

# **Ofcom Broadcast Bulletin**

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## Introduction

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

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

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

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

## **Standards cases**

### **In Breach**

#### **Promotions**

*Sky One and other Sky channels, 11 February to 25 March 2007, various times*

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#### **Introduction**

Until 1 March 2007, British Sky Broadcasting (“Sky”) and Virgin Media had a carriage agreement by means of which Virgin Media agreed to carry Sky One, Sky Travel, Sky News and Sky Sports News (“the Sky Channels”) over the Virgin Media cable network. Sky’s sports and movies channels were distributed under separate arrangements.

During February and until 1 March 2007, Sky was in negotiations with Virgin Media regarding the future carriage of the Sky Channels.

Between 11 February 2007 and 25 March 2007, Sky broadcast across its various channels a number of what purported to be “promotions”, that is, either self-promotions<sup>1</sup> or cross-promotions<sup>2</sup> for other Sky Channels. There were in all 11 different promotions, each was shown repeatedly and in total there were over 2500 broadcasts during that period. The promotions are grouped below into four separate categories (“Promotions A, B, C and D”) for ease of reference.

Promotions A, B and C were broadcast on the Virgin Media cable network only and Promotion D was shown on the Sky Digital satellite platform only.

#### Promotion A

On 11 and 12 February 2007, Sky broadcast a promotion (“Promotion A”) which consisted of a voiceover supplemented by scrolling on-air text that said:

*“If you’re an ntl:Virgin customer you should know that they are doubting the value of Sky One, Sky News, Sky Sports News and Sky Travel. These channels could soon disappear, along with your favourite shows like brand new Lost, 24, Battlestar Galactica and Simpsons. You can help by calling ntl:virgin now on 0845 454 00 00 and urging them to keep the tv you love on air.”*

At this time, Sky was still in negotiations with Virgin Media regarding the carriage agreement. Promotion A contained no visual clips of programming, just text, including logos of the Sky Channels.

#### Promotions B

Sky then replaced Promotion A with a number of different but similar promotions (“Promotions B”), which were broadcast between 25 and 28 February 2007.

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<sup>1</sup> defined in the Cross-promotion Code as “promotions on a channel for that same channel and/or for programmes broadcast on that channel”.

<sup>2</sup> defined in the Cross-promotion Code as “promotions, on a channel, of programmes and Broadcasting-related Services, that are not Self-promotions”.

Promotions B included clips of programming from the Sky Channels and voiceovers that referred to the programmes and the channels in question. They all referred to the possibility of Virgin Media ‘dropping’ the Sky Channels, asked Virgin Media customers to call Virgin Media (without referring to the telephone number provided in Promotion A) and included the message “*or join Sky at sky.com/switch.*”

### Promotions C

Sky and Virgin Media did not agree terms for a new carriage agreement and, on 1 March 2007, Virgin Media ceased to carry the Sky Channels.

Between 1 and 19 March 2007, Sky broadcast promotions on those of its channels that were still distributed by Virgin Media (essentially its movies and sports channels); again these promotions were only broadcast on the Virgin Media cable network (“Promotions C”). Promotions C again included clips of and references to programming from the Sky Channels. They also referred to the fact that Virgin Media had ‘dropped’ the Sky Channels and referred viewers to [sky.com/switch](http://sky.com/switch). A sample script extract is provided below:

*“If you’re a Virgin Media Customer, you’ll know that they’ve dropped Sky Sports News. To get the tv you love back go to Sky.com/switch”*

### Promotion D

In addition to the above promotions all broadcast on the Virgin Media cable network only, Sky broadcast a promotion on its channels on the Sky Digital satellite platform (“Promotion D”) between 9 and 25 March 2007. This included clips from the Sky Channels and the following voiceover:

*“You may have heard that Virgin Media customers no longer receive some of the Sky channels. But don’t worry, as a Sky customer you’ll still be able to watch all your favourite programmes. Sky continues to invest in its channels so you can enjoy our groundbreaking shows like brand new Battlestar Galactica, Lost and 24. Count on Sky for the TV you love.”*

### **Complaints**

We received a complaint from Virgin Media who considered that the Sky promotions were intended to inappropriately influence confidential commercial negotiations and to damage Virgin Media’s relationship with its customers; Virgin Media believed that this was contrary to Ofcom’s Cross-promotion Code.

We also received 187 complaints from viewers who considered the Sky promotions were unfair in some way to Virgin Media.

Having considered the various complaints, Ofcom requested Sky to comment on three issues. First, Sky was asked to comment on how its promotions complied with the Cross-promotion Code, and in particular the provision that “all licensees and S4C shall ensure that Cross-promotions are limited to Broadcasting-related services”. Second, Sky was asked to consider whether the promotions, where they contained an invitation to cable viewers to switch to the Sky platform coupled with the address of a Sky webpage, complied with the Broadcasting Code’s undue prominence rules. Finally, Sky was asked to comment on how the reference to the Sky webpage

complied with the definition and the guidance on the definition of “broadcasting-related services”.

### **Relevant rules**

- Television Without Frontiers Directive

Recital (34) to Directive 97/36/EC, which amended Directive 89/552/EEC, known as the Television Without Frontiers Directive, states:

“Whereas daily transmission time allotted to announcements made by the broadcasters in connection with its own programmes...is not to be included in the maximum amounts of daily or hourly transmission time that may be allotted to advertising and teleshopping”

- Rules on the Amount and Distribution of Advertising (“RADA”)

RADA takes forward the requirements of the Television Without Frontiers Directive. Rule 2.1 of RADA states:

“For the purposes of calculating advertising time the following are deemed to be advertising items: ...publicity by the licensees themselves except information to viewers about or in connection with programmes.”

- Cross-promotion Code

This exception in the Television Without Frontiers Directive and in RADA for programmes has been extended by Ofcom’s Cross-promotion Code (“the Code”). The Introduction to the Code explains that, subject to the Code, “television broadcasters are able to promote programmes, channels and other broadcasting-related services without such promotions being considered advertising and included in the calculation of advertising minutage.”

The Code also explains that there are two key principles which the Code rules are designed to reflect:

- ensuring that cross-promotions on television are distinct from advertising and inform viewers of services that are likely to be of interest to them as viewers; and
- ensuring that promotions in television outside programmes do not prejudice fair and effective competition.

Rule 1.1 of the Code states:

“All licensees and S4C shall ensure that Cross-promotions are limited to Broadcasting-related Services.”

Under the Code, ‘Broadcasting-related Services’ include “all broadcasting activities licensable by Ofcom, for example television and radio services. They also include other services with a ‘broadcasting-feel’, that is, services which deliver content similar to that delivered on a television or radio service. In addition, a website that provides content clearly and directly related to a Broadcasting-related Service may itself be a Broadcasting-related Service.”

Under Rule 2.2 of the Code, promotions on ITV, Channel 4 and Five to analogue households that mention a digital retail television service and/or digital television broadcasting platform must treat all such major services and platforms in an equal and impartial manner. This rule is intended to ensure that promotions do not prejudice fair and effective competition.

Other broadcasters, including Sky, are not subject to this requirement under the Code. However, they must ensure that any references in promotions to retail television services or broadcasting platforms comply with the requirements of Section 10 of the Broadcasting Code, in particular Rule 10.4, which requires that references in programmes (which, in this context, include promotions) must not give products or services undue prominence.

#### *Undue prominence*

The content of promotions is also subject to the requirements of the Broadcasting Code, including Rule 10.4 which prohibits undue prominence<sup>3</sup>. The Broadcasting Code states:

“Undue prominence’ may result from:

- the presence of, or reference to, a product or service (including company names, brand names, logos) in a programme where there is no editorial justification; or
- the manner in which a product or service (including company names, brand names, logos) appears or is referred to in a programme.”

Ofcom’s guidance on Section 10 of the Broadcasting Code (the “Guidance”) includes guidance on promotions and states:

“The promotion may also provide information about price and availability of the broadcasting-related service. Such information may also include details of the platform or retail service on which the broadcasting-related service is available...

