

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).

Standards cases

In Breach

Promotions for Sunday Surgery

BBC Radio 1, 19, 20 and 21 September 2005, various times

Introduction

Sunday Surgery is a radio advice programme aimed at young people. The BBC produced various different promotions for this programme.

The promotions 'broke into' normal programming (in these cases, music) with what sounded like radio interference and then promoted a telephone number in the style of a sex-line advertisement. These promotions were accompanied by sounds of graphic sexual moans and groans. Ofcom received complaints about three of these promotions transmitted at different times of the day.

The three versions were:

- 19 September 2005, broadcast at approximately 16:20:
"Dirty hot babes all over the UK looking for you to make their body rock. Call this number free, get dialling on [number given], come on – call me [number given]."
- 20 September 2005, broadcast at approximately 14:50:
"Call me now – I've got lips to leave you breathless and a body to make you moan. Call this number free, [number given] come on - call me".
- 21 September 2005, broadcast at approximately 10:15
"Are you open enough to take part in a two hour live sex marathon? Come on, call me [number given] call this number free [number given] – call me now."

There was no other information around the promotions to explain the nature or context of the item or any reference to the promotions by the presenters. The promotions were scheduled at various points in the day.

Twelve listeners complained, given the style of the promotions, that they had heard an illegal broadcaster breaking into Radio 1's transmission and promoting a sex phone line. Two listeners were aware that it had been a trailer for the BBC Radio 1 series *Sunday Surgery*. However, they considered that the content was too adult in nature and that the promotions were therefore inappropriate for broadcast at a time when children were available to listen.

Response

The BBC said that these promotions were part of a four week campaign based around *Sunday Surgery*, a live audience show designed to address the urgent need for sexual education among young people. The theme of the campaign was sexual health and sexual morality and the aim was to use *Sunday Surgery's* relationship with young people to start, and inform, a debate about these issues. Careful consideration had been given to how to convey the safe sex message to the intended

audience, and discussions with a wide range of agencies had taken place to establish the approach such a campaign should adopt.

Three particular points emerged: that large numbers of young people seemed immune to the more conventional sources of advice available to them: that in spite of public frankness about sexual matters, one-to-one discussion was still severely hampered by mutual embarrassment; and that (as suggested in a recent World Health Organisation report) any campaign should aim to target young people before they became sexually active - aiming to reach 9/10 -14 year olds as well as older children. Given the aim to reach the 9/10 -14 age category, while minimising the exposure of those in younger age groups, discussions were held at senior management levels within Radio 1 and beyond. The result was trails which were unusual enough to grab the attention of those who would have understood them (anyone who followed up the invitation to dial the number had the campaign explained fully to them) but which would have passed over the heads of the younger, minority audience.

The promotions were scheduled to avoid times when the youngest children were particularly likely to be listening: no trails were broadcast in breakfast programmes, and the peak audience at 15:30 was also avoided. With regard to those trails that were broadcast at times when children were unlikely to be listening, the BBC argued that any potential offence was justified by the context. In this case the context was a serious increase in the levels of sexually-transmitted infections among young people over the past decade.

The campaign was felt to have a clear and serious educational purpose. Given the statistics for teenage pregnancy and sexually transmitted diseases, the BBC believed that some explicitness was justified as a way of attracting the attention of those most at risk. It was for these reasons that it believed that the protection of children had a meaning rather wider than the one normally taken to apply in broadcasting.

Decision

We have no issue with the points that the BBC make about the merits of a campaign that seeks to address the important subject of sexual health among young people. However, we note that the campaign involved the BBC soliciting telephone calls from 9/10 to 14 year olds to what appeared to be an adult sex line.

Our concerns were with the style and sexual explicitness of the promotions. The material 'came from nowhere' and appeared to be genuine interference. The sexual tone of the script was re-emphasised by sounds of sexual moaning and groaning imitating adult sex-lines.

In particular, we note that such promotions aimed at 9/10 to 14 year olds were transmitted at, for instance 10:15 and 14:50, when most children of that age are likely to be at school. For the audience at these times, the promotion interrupted regular programming and gave no context whatsoever (unless the audience rang the number). Given the target audience for the promotions was unlikely to be listening, there appears to be limited justification for transmitting the trails at these times. The Code requires potentially offensive material to be justified by the context. The BBC argues that, in this case, the context was the serious increase in sexually transmitted diseases among the young. This is however, not the manner in which the term context is used within the Code. The Broadcasting Code states that potentially offensive material may be justified by the context, for example, the editorial content of the programme, the time of the programme and what other programmes are

scheduled before and after. However, despite the lack of context and the clear confusion caused to some listeners, we do not believe that the material in itself was totally against audience expectations for this station, at a time when the vast majority of listeners would have been adults.

