five	Competitions	1
The Games	23/03/2006	Channel 4	Sex/Nudity	1
			Generally Accepted Standards	1
The IT Crowd	10/03/2006	S4C		
The Jeremy Kyle Show	22/03/2006	ITV1	Offensive language	1
			Generally Accepted Standards	1
The New British Face	07/03/2006	Five		
The Prince & Me	20/03/2006	Sky Movies	Dangerous behaviour	1
The Royal	12/03/2006	ITV1	Violence	3
The Trouble With Old People	17/03/2006	Channel 4	Generally Accepted Standards	1
The Trouble With Old People	20/03/2006	Channel 4	Generally Accepted Standards	1
The Tube	10/03/2006	Sky Three	Offensive language	1
			Generally Accepted Standards	2
The Wright Stuff	17/03/2006	Five		
The Wright Stuff	22/03/2006	Five	Animal welfare	1
The X Factor	03/12/2005	ITV1	Misleading	1
This Morning	15/03/2006	ITV1	Other	1
TMF - The Music Factory	28/02/2006	TMF	Dangerous Behaviour	1
TV Heaven, Telly Hell	20/03/2006	ITV1	Animal welfare	1
TV's Craziest Moments	16/01/2006	E_Entertainment	Offence	1
UEFA Champions League - Live	15/03/2006	ITV4	Due Impartiality	1
			Generally Accepted Standards	1
UKTV	17/03/2006	UK Gold		
Undercover Customs	15/02/2006	Sky Travel	Generally Accepted Standards	1
Unsolved	10/11/2005	ITV	Other	1
			Generally Accepted Standards	1
Victoria Derbyshire	08/03/2006	BBC Radio 5 Live		
Virgin Breakfast Show	21/03/2006	Virgin Radio	Generally Accepted Standards	1
Waterloo Road	16/03/2006	BBC1	Sex/Nudity	2
Waterloo Road	09/03/2006	BBC1	Substance Abuse	1
			Generally Accepted Standards	2
Waterloo Road	23/03/2006	BBC1		
What Women Want	04/01/2006	BBC1	Sex/Nudity	1
Wild At Heart	19/02/2006	ITV1	Offensive language	1
Wild At Heart	06/01/2006	ITV1	Offensive language	1