...the primary purpose of the promotion should be to promote the broadcasting-related service itself: any additional reference regarding how to get that service, e.g. a reference to the platform or retail service on which the broadcasting-related service is provided, including price information, should not be unduly prominent in the context of the promotion.”

#### **Response**

Sky said that the rationale for the promotions was to promote the Sky Channels and to provide information as to their availability or likely availability that would be of benefit to viewers. Sky considered that there was a significant risk that the Sky Channels would no longer be available to Virgin Media customers. As a result, Sky determined that it would promote the Sky Channels on the Virgin Media cable network and also communicate information to viewers of the Sky Channels in cable homes about their likely availability. Sky said that it considered that an effective method of promoting those channels would be to include a message inviting cable viewers to call Virgin Media in support of the Sky Channels.

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<sup>3</sup> See paragraph 1.7, Section 1 of the Cross-promotion Code.

The first such promotions were broadcast from 11 to 12 February 2007 (Promotion A); they were ceased temporarily when it seemed possible that a deal could be concluded for the distribution of the Sky Channels. When negotiations broke down again, Sky reintroduced the promotions.

Sky said that Promotions B invited viewers to call Virgin Media to ‘keep’ the Sky Channels and provided viewers with information as to how they might otherwise receive the channels in the event that they were no longer available to Virgin Media customers.

Sky said that Promotions C informed viewers of the availability of the Sky Channels.

Sky said that it broadcast promotions (Promotion D) on the digital satellite feeds of its basic and premium channels reassuring viewers of the continued availability of the Sky Channels to viewers on that platform in order to counter any viewer confusion.

Accordingly, Sky claimed, the purpose of each of the promotions was to promote the Sky Channels and to inform viewers of the availability or likely availability of the Sky Channels. Sky said that this objective was consistent with the principle set out in the Cross-promotion Code to ensure that cross-promotions on television inform viewers of services that are likely to be of interest to them as viewers. Sky argued that it is clearly in the interests of viewers that they are informed as to how they can continue to view the channels that they like to watch when they are unlikely to be available or are no longer available on a particular platform.

Sky also said that the subject of each of the promotions was the Sky Channels and programming. The subject of the promotions was neither the digital satellite platform nor Sky's digital retail television service. Sky said that Sky retail television services were not given undue prominence; references were brief, factual and, where appropriate, balanced between the two competing services, for example, “*We want to keep Sky channels on air so call Virgin Media if you do too. Or join Sky at sky.com/switch*”.

Sky said that the message “*Join Sky at sky.com/switch*” was not unduly prominent. It considered it to be “the shortest, simplest and most effective way of providing the message that ‘the Sky Channels are now only available from the Sky digital retail television service – for more information visit Sky.com’”.

## **Decision**

Broadcasters are able to promote programmes, channels and other broadcasting-related services in promotional airtime, that is, airtime outside of programmes that is not included in the calculation of permitted advertising minutage, provided the promotion falls within the scope of the Cross-promotion Code and subject to the provisions of that Code.

The ability to promote programmes, channels and other broadcasting-related services in promotional airtime is a specific and limited exception to the normal advertising minutage rules set out in RADA. As such, the rules permitting this exception are interpreted restrictively.

The content of a promotion is also subject to the requirements of the Broadcasting Code, including Rule 10.4 which prohibits unduly prominent references to products or services.

It is self-evident that the purpose of a promotion must be to promote the channel itself (in the case of a self-promotion) or another broadcasting-related service (in the case of a cross-promotion). Promotions whose primary purpose falls outside these objectives are inconsistent with the Cross-Promotion Code. Further, care should be taken that promotions which include material which seeks or appears to seek to achieve other objectives is consistent with the Cross-promotion Code. In particular, references within promotions to third parties, such as industry competitors, need to be treated with care to ensure they are consistent with the Cross-promotion Code.

Ofcom has considered each of the Sky promotions within the legal and regulatory framework outlined above and against the Cross-promotion Code and Ofcom's Broadcasting Code, having regard to the Guidance.

### Promotion A

#### *Cross-promotion Code*

Promotion A was broadcast on the Virgin Media cable network only, while the Sky Channels were still available to Virgin Media customers. In contrast with all the other, subsequent promotions, Promotion A did not include visual or audio clips of programmes, but simply comprised on-screen text, with logos of the Sky Channels, and a voiceover. It stated that Virgin Media (referred to in Promotion A as 'ntl:Virgin') was "*doubting the value*" of the Sky Channels, that the channels and certain shows "*could soon disappear*" and that viewers could "*help*" by calling Virgin Media on a specified phone number.

Ofcom noted the specific content of the promotion, in particular the references to Virgin Media, and the fact that it was broadcast on the Virgin Media cable network only. Ofcom also considered Sky's argument that Promotion A provided viewers with information about the likely availability of the Sky Channels.

Ofcom concluded that, irrespective of what Sky's actual intention may have been, the overriding impression given by Promotion A was that it was part of a targeted campaign to get viewers to lobby Virgin Media not to drop the Sky Channels. It therefore went beyond simply promoting the Sky Channels.

Ofcom concluded that it was not appropriate for what purported to be a promotion for the Sky Channels to go beyond promoting a broadcasting-related service in the manner described and found Promotion A to be in breach of Rule 1.1 of the Cross-promotion Code.

### Promotions B

#### *Cross-promotion Code*

As with Promotion A, Promotions B were broadcast on the Virgin Media cable network only, while the Sky Channels were still available to Virgin Media customers. Promotions B contained clips of programmes on the Sky Channels and included promotional references to those programmes and channels; for example:

*"24 hours a day, 7 days a week, every week of the year, Sky Sports News brings you the breaking news, interviews and reactions from behind the scenes. Stay in touch with your sport with the UK's only dedicated sports news channel."*

*"If there was no Sky One, there'd be no Homer, no Jack, no Others. No losing yourself on a Sunday night. No cure for the Monday Blues...No close shaves, no cliffhangers, no closure."*

Taken in isolation, these promotional references within Promotions B to the Sky Channels and to programmes on those channels did not seem inconsistent with the Cross-promotion Code. However, each of Promotions B went on to refer to the possibility of Virgin Media 'dropping' the Sky Channels and called upon Virgin Media customers to call Virgin Media (although a telephone number was not included) to urge it to keep the Sky Channels. In addition, one of Promotions B also included the following statement:

*"Unfortunately, Virgin Media may soon drop Sky channels despite recently raising their prices for many customers."*

The overriding impression given by Promotions B was that they were part of a targeted campaign to get viewers to lobby Virgin Media not to drop the Sky Channels and a call to action to Virgin Media customers to switch to Sky's retail television services. In Ofcom's view, it was inappropriate in the context of what purported to be promotions for the Sky Channels to go beyond promoting a broadcasting-related service in the manner described. Ofcom therefore found Promotions B to be in breach of Rule 1.1 of the Cross-promotion Code.

#### *Undue prominence*

Moreover, Promotions B called upon viewers to "*join Sky at Sky.com/switch*". Ofcom considered whether this reference to the Sky retail television service was unduly prominent in the context of the promotion.

Television platforms and television retail services are not themselves broadcasting-related services capable of being cross-promoted under the Cross-promotion Code. However, they may be mentioned in a promotion for the purpose of informing viewers how to access the broadcasting-related service, e.g. a television channel. However, as the guidance on undue prominence explains, any reference to the platform or retail service on which the broadcasting-related service is provided should not be unduly prominent in the context of the promotion.

In deciding whether the references to the Sky retail television service in Promotions B were unduly prominent, Ofcom noted that they were made in the context of what purported to be promotions of the Sky Channels, yet made pointed statements about the possibility of Virgin Media dropping those channels, encouraged viewers to lobby Virgin Media (presumably not to drop them and/or to register their dissatisfaction) and also encouraged them to switch to the Sky retail television service.

Whilst it is accepted that a reference to a broadcaster's website may be appropriate in a promotion as a means of informing viewers about the availability of the channels and/or programmes being promoted, care must be taken to ensure that such a reference is not unduly prominent in the particular context in which it is made.