However, our main concern was that such material was also transmitted at drive time (in one specific case around 16:20). The BBC argues that some of the target age group would be in the audience at this time. However, so would many younger children and even if, as the BBC claims, the material would have “passed over the heads of the younger, minority audience”, in Ofcom’s view it was totally inappropriate given the content and tone of the promotion (described above), for transmission at that time of the day, when younger listeners would have been in the audience.

Overall, despite the BBC’s intentions, we consider that the scheduling of such a promotion when younger children would have been in the audience was an editorial and compliance misjudgement.

Breach of Rule 1.3 (appropriate scheduling)

Adam Caterall

97.4 Rock FM, 8 November 2005, 21:50

Introduction

The presenter told listeners that he intended to call a woman that his male friend had met the previous weekend. The presenter then pretended to be his friend to try to find out the details of what had taken place between the couple. During the call between the presenter and the woman, there was a very detailed and sexually graphic conversation.

Two listeners complained that the telephone conversation between the presenter and the woman contained crude and offensive sexual remarks, which they thought were unacceptable.

Response

Emap, the station's parent company, explained the background to the item. The presenter was new to this programme and, in an attempt to inject some character and humour into what otherwise would be a music intensive programme, had been including some new material to maintain and, hopefully, grow his audience. Some of his recent programmes had included innovative humorous features which had been well received by listeners. Spurred on by an initial positive reaction, he 'set up' a phone call with a female friend. Regrettably, the live discussion veered out of control, even though he realised it was venturing into dubious territory. Following the broadcast, the presenter was told that the content of the feature was unacceptable and internal measures were put in place to address the issues raised by this item. The presenter was acutely aware that what was intended to provide humour was a serious misjudgement and had caused offence, for which he apologised.

Decision

The station told us that the call, in which the woman was encouraged to discuss intimate details about her recent sexual liaison, was in fact a pre-planned set-up and not a genuine call. However we agree with the broadcaster that the extremely graphic sexual language was inappropriate and seriously misjudged.

We welcome that the broadcaster had subsequently taken internal measures and its assurance that the programme would, in future, be closely monitored. However we were particularly concerned about the lack of production support available to a relatively inexperienced presenter who was attempting to move away from a music intensive slot to include more innovative material.

Breach of Section 2.3 (Generally accepted standards)

Lucy Ambache

Choice FM, 30 October 2005, 17:50

Introduction

A listener complained that a presenter read out a text which the complainant thought was offensive. In response to an item about dating younger people, a presenter commented that she had just got a “filthy” text, which she proceeded to read out in spite of acknowledging that it might “get her the sack”. The text read: “If they are old enough to bleed, they’re bleeding big enough, old enough”.

Response

GCap, the station’s parent company, explained that the presenters had been having a tame discussion about a forthcoming item on dating younger men. Unfortunately one of the presenters was distracted by a text she had received on her personal mobile as she was about to ‘sign off’ on the show and, unwisely, she decided to read it out on air. The broadcaster said this was an unfortunate incident and not representative of the presenter’s usual standard of broadcasting. Nor was it a reflection of Choice FM’s attitude towards young people. The station sought to provide positive aspirations for young people and both the presenters involved appreciated that such ‘throw-away’ remarks were not in line with this.

Both the presenters had offered their sincere apologies for their careless comments, which had been dealt with internally. GCap also wished to offer its sincere apologies to the complainant and anyone else who may have been offended by such comments.

Decision

The presenter’s comments before she read out the text indicated that she was aware that it was potentially offensive. We thought that her deliberate decision to relay the content of the text, with its apparent endorsement of under-age sex, was ill-judged, especially given that this slot typically attracts a young audience, including those under 15.

Breach of Rule 2.3 (Generally accepted standards)

Resolved

Monk

BBC1, 5 November 2005, 14:15

Introduction

In this US detective series, the central character (Monk) uses his obsessive-compulsive tendencies to solve crimes. In this episode, Monk's carer, Sharona, appeared to be the only person to see the body of a man who had apparently been murdered. The man's bloodied body kept appearing to her but each time he met his death in a different method, including hanging and being stabbed in the chest. A viewer felt these images of the 'murdered' body were too strong for broadcast at this time of the afternoon when children could be watching.

Response

The BBC explained that this was essentially a comedy drama featuring a quirky detective. Although "dark deeds" may take place, regular viewers are aware that nothing is quite what it seems. In this episode, there were clear indications throughout the episode that there was more to these events than straightforward murder - Sharona was either delusional or someone wanted to make it appear that she was (which turned out to be the case).

The BBC said that it had edited three of the scenes showing apparently severe injuries before this transmission. However, additional edits would be made to adjust further the balance between the detail of the "injuries" and their effect on Sharona.

Decision

We welcome the BBC's decision to edit some of the scenes for daytime broadcast. Although the light-hearted nature of the drama was apparent from the outset, some of the images of the "injuries" could be disturbing to younger children. Following the BBC's actions, we consider the matter resolved.