In this case, Promotions B referred viewers to 'Sky.com/switch' i.e. the particular webpage informing viewers how to switch to Sky. In Ofcom's view, the reference to this specific webpage was a further indication that Promotions B went beyond simply informing viewers that the Sky Channels were available on the Sky retail television service. In this particular context, Ofcom considered that the message "*join Sky at*

*Sky.com/switch*" was in fact a call to action in respect of Sky's retail television service.

For these reasons, Ofcom considered that the references in Promotions B to the Sky retail television service were unduly prominent in the specific context of the promotions and therefore in breach of Rule 10.4 of the Broadcasting Code.

### Promotions C

#### *Cross-promotion Code*

Promotions C were broadcast on the Virgin Media cable network only, in the days immediately following the end of the carriage agreement in respect of the Sky Channels. Promotions C included clips of and references to programming from the Sky Channels. They also said that Virgin Media had 'dropped' the Sky Channels and referred viewers to *sky.com/switch*.

Whilst Promotions C contained no lobbying messages, Ofcom noted that what purported to be promotions for the Sky Channels (and programmes on those channels) referred directly to a third party, that is, Virgin Media, who was no longer carrying the channels and encouraged viewers to switch to Sky's retail television service. The overriding impression of Promotions C is that they did not seek to promote the Sky Channels, programmes or broadcasting-related services, but instead were a call to action to Virgin Media customers (to whom alone the purported promotions were being broadcast) to switch to Sky's retail television service.

Ofcom concluded that it was not appropriate for what purported to be a promotion for the Sky Channels to go beyond promoting a broadcasting-related service in the manner described. Ofcom therefore found Promotions C to be in breach of Rule 1.1 of the Cross-promotion Code.

#### *Undue prominence*

Promotions C also included references to the Sky retail television service, such as "*to get the TV you love back, go to sky.com/switch*". One promotion specifically referred to booking a Sky TV installation:

*"Since Virgin Media dropped Sky One you may be missing out on brand new episodes of 24, Lost and Battlestar Galactica. Don't worry, if you book your Sky TV installation now, you could watch those episodes during our special Easter catch-up weekend. It's easy to switch to Sky and keep the TV you love. Go to Sky.com/switch"*

Ofcom considered whether these references to the Sky retail television service were unduly prominent in the particular context of the promotions. Whilst Promotions C did not include lobbying messages to viewers (in contrast with Promotions B), the references to the Sky retail television service were clear and unambiguous 'calls to action' to viewers to subscribe to the Sky retail television service and accordingly went beyond information about the availability of the Sky Channels.

As with Promotions B, Promotions C referred viewers to the *Sky.com/switch* webpage. In Ofcom's view, the reference to this specific webpage was a further indication that Promotions C went beyond simply informing viewers that the Sky Channels were available on the Sky retail television service.

For these reasons, Ofcom found Promotions C to the Sky retail television service unduly prominent and in breach of Rule 10.4 of the Broadcasting Code.

#### Promotion D

Promotion D was broadcast in the days immediately following the end of the carriage agreement in respect of the Sky Channels. It was broadcast on the Sky digital satellite platform and, unlike Promotions A, B and C, was not targeted at existing Virgin Media customers. The voiceover included the following words: “*You may have heard that Virgin Media customers no longer receive some of the Sky channels. But don't worry, as a Sky customer you'll still be able to watch all your favourite programmes...*”

Ofcom had some concerns with this promotion. It considered that there may be a fine line between promotions which promote programmes, channels and broadcasting-related services, and promotions which have a different primary purpose. However, Ofcom ultimately concluded that, considered in isolation from the other Promotions, Promotion D primarily sought to promote the Sky Channels and programmes and therefore complied with the Cross-promotion Code.

Nevertheless, Ofcom considered that the reference to Virgin Media as a provider on which the channels were **not** available was against the spirit, if not the letter of the Code. Whereas the Code and Guidance do not discuss whether indications as to where the broadcasting service is **not** available are permissible, Ofcom considered it was not the intention of the Code to permit such references. In light hereof, Ofcom will review both the Code and the Guidance to ensure that Ofcom's policy objectives and the statutory framework in this area are aligned.

Ofcom also concluded that the promotion did not go beyond informing viewers that the Sky Channels were available on the Sky retail television service (in particular, the promotion did not include any reference to ‘joining’ or ‘switching’ to Sky, as viewers were already Sky subscribers) and was therefore not unduly prominent in this respect.

#### **Breach of Cross-promotion Code (Promotions A, B and C) Breach of Rule 10.4 of the Broadcasting Code (Promotions B and C)**

**The original findings of the Executive, which found a breach of the Cross-promotion Code in relation to Promotions A, B, C and D and a breach of Rule 10.4 of the Broadcasting Code in relation to Promotions B and C, were appealed by Sky, leading to a review by the Ofcom Content Board. These findings are the result of that review.**

#### Note to broadcasters on cross-promotion:

Broadcasters are reminded that, if promotional content goes beyond what is permitted under the Cross-promotion Code and indeed the relevant provisions of the Broadcasting Code (in particular Rule 10.4), they must consider whether such content may only be broadcast as part of their paid-for advertising allowance.

## **Revenant**

*Zone Horror, 2 August 2008, 16:00 and 3 August 2008, 12:00*

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### **Introduction**

Zone Horror is a channel which broadcasts free-to-air and specialises in horror films and supernatural series. *Revenant* is an adult vampire comedy set in modern day Los Angeles. It is rated as “18” by the British Board of Film Classification. Ofcom received five complaints about the adult nature of this film which was broadcast on a Saturday and Sunday lunchtime. In particular, viewers expressed concerns about graphic vampire imagery, sexual scenes, drug use, and the use of the most offensive language (“fuck” and its derivatives).

Ofcom wrote to Zone Horror for its comments under Rule 1.21 (BBFC 18-rated films must not be broadcast before 21:00 on any service except pay per view) of the Code.

### **Response**

Zone Horror said it was “extremely embarrassed” the film was broadcast and apologised to viewers. It acknowledged the film was not compliant with the Code. The broadcaster said *Revenant* had been restricted to a post-watershed timeslot but Zone Horror also wanted an edited version which could be shown at any time and asked its editing team for this to be created. In anticipation of this being feasible, the film was scheduled for an afternoon transmission. However, after it became clear to the channel that the film could not be edited to make the content suitable for a daytime slot, *Revenant* was not removed from the schedule and was broadcast uncut. Since this incident occurred, Zone Horror said it has introduced more robust compliance procedures.

### **Decision**

As an unedited 18-rated film, the content of *Revenant* was wholly unsuitable for broadcast in the afternoon. There were numerous uses of the most offensive language including frequent and multiple references to “fuck” and its derivatives, such as “*motherfucker*”, and one use of “*cunt*”. In addition there were: violent and bloody scenes of death involving vampires including a scene where one vampire’s head was cut off with a saw; overtly sexual scenes involving nudity and representations of sex; a sequence which appeared to take place at a vampire sado-masochism club where non-vampires were bound and gagged; and drug scenes, such as a vampire lighting a crack spoon and various characters sniffing aerosol cans from a paper bag.

We acknowledge and welcome the steps introduced by Zone Horror to improve compliance. However, Ofcom was particularly concerned that after the original broadcast, the film was repeated on the next day. This was a serious breach of the Code, all the more unacceptable because the broadcaster was informed before broadcast that the programme could not be edited to make it comply with the Code.

### **Breach of Rule 1.21**

## **Always Crashing in the Same Car**

Turner Classic Movies, 28 July 2008, 14:45

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### **Introduction**

Turner Classic Movies (“TCM”) is a niche film channel that shows classic films and dramas aimed at an older adult audience. *Always Crashing in the Same Car* is a 10 minute film that received second prize in TCM’s 2007 “Classic Shorts” film competition.

One viewer was concerned that the film contained the following strong language: “fuck”, “fucked” and “shit”. The viewer was concerned that such language should appear before the watershed, when young and pre-school children might have been in the audience. On reviewing a recording of the material provided by TCM, Ofcom noted that the film contained over 20 separate examples of strong language, and that as well as the above, there were several uses of “cunt” and “cunting”.

Ofcom wrote to TCM, asking it to respond under the following Rules: 1.14 (the most offensive language must not be broadcast before the watershed), and 2.3 (material that may cause offence must be justified by the context).

### **Response**

TCM said that the scheduling of the film before the watershed was a human error by a freelance scheduler. TCM added that, since this error had occurred, the channel had changed its internal scheduling procedures to make sure all schedules, completed by a person covering for a permanent scheduler, are checked and approved prior to transmission.

### **Decision**

Ofcom’s research confirms that most viewers find “cunt” and “fuck” and their derivatives some of the most offensive language. TCM, despite being a channel aimed at an adult audience, must take account of the fact that there is a reasonable chance of children watching the channel in the afternoon during the school holidays, which is when this film was broadcast. Ofcom welcomes the admission by TCM of the compliance error in this case and that it has tightened up compliance procedures. The repeated use of the most offensive words before the watershed was, however, a clear breach of Rule 1.14.

In general, offensive material can be broadcast, so long as it is justified by the context. Given factors such as the time of broadcast, the effect that the material might have had on viewers who may have come across the material unawares, and the lack of any warning to viewers, Ofcom considered that the broadcast of this offensive material was not justified by the context, and was therefore a breach of generally accepted standards. Therefore Rule 2.3 was also breached.

### **Breach of Rules 1.14 and 2.3**

## The BRMB Breakfast

BRMB (Birmingham), 2 July 2008, 05:00

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### Introduction

Throughout the breakfast show on BRMB the presenters trailed an “*Aldi taste test*”. This test, which compared Aldi products to other brands, was run as the final feature in the programme. One of the show’s two regular presenters blind-tasted a selection of branded groceries and compared them with Aldi’s ‘own brand’ equivalent products. In each case she had to pick her favourite. The other presenter introduced the results of the test by saying:

*“Everybody’s skint at the moment, aren’t they? I think it’s fair to be said... Your shopping bills get more and more ridiculous, fuel gets more and more ridiculous, so we thought we’d help you out with this, ’cos obviously it’s all over the papers and everything about ... Aldi and how cheap it is. And I’ve been converted ... and it really – right – just, just – can’t remember the exact prices, but I think the Kellogg’s Fruit and Fibre is a couple of quid – about two-thirty or something. The Aldi version’s about 99p. The yoghurts – I think Muller’s about 60p. One of theirs is about thirty and the tea is – well, what about Tetley? That’s a couple of quid isn’t it and I think it’s about a pound or something. So it’s a lot cheaper.”*

The presenter who had sampled the groceries was told that she had favoured the branded tea (Tetley), which did not surprise her, as she claimed to be “*a connoisseur of tea*.” When the presenter was told that she had chosen the branded cereal (Kellogg’s), she said: “*...seriously, since the milk has gone in, I have changed my mind.*” On being told that she had chosen Aldi’s own brand yoghurt, the presenter, who did not normally like yoghurt, replied and the following exchange took place:

- Presenter 1:     *“...do you know what? I would shop here and I would buy this...”*  
Presenter 2:     *“So we’re saying ... two out of three then for Aldi ... and you’ve saved yourself a fair few quid there. You really ought to start mate.”*  
Presenter 1:     *“I’m coming with you. I’ll come – no, definitely, if it’s this nice, I’m coming up there.”*

She was then told that Aldi had called the station during the tasting to invite her to the local store, to which she responded that her son had been on a trip to Aldi with the Beaver Scouts. The other presenter then said that he had seen a Sainsbury’s employee shopping at Aldi’s store in Shirley. He presumed that the employee would have received discount at Sainsbury’s and concluded that Aldi was still cheaper, which “*speaks volumes.*”

A listener was concerned that the presenters “constantly talked up the value of Aldi stores, against all competition...”

GCap Media plc (“GCap”), which operates BRMB, told Ofcom that the feature “was not the subject of a commercial arrangement with Aldi.” Ofcom therefore requested GCap’s comments with regard to the following Code Rules:

- 10.3, which prohibits the promotion of products and services in programmes; and

- 10.4, which prohibits undue prominence being given to products and services in programmes.

## Response

With reference to Rule 10.3 of the Code, GCap did not consider that Aldi products were being promoted in the feature, as “they were not chosen as the favourites on each occasion” and “were not particularly favoured above other products.”

With reference to Rule 10.4 of the Code, GCap considered that the references to Aldi and its products were editorially justified in the context of the breakfast show’s ongoing topical discussions concerning the credit crunch and rising prices – in particular, low cost supermarkets, ways to beat price rises and cutting petrol and energy costs. The broadcaster said that there had been a story in most national papers about how supermarkets were operating in the current economic climate. It added that, as one of the breakfast show’s presenters was “perceived by listeners as being wealthy and somewhat flashy”, he had decided to try shopping at a low price supermarket. Having done so, he decided to ask his co-presenter to carry out a ‘taste test’, comparing Aldi’s own groceries with other brand products, to show that “unbranded, low cost products can be of equal quality to their branded rivals, and as such listeners could save money without compromising on quality.” GCap accepted that BRMB could have compared branded products with other supermarkets’ own groceries. However, given the above context, Aldi was chosen, as “it is perceived to be a particularly ‘low cost’ supermarket.”

GCap also noted that the Aldi groceries featured in the programme were given no greater prominence than the branded products to which they were compared.

## Decision

There may be editorial justification for comparing products on air - for instance, in a review item or programme, comparing the features of one brand’s product with another or taste testing a brand’s range of products against another’s. However, such editorial should avoid any overt promotion or undue prominence of specific brands and/or their associated products/services.

In this case, there was clearly editorial justification for the feature, which was presented in the context of cost-cutting in the current economic climate. A low-cost supermarket’s products were compared with other branded products in terms of both their cost and taste. However, Ofcom considered that the manner in which Aldi’s products, and in particular, the Aldi brand overall, were featured in this item went beyond what was editorially justified in the circumstances.

Ofcom noted GCap’s argument that the final ranking of Aldi groceries in the *“Aldi taste test”* meant this particular feature was not promotional of Aldi’s products. We disagree. The purpose of Rule 10.3, which prohibits the promotion of products or services in programmes, is to maintain the distinction between advertising and programming. Ofcom accepts that a presenter may refer positively to a product or service on air and that such endorsement may not necessarily be promotional (for example, a presenter may say, in passing, how he has just enjoyed watching a newly released film). However, Ofcom considers that the item contained frequent and strong positive personal endorsement by both presenters of Aldi and its products, in terms of their quality and relative price (e.g. *“...two out of three then for Aldi ... and you’ve saved yourself a fair few quid there”*).

Crucially, within this positive endorsement, the presenters encouraged listeners to purchase from Aldi, for example:

*"I would shop here, and I would buy this";*

*"...I've been converted...";*

*"... You really ought to start mate"; and*

*"I'm coming with you...".*

Ofcom therefore considers that, in not only positively endorsing Aldi and its products, but also encouraging listeners to shop at Aldi, the feature was in breach of Rule 10.3 of the Code.

With regard to Rule 10.4 of the Code, Ofcom noted that no other low-cost supermarket's products were featured. In addition to the numerous references to Aldi products, the presenters made a number of comments about the Aldi brand overall. Ofcom also noted the title of the feature ("Aldi taste test"), which gave the impression that it was sponsored by Aldi (which was not, in fact, the case).

The cumulative effect of these elements of the feature, in combination with the personal positive endorsement of Aldi and its products throughout the item by the presenters, resulted in the references to Aldi and its products being unduly prominent, in breach of Rule 10.4 of the Code.

#### **Breach of Rules 10.3 and 10.4**

## **Bang Babes**

*Tease Me 2, 17 March 2008; 21:00–22:00*

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### **Introduction**

*Bang Babes* is free-to-air unencrypted programming available on the channels Tease Me and Tease Me 2 and situated in the adult section of the Sky electronic programme guide (“EPG”). The channel broadcasts programmes based on interactive ‘adult’ chat services: viewers are invited to contact on-screen presenters (“babes”) via premium rate telephony services (“PRS”). The female presenters dress and behave provocatively.

Ofcom received a complaint about the broadcast on Tease Me 2 on 17 March 2008. It alleged that the broadcast showed simulated masturbation and full screen images of bare breasts and nipple stimulation before 22:00.

Ofcom viewed the material. It noted that the broadcast on Tease Me 2 on 17 March from 21:43 showed prolonged close-ups and full screen images of the presenter’s breasts and nipples, which were continuously massaged and stimulated and thrust into the camera. In addition, the presenter was shown lying on her back with her legs apart rubbing and touching her genital area outside of her underwear in a sexual manner before 22:00. There was also a brief sequence where the presenter placed her hands inside her underwear. These sequences were all of a highly sexualised nature.

Ofcom sought comments from the Licensee in respect of Rules 2.1 (generally accepted standards) and 2.3 (material which may cause offence must be justified by context) of the Code.

### **Response**

The broadcaster stated that the close-up images of the presenter’s naked breasts had not been shown until after 21:30 and this scheduling was in line with its own internal procedures and those of the Participation Television Broadcasters Association (“PTVBA” or “the Association”)<sup>1</sup>. The broadcaster conceded that there had been a brief instance of simulated masturbation which contravened its internal procedures. Production staff and presenters had been advised that simulated masturbation was unacceptable and the broadcaster stated this would not recur.

In summary the broadcaster argued that overall the content of the broadcast did not exceed generally accepted standards, given the context of the time of broadcast, the channel and its positioning in the adult section of the EPG and audience expectations. It also added that since these broadcasts occurred some time ago tighter compliance procedures were now in place to ensure that such material would not be shown again.

### **Decision**

It is a requirement of the Code that content which is considered to be ‘adult-sex’ material must be PIN protected and encrypted (Rule 1.24). In this case, Ofcom

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<sup>1</sup> The PTVBA is a not-for-profit trade association that represents a number of licensees from various participation TV sectors, including ‘adult’ chat TV channels

carefully considered whether the content complained of was 'adult-sex' material. It concluded that in this case it clearly was not. This decision was reached taking all the relevant circumstances into account, including the sexual explicitness and nature of the images (including such factors as their frequency, length and editing) and language, the purpose of broadcasting this material and the overall context in which it was broadcast. In terms of the complaint about simulated masturbation, Ofcom noted that the broadcaster had stressed that a presenter acted briefly outside its own internal procedures on 17 March 2008 and that, since then, staff had received further compliance training. Broadcasters must note, as Ofcom has made clear on a number of occasions, that it is unacceptable to show simulated or real masturbation in the context of free-to-air 'adult' chat television services.

As regards Rules 2.1 and 2.3 and the 17 March broadcast, Ofcom acknowledges that the images and language on *Tease Me 2* were materially less explicit than in a number of examples of free-to-air 'adult' chat service content that it has previously investigated. Ofcom concern on this occasion focussed on the content and the time of broadcast.

The prolonged and close-up full-screen shots of the presenter stimulating and massaging her bare breasts, pinching her nipples and shaking them to camera, were in Ofcom's opinion highly sexualised and not suitable for broadcast before 22:00. The images of the presenter lying on her back with her legs open, briefly simulating masturbation, and stroking her semi-naked body were also not acceptable before 22:00. All these images in Ofcom's view were sexually provocative and of a physically intrusive nature so as to be offensive, and in breach of generally accepted standards on a free-to-air channel in the adult section of the EPG shown before 22:00.

The location of the channel in the 'adult' section of the EPG and the existence of parental controls, are not sufficient in Ofcom's view to justify broadcast of such content before 22:00. The broadcast therefore breached Rules 2.1 and 2.3.

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

## **Vision for Israel**

*Revelation TV, 18 April 2008, 15:00*

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### **Introduction**

Revelation TV is a religious channel that often features discussion and personal view programmes which from time to time engage viewers with challenging debates on topical issues. Ofcom received one complaint from a viewer who alleged that an edition of the programme *Vision for Israel* presented by theologian, teacher and author Dan Juster, made abusive and inappropriate comments regarding Islam. Ofcom noted that, during this hour-long programme which compared the Christian and Muslim faiths, Dan Juster stated [it was his belief that]: "*Islam cannot be defined as a peaceful, loving religion...Islam enforces its own viewpoint through the power of the sword through death...*" and "*Islam believes that violence is a legitimate means to establish and extend Islam*".

Ofcom asked the Licensee, Revelation TV Limited, to comment under Rule 4.1 of the Code (Broadcasters must exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes).

### **Response**

Revelation TV responded that the programme was a lecture given by Dan Juster at a conference in Israel in 2007. The lecture was entitled *Israel, Islam and the Church*. It said that Dan Juster is a Master of Divinity who has taught in various universities and colleges in the USA, Korea, Brazil and Hungary. The broadcaster continued that this programme was one of a series of seven and that, having viewed the previous six editions of the series and found them to be compliant with the Code, it was lulled into a false sense of security with respect to this seventh episode and did not view it for compliance prior to transmission.

The broadcaster continued that if it had been aware of the programme's content it would either not have shown it, or would have arranged a discussion/debate on the issues raised, since it was aware that as a religious television channel it had many viewers who were sympathetic to the Muslim faith. It concluded its response by stating that it was increasingly engaging with its viewers through debate and dialogue and had recently hosted a debate, on the role of women in Islam and Christianity, where the Muslim point of view was presented by a respected Imam.

### **Decision**

In forming its decision, Ofcom bore in mind the fact that broadcasters have a right to freedom of expression which includes the broadcaster's right to transmit and the audience's right to receive creative material, information and ideas without interference but subject to restrictions proscribed by law and necessary in a democratic society. This right is enshrined in the European Convention on Human Rights. Broadcasters should therefore always take care to ensure that material it transmits is in accordance with both the general law and the Code.

The comments made in this programme described above were said in the context of a specialised religious programme made for a particularly niche and predominantly Christian audience. Ofcom has always considered that it is possible for the follower of one religion to reject or critique other religions in the course of sermonising or

proselytising and remain within the requirements for Rule 4.1. However, this Code Rule requires broadcasters to exercise the proper degree of responsibility when, for example, using hyperbole which may include more extreme views which could be deemed offensive to people in the audience who hold different views and beliefs.

In Ofcom's view it was a serious compliance error that Revelation TV did not review the content of this programme prior to transmission. As a consequence of this, the broadcaster was not able to put the potentially offensive comments into context. The broadcaster therefore did not exercise the proper degree of responsibility with respect to the content of this religious programme as required by Rule 4.1.

The programme was in breach of Rule 4.1 of the Code.

**Breach of Rule 4.1**

## **Resolved**

### **Listener competition**

*Clive Warren afternoon programme, Century Northwest, 15 July 2008, 14:00*

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#### **Introduction**

Century Northwest is a commercial radio station serving the north west of England.

On 15 July 2008 the station ran a competition for listeners to win tickets to a local event. In the competition a brief excerpt from a song was played with a word removed. Listeners were invited to send a premium-rated text message containing the missing word, by using a text short code. On this occasion the missing word was 'love'.

The following day GMG Radio, the station's parent group, contacted Ofcom to explain that through an oversight the word 'love' was also used by the station on all station short codes for its online dating service. Because of this some listeners' texts would not have been entered for the competition. The presenter had not been aware that 'love' was a text keyword used by the station for other purposes.

Ofcom sought GMG's further comments in respect of Rule 2.11 (competitions should be run fairly).

#### **Response**

GMG said that 230 text entries had been wrongly excluded. All had been notified by the station by text and telephone within hours of the competition closing advising of the error and asking entrants to contact Century to supply details so that refunds could be made.

26 entrants responded. Of these, 13 requested refunds, which were made; two asked for the charge to be donated to the station's charity; and the remainder contacted the broadcaster but did not require refunds. Century had received no complaints from those contacted or from any other listeners. In addition, an apology was broadcast in the same show the following day and included an explanation that excluded entrants would be contacted for refunds. (Ofcom was sent a recording of the statement as broadcast.)

GMG stressed that they had approached Ofcom to seek guidance in order to fully maintain complete transparency and honesty. GMG said that everything possible had been done, as soon as possible, to remedy the situation. The error was a mistake that had never happened before on any of GMG's stations and services. The problem had subsequently been rectified by staff now being told to check directly with the GMG digital team and run a test of the competition mechanic before broadcast.

#### **Decision**

Ofcom welcomed the broadcaster's very swift action in putting right the problem, effecting refunds and publicising the actions being taken. We also acknowledge GMG's immediate notification of the matter to Ofcom and the openness and efficiency with which it dealt with Ofcom's further enquiries. It is evident that the error was wholly inadvertent and deeply regretted by the broadcaster.

For these reasons, Ofcom has concluded that the issue is resolved.

Ofcom wishes to remind all licensees that the greatest care must be taken where listeners and viewers are invited to take part in competitions. Code breaches can arise from errors, however inadvertent. Broadcasters are reminded that Guidance to Section 2 of the Code deals extensively with competitions.

**Resolved**

## Fairness and Privacy cases

### Not upheld

#### Complaint by Lady Jane Ann Winterton, MP

*North West Tonight, BBC1 North West, 4 February 2008*

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**Summary:** Ofcom has not upheld this complaint of unwarranted infringement of privacy made by Lady Jane Ann Winterton MP.

Lady Winterton's complaint was considered by the Executive Fairness Group.

In summary Ofcom found that:

- Lady Winterton did not have a legitimate expectation of privacy in relation to the recording of footage of her home in that it did not appear to have physically disturbed or materially restricted the private and family life of the complainant since Lady Winterton was not at home at the time of the recording. Nor in Ofcom's opinion did the footage recorded contain any inherently private or particularly sensitive information about the complainant that was not already available to the general public in that only the exterior of the property was filmed. In Ofcom's view the filming of the property in these circumstances was not intrusive into the conduct of Lady Winterton's personal and family life.
- Lady Winterton did not have a legitimate expectation of privacy in relation to the broadcast of footage of her home since this footage, which included only external shots of the property, disclosed nothing of a private nature. Furthermore the location of her home (which was already in the public domain) was not disclosed in the programme.
- Given this, Ofcom found that Lady Winterton's privacy was not infringed in either the making or the broadcast of the programme and it was not necessary for it to consider whether any infringement was warranted.

### Introduction

On 4 February 2008 *North West Tonight*, the BBC regional news programme, included a report alleging that Lady Jane Ann Winterton and her husband, Sir Nicholas Winterton, (both of whom are MPs) were "*ripping off the tax payer by claiming expenses for their London flat*". The report stated that the couple had paid off the mortgage on the London flat six years prior to the broadcast but had then transferred it into a trust (with three trustees, two of whom were Lady and Sir Nicholas Winterton) so that they could claim for the rent for the flat (which was paid to the trust) through their Parliamentary expenses.

The report included external shots of the complainant's house in Cheshire (one of which showed the reporter ringing the doorbell) with the following commentary:

*"They weren't at their Cheshire home today and their London office told us they wouldn't be explaining themselves on camera".*

The report then included comments from Martin Bell (the journalist and former MP for Tatton), a representative from the charity "Church Action on Poverty" and two people living within Sir Nicholas Winterton's Macclesfield constituency before quoting sections of a written statement made by Lady Winterton and her husband.

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

### **The Complaint**

#### **Lady Winterton's case**

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

- a) Her home was filmed without her consent. By way of background the complainant noted that the reporter approached the front door of her home in order to try to gain an interview with the camera rolling.

In summary, Lady Winterton complained that her privacy was unwarrantably infringed in the broadcast of the programme in that:

- b) Footage of her home was broadcast without her consent. By way of background the complainant noted that the footage was of the reporter approaching the front door of her home in order to try to gain an interview.

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

In summary the broadcaster responded to the privacy complaint made by Lady Winterton as follows:

By way of background to its response to both heads of complaint the BBC said, that the story was of considerable public interest and the local BBC news outlet *North West Tonight* was anxious to give it due coverage including any comment from either the complainant or her husband. The BBC said that having previously failed to contact either Lady Winterton or her husband through their London parliamentary offices, their constituency offices and their London flat, the programme makers decided to try to contact them by sending a reporter to their home in Cheshire. The BBC said that the reporter was filmed approaching the front door of the property. It said that the shot of this which was broadcast lasted just five seconds and was accompanied by the explanation that the Wintertons were not at their Cheshire home and that their London office had said they would not be explaining themselves on camera. The BBC also said that wider shots were used in the programme as the backdrop to a piece to camera by the reporter but that these were non-specific in terms of identifying the property.

- a) The BBC did not consider that the programme unwarrantably infringed Lady Winterton's privacy in the making.

The broadcaster argued that an individual's privacy may only be breached in respect of their place of residence if information about that person's private address (information about which that person had a reasonable expectation of privacy) is imparted so that anyone watching the programme which includes that information is given a clear indication of where the individual lives. The BBC said that while this information could be imparted in the broadcast of a programme

which includes footage of a private residence it could not be imparted through the filming of this footage because the filming itself involves no dissemination of information about the individual's private address.

The BBC accepted that, in principle, it was possible for a reporter approaching someone's home with the camera rolling to infringe that person's privacy but argued that the breach in such a situation would lie in filming the individual rather than in filming anything leading up to the filming of the individual. The broadcaster said that that this was not the situation in this case because neither the complainant nor her husband were filmed.

- b) The BBC did not consider that the programme unwarrantably infringed Lady Winterton's privacy in the broadcast.

The BBC again argued that in the circumstances of this complaint, a breach of privacy must involve the dissemination of information about the complainant's private address and that this must be information in respect of which the complainant had a reasonable expectation of privacy. It said that in this case the report included no specific information about the complainant's address, that only the name of the county was given and that there were no visual clues as to the location of the property.

The BBC also said that in any case the complainant's home address was already in the public domain by virtue of Sir Nicholas Winterton's listings in *Who's Who* (the BBC acknowledged that Sir Winterton had removed his address from *Who's Who* in 2008 but noted that it had been included in the 2007 edition) and two recent articles one in *The Daily Mail* and the other on *The Evening Standard's* website (the broadcaster provided copies of these).

## **Decision**

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

Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness, if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

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

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

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy both in relation to the making and the broadcast of the programme, Ofcom must consider two distinct questions: First, has

there been an infringement of privacy? Secondly, if so, was it warranted? This is in accordance with Rule 8.1 of Ofcom's Broadcasting Code "the Code" which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes, must be warranted".

- a) Ofcom considered Lady Winterton's complaint that her privacy was infringed in the making of the programme in that her home was filmed without her consent.

In considering this part of the complaint Ofcom took account of Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with the person's consent or be otherwise warranted. The Code indicates that the word "warranted" in the context of justifying an infringement of privacy has a particular meaning. It means that a broadcaster must be able to demonstrate why the infringement was justified and, if the justification put forward is in the public interest, why in the particular circumstances of the case, the public interest outweighed the complainant's right to privacy.

Ofcom first considered whether Lady Winterton had a legitimate expectation of privacy in the circumstances in which her home was filmed.

Having examined the footage in question, Ofcom recognised Lady Winterton's observation within her complaint that a section of the recorded footage was of the reporter as he approached the front door of the property. However, in Ofcom's view there was no reason why the filming of the reporter's approach to the front door of the property would have infringed Lady Winterton's privacy to any degree greater than might have been the case had a member of the general public approached the door using the same pathway. In reaching this conclusion Ofcom noted that the approach to the front door of the property by the programme makers did not appear to physically disturb or materially restrict the private and family life of the complainant in that Lady Winterton was not at home at the time. Nor in Ofcom's opinion did the footage recorded of this approach contain any inherently private or particularly sensitive information about the complainant that was not already available to the general public in that only the exterior of the property was filmed. As a result Ofcom concluded that the filming of the property in these circumstances was not intrusive into the conduct of Lady Winterton's personal and family life.

Taking into consideration all of the factors above, Ofcom found that Lady Winterton did not have a legitimate expectation of privacy in relation to the filming of the outside of her home in these specific circumstances. Given this Ofcom therefore found that Lady Winterton's privacy was not infringed in the making of the programme, and it was not necessary for Ofcom to further consider whether any infringement of privacy was warranted.

- b) Ofcom considered Lady Winterton's complaint that her privacy was infringed in the broadcast of the programme in that footage of her home was included without her consent.

In considering this part of the complaint Ofcom took account of Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. It also took particular account of Practice 8.2 of the Code which states that information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted.

Ofcom considered whether Lady Winterton had a legitimate expectation of privacy in relation to her complaint that the location of her home was disclosed in the programme.

It recognised that there is an expectation that a broadcaster should not disclose the location of a person's home or family unless it is warranted.

Ofcom noted that only exterior shots of the house were included in the broadcast footage, that no house number, house name or street name was disclosed and that no mention of the location of the house was made other than that it was in Cheshire. In Ofcom's view only those already familiar with the property would have been able to identify it from the footage broadcast in the programme.

Ofcom also observed that the fact that Lady Winterton was married to Sir Nicholas Winterton and the details of Sir Nicholas Winterton's home address were already in the public domain via Sir Nicholas' entry to the 2007 edition of *Who's Who* and two newspaper articles published prior to the broadcast and provided by the broadcaster.

In these circumstances Ofcom considered that the complainant did not have a legitimate expectation of privacy with regard to the broadcast of footage of Lady Winterton's property. Given this, Ofcom therefore found that Lady Winterton's privacy was not infringed in the broadcast of the programme, it was not necessary for Ofcom to further consider whether any infringement of privacy was warranted.

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

## Other Programmes Not in Breach/Resolved

**8 October 2008 to 21 October 2008**

Programme	Trans Date	Channel	Category	No of Complaints
3 Minute Wonder: Frieze Films 2008 - Road Movie	13/10/2008	Channel 4	Violence	3
3 Minute Wonder: Subverting the City	30/09/2008	More4	Crime (incite/encourage)	1
Al Murray's Happy Hour	10/10/2008	ITV1	Undue Prominence	1
Alan Brazil / Jon Gaunt	25/09/2008	Talksport	Generally Accepted Standards	1
Ann Widdecombe Versus The Diet Industry	25/09/2008	ITV1	Due Impartiality/Bias	1
BBC Breakfast	24/09/2008	BBC1	Religious Offence	1
BBC News	02/10/2008	BBC1	Generally Accepted Standards	1
BBC News	03/10/2008	BBC1	Generally Accepted Standards	1
Big Brother's Little Brother	15/08/2008	E4	Generally Accepted Standards	1
Blowdown: Explosive Engineering (Trailer)	11/09/2008	National Geographic	Generally Accepted Standards	1
Boursin sponsorship of ITV Drama	n/a	ITV3	Inaccuracy/Misleading	1
Britain's Best Dish	20/10/2008	ITV1	Generally Accepted Standards	1
Britain's Whitest Family	03/10/2008	Channel 4	Generally Accepted Standards	1
Calendar News	06/10/2008	ITV1 (Yorkshire)	Dangerous Behaviour	1
Carling Cup - Newcastle Utd v Tottenham Hotspur	24/09/2008	Sky Sports2	Generally Accepted Standards	1
Cartridge World sponsorship	n/a	ITV4	Inaccuracy/Misleading	1
Channel 4 News	17/10/2008	Channel 4	Generally Accepted Standards	1
Channel 4 News	29/09/2008	Channel 4	Due Impartiality/Bias	1
Channel 4 News	06/10/2008	Channel 4	Inaccuracy/Misleading	1
Chateau Monty	04/09/2008	Channel 4	Offensive Language	1
Chris Moyles Show	28/08/2008	BBC Radio 1	Generally Accepted Standards	1
Chris Moyles Show	n/a	BBC Radio 1	Substance Abuse	1
Christian O'Connell	20/10/2008	Absolute Radio	Generally Accepted Standards	1
Coming of Age	30/09/2008	BBC Three	Sex/Nudity	1
Coronation Street	13/10/2008	ITV2	Dangerous Behaviour	3
Coronation Street	17/10/2008	ITV1	Substance Abuse	2
Coronation Street	17/10/2008	ITV1	Generally Accepted Standards	1
Coronation Street	12/10/2008	ITV1	Generally Accepted Standards	1
Cricket	07/08/2008	Sky Sports 1	Generally Accepted Standards	1
Crunch Time: Tonight	22/09/2008	ITV1	Generally Accepted Standards	2
Crunch Time: Tonight	22/09/2008	ITV1	Due Impartiality/Bias	1

Cutting Edge: Bobski the Builder	16/10/2008	Channel 4	Generally Accepted Standards	1
Cutting Edge: Bobski the Builder (Trailer)	13/10/2008	Channel 4	Generally Accepted Standards	1
Dom Joly	11/10/2008	Absolute Radio	Generally Accepted Standards	1
Dude, Where's My Car?	29/09/2008	Five	Advertising	1
Eastenders	07/10/2008	BBC1	Sex/Nudity	13
Eastenders	14/10/2008	BBC1	Generally Accepted Standards	1
Eastenders	14/10/2008	BBC1	Substance Abuse	1
Eastenders	07/10/2008	BBC1	Religious Offence	1
Eastenders	07/10/2008	BBC1	Generally Accepted Standards	1
Emmerdale	07/10/2008	ITV1	Violence	1
Emmerdale	23/09/2008	ITV1	Substance Abuse	1
Five News	30/09/2008	Five	Generally Accepted Standards	1
Frank Skinner Live at the Birmingham Hippodrome	17/10/2008	Channel 4	Generally Accepted Standards	1
Friday Night with Jonathan Ross	03/10/2008	BBC1	Generally Accepted Standards	1
Friday Night with Jonathan Ross	19/09/2008	BBC1	Religious Offence	1
GMTV	01/10/2008	ITV1	Due Impartiality/Bias	1
GMTV	30/09/2008	ITV1	Use of Premium Rate Numbers	1
GMTV	01/10/2008	ITV1	Generally Accepted Standards	1
GMTV competitions	n/a	ITV1	Use of Premium Rate Numbers	1
Gay to Z	10/10/2008	Channel 4	Sex/Nudity	4
Going for Gold	n/a	Five	Competitions	2
Graham Mack in the Morning	15/09/2008	TFM 96.6 FM	Sex/Nudity	1
Guinness sponsorship	05/09/2008	More4	Generally Accepted Standards	1
HD promotion	10/07/2008	Sky Two	Inaccuracy/Misleading	1
Harry & Paul	10/10/2008	BBC1	Generally Accepted Standards	1
Harry & Paul	26/09/2008	BBC1	Generally Accepted Standards	1
Harry Potter and the Goblet of Fire	05/10/2008	ITV1	Offensive Language	2
Harveys Sponsorship / Coronation Street	n/a	ITV1	Religious Offence	1
Heart FM Competition	07/09/2008	Heart FM	Competitions	1
Hell's Kitchen USA	13/10/2008	ITV2	Generally Accepted Standards	1
Hirsty's Daily Dose	12/09/2008	Galaxy 105 FM	Sex/Nudity	1
Hollyoaks	04/09/2008	E4	Violence	2
Hollyoaks	05/09/2008	Channel 4	Violence	15
Hollyoaks	02/10/2008	E4	Sex/Nudity	1
Hollyoaks	01/10/2008	Channel 4	Generally Accepted Standards	1
Hollyoaks	n/a	Channel 4	Generally Accepted Standards	1
Home and Away	17/10/2008	Five	Generally Accepted Standards	1
Hostel	25/09/2008	Five	Violence	2

How Not To Decorate	23/09/2008	Five	Offensive Language	1
How Not to Decorate	30/09/2008	Five	Offensive Language	1
ITV News	20/10/2008	ITV1	Dangerous Behaviour	2
Jamie's Ministry of Food	30/09/2008	Channel 4	Offensive Language	16
Jamie's Ministry of Food	07/10/2008	Channel 4	Offensive Language	1
Jamie's Ministry of Food	14/10/2008	Channel 4	Offensive Language	5
Jimmy Carr: Stand Up	26/09/2008	Channel 4	Generally Accepted Standards	1
KNTV - Philosophy	16/10/2008	Channel 4	Animal Welfare	1
Katie & Peter: The Next Chapter	25/09/2008	ITV2	Dangerous Behaviour	4
Katie and Peter: The Next Chapter	28/09/2008	ITV2	Commercial References	1
Katie and Peter: The Next Chapter	21/09/2008	ITV2	Commercial References	1
Katy Brand's Big Ass Show	23/09/2008	ITV2	Religious Offence	1
Katy Brand's Big Ass Show	30/09/2008	ITV2	Religious Offence	1
Katy Brand's Big Ass Show	07/10/2008	ITV2	Religious Offence	3
Ladies' Night (Trailer)	16/09/2008	E4	Generally Accepted Standards	5
Legends Phone In	24/09/2008	Century FM	Generally Accepted Standards	1
Little Britain USA	10/10/2008	BBC1	Generally Accepted Standards	15
Little Britain USA	03/10/2008	BBC1	U18's in Programmes	1
Little Britain USA	03/10/2008	BBC1	Generally Accepted Standards	4
Loose Women	01/09/2008	ITV1	Generally Accepted Standards	1
Lowest Bid Competition	10/09/2008	Reading 107 FM	Competitions	1
Merlin	11/10/2008	BBC1	Generally Accepted Standards	1
Mock the Week	14/08/2008	BBC2	Generally Accepted Standards	1
Moneybox (Trailer)	n/a	BBC Radio 4	Generally Accepted Standards	1
Motorway Cops	25/09/2008	BBC1	Violence	4
Mrs Doubtfire	04/10/2008	Channel 4	Offensive Language	2
Natural Born Sellers	02/10/2008	ITV1	Offensive Language	1
News	06/10/2008	BBC Radio 1	Sex/Nudity	1
News	26/09/2008	Original Bristol 106.5	Commercial References	1
News	06/10/2008	BBC Radio 1	Sex/Nudity	1
News	19/09/2008	Galaxy 102 FM	Inaccuracy/Misleading	1
News	26/09/2008	GWR 96.3FM Bristol	Commercial References	1
News	28/09/2008	Star 107.2	Commercial References	1
News	24/09/2008	Original Bristol 106.5	Undue Prominence	1
News beat	06/10/2008	BBC Radio 1	Generally Accepted Standards	1
Party People	15/09/2008	Get Lucky TV	Sex/Nudity	1
Peter Kay's Britain's Got the Pop Factor	12/10/2008	Channel 4	Offensive Language	1
Peter Kay's Britain's Got the Pop Factor	12/10/2008	Channel 4	Religious Offence	1

Peter Kay's Britain's Got the Pop Factor (Trailer)	02/10/2008	Channel 4	Religious Offence	1
Relocation, Relocation	27/08/2008	More4	Undue Prominence	1
Richard Bacon	01/10/2008	BBC Radio 5 Live	Generally Accepted Standards	1
Ricky Gervais: Fame	19/09/2008	Channel 4	Generally Accepted Standards	1
Road Wars	12/10/2008	Sky Two	Generally Accepted Standards	1
Road Wars	15/10/2008	Sky One	Generally Accepted Standards	1
Russell Brand Live	26/09/2008	Channel 4	Religious Offence	38
Russell Brand Live	26/09/2008	Channel 4	Generally Accepted Standards	1
Silent Witness	01/10/2008	BBC1	Sex/Nudity	2
Silent Witness	01/10/2008	BBC1	Generally Accepted Standards	1
Secret Diary of a Call Girl	09/10/2008	ITV1	Generally Accepted Standards	1
Sexcetera	28/08/2008	Virgin 1	Sex/Nudity	1
Sexcetera	21/08/2008	Virgin1	Sex/Nudity	1
Silent Witness	01/10/2008	BBC1	Religious Offence	1
Sky HD promo	01/10/2008	Sky Sports 1	Inaccuracy/Misleading	1
Something For The Weekend	05/10/2008	BBC2	Dangerous Behaviour	1
South Park	n/a	Paramount Comedy 2	Inaccuracy/Misleading	1
Spendaholics	12/09/2008	BBC Three	Generally Accepted Standards	1
Star Stories	02/10/2008	Channel 4	Religious Offence	1
Star Trek: The Next Generation	20/09/2008	Virgin 1 +1	Violence	1
Stephen Fry in America	19/10/2008	BBC1	Generally Accepted Standards	1
Steve Berry	09/10/2008	Rock Radio 106.1FM	Generally Accepted Standards	1
TMi	04/10/2008	BBC2	Violence	1
TV's Naughtiest Blunders	31/08/2008	ITV1	Generally Accepted Standards	1
Tarrant on TV	24/08/2008	ITV1	Sex/Nudity	7
The Alan Titchmarsh Show	17/09/2008	ITV1	Generally Accepted Standards	22
The Alan Titchmarsh Show	08/10/2008	ITV1	Generally Accepted Standards	7
The Alan Titchmarsh Show	24/09/2008	ITV1	Sex/Nudity	1
The Alan Titchmarsh Show	07/10/2008	ITV1	Offensive Language	1
The Andrew Marr Show	12/10/2008	BBC1	Generally Accepted Standards	1
The Big Breakfast	28/09/2008	Westside Radio 89.6FM	Dangerous Behaviour	1
The Breakfast Show	07/07/2008	Kerrang Radio	Misleading	1
The Genius of Charles Darwin	18/08/2008	Channel 4	Inaccuracy/Misleading	1
The Genius of Charles Darwin	04/08/2008	Channel 4	Due Impartiality/Bias	1
The Jerry Springer Show	10/10/2008	Virgin1	Generally Accepted Standards	1
The L-Word (trailer)	29/09/2008	Living	Sex/Nudity	1
The Most Annoying Pop Songs We Hate to Love	20/09/2008	BBC Three	Generally Accepted Standards	1
The National Lottery Draws	17/09/2008	BBC1	Generally Accepted Standards	1

The ONE Show	01/10/2008	BBC1	Generally Accepted Standards	1
The Restaurant	15/10/2008	BBC2	Dangerous Behaviour	1
The Ricki Lake Show	16/10/2008	ITV2	Offensive Language	1
The Tax Factor: Tonight	29/09/2008	ITV1	Due Impartiality/Bias	3
The Tony Livesy Experience	12/09/2008	BBC Radio Lancs	Sex/Nudity	1
The Tudors	26/09/2008	BBC2	Violence	1
The Wright Stuff	16/03/2008	Five	Generally Accepted Standards	1
The X Factor	18/10/2008	ITV1	Offensive Language	1
The X Factor	05/10/2008	ITV1	Undue Prominence	1
The X Factor	05/10/2008	ITV1	Generally Accepted Standards	1
The X Factor	11/10/2008	ITV1	Substance Abuse	1
The X Factor	11/10/2008	ITV1	Due Impartiality/Bias	1
This Morning	06/10/2008	ITV1	Competitions	1
This Morning	07/10/2008	ITV1	Sex/Nudity	1
Totally You've Been Framed	18/10/2008	ITV1	Animal Welfare	1
Totally You've Been Framed!	04/10/2008	ITV1	Dangerous Behaviour	1
Traffic & Travel Bulletin	27/09/2008	GWR 96.3FM Bristol	Commercial References	1
UK Border Force	23/09/2008	Sky One	Generally Accepted Standards	1
Ugly Betty	18/09/2008	E4	Advertising	1
Unbreakable	06/10/2008	Five	Animal Welfare	2
Unbreakable	06/10/2008	Five	Violence	1
Unbreakable (trailer)	06/10/2008	Five	Generally Accepted Standards	1
Vanessa Feltz	22/09/2008	BBC London 94.9	Generally Accepted Standards	1
Weakest Link	01/10/2008	BBC1	Sex/Nudity	1
When Women Rule the World	12/10/2008	Channel 4	Generally Accepted Standards	3
When Women Rule the World	04/09/2008	Channel 4	Generally Accepted Standards	1
Wire in the Blood	03/10/2008	ITV1	Generally Accepted Standards	1
You've Been Framed	19/10/2008	ITV1	Animal Welfare	1
You've Been Framed	19/10/2008	ITV1	U18's in Programmes	1