Complaint resolved

The Mark and Jo Show

Beacon Radio, 25 November 2005, 06:00 – 10:00

Introduction

A listener thought that the presenter's use of the word "poof" when she referred to a band was homophobic.

Response

GCap, the station's parent company, acknowledged that the word can be discriminatory in certain circumstances, although it thought that in this instance, it was intended to be light-hearted and inoffensive. Nevertheless it had discussed the matter with the presenter and apologised for any offence the remark had caused.

Decision

The tone of the show is light-hearted and involves banter between the two presenters. While briefly discussing bands from the 80s, one of the presenters ridiculed her co-presenter's claim that his favourite band was responsible for the '*greatest record ever made*' and said he'd met the two men concerned. She responded with the remark: '*They're not men, they're poofs*'. While it appeared to have been made in a dismissive manner to goad the other presenter, such terms can have the potential to offend. However, in view of the fact that the matter had been brought to the presenter's attention and the apology given by the broadcaster, we considered the matter resolved.

Complaint resolved

Baddiel and Skinner Unplanned

Paramount Comedy, 28 October 2005, 00:35

Introduction

This was a repeat run from the original ITV series in which Baddiel and Skinner discuss a range of subjects and add their own perspective. One issue they discussed in this edition was the risk of being mugged late at night. Frank Skinner demonstrated how he felt trouble could be averted by walking in a manner similar to someone with, it would appear, cerebral palsy.

One viewer complained that this sequence had been complained of when it was first broadcast and that the Broadcasting Standards Commission (BSC) had upheld those complaints; it was therefore inappropriate to show it again.

Response

Paramount apologised for any distress that the broadcast of the material caused the complainant. The edition in question was reviewed as part of standard compliance procedures without the benefit of the knowledge of the BSC Finding. The broadcaster said that it felt that the edition was suitable for transmission – it did not believe that Frank Skinner was intending to be derogatory to people with physical disabilities or to hold this group up to ridicule. However, it accepted that a greater degree of sensitivity should have been shown in this area and that the item should have been removed prior to transmission. Having reviewed its procedures, the broadcaster had implemented a number of changes with the intention of preventing a recurrence.

Decision

The broadcaster had initially considered the material within a previously broadcast package and it was not aware of the BSC finding. Having been made aware of the sensitivity involved in broadcasting sequences of this nature, Paramount acted promptly and in a way intended to prevent this kind of material being re-broadcast.

Complaint resolved

The Great Big British Quiz

TTV, 20 August 2005, 22:30

Introduction

Nine road signs were shown on screen above a question which said: "Which are correct?" Two viewers challenged the answer subsequently revealed on air, which identified three correct signs.

Response

TTV said that its review of the programme had uncovered an error. Six of the nine signs shown on screen should have been altered but the wrong graphic had been shown in which only one sign had been altered. The answer given related to what should have been shown – not what was shown.

The broadcaster assured us that it had now instituted new procedures for checking and cross checking puzzles before they went to air to make sure that such an error did not happen again. This now involved four checks prior to broadcast, at various stages of production, and, in addition, some puzzles were run through a computer programme to check their veracity. The broadcaster also assured us that any type of puzzle "only ever has one rule set" (now deposited with an independent third party). While it believed that the manner in which it altered signs was generally fair to its audience, it was keen to ensure viewer confidence and therefore confirmed that there would be an increased degree of alteration in future puzzles based on changes to symbols.

Decision

We are keen to ensure that all aired competitions are conducted fairly. The errors in this case were unfortunate. However, we welcome the action taken by the broadcaster to ensure no recurrence and its assurances concerning future output, which we believe resolves the matter.

Complaints resolved

ICSTIS has now published *A Statement of Expectations on Call TV Quiz Services*, following its recent consultation concerning premium rate TV quiz channels and TV programmes whose dedicated purpose is to run premium rate competitions. The statement can be found at:

http://www.icstis.org.uk/pdfs_consult/QuizTvConResponse06.pdf

Fairness and Privacy Cases

National Car Parks Limited

Danny Baker's Breakfast Show, BBC Radio London, 29 April 2005

Summary: Ofcom has not upheld this complaint of unfair treatment made by National Car Parks Limited (NCP). NCP complained that radio presenter Danny Baker broadcast unfair comments about the actions of a parking attendant in their employ.

Ofcom found that the programme did not result in unfairness to NCP as the programme was unlikely to have been capable of adversely affecting the reputation of NCP.

Introduction

During *Danny Baker's Breakfast Show* the presenter, Danny Baker, gave an account of an incident in Camden which resulted in his car being towed away. Mr Baker commented on the manner he believed he was treated by the parking attendant and claimed that the parking attendant at the scene did not speak to him.

National Car Parks Limited ("NCP"), the company responsible for parking enforcement on behalf of Camden Council, complained that it was treated unfairly in the broadcast of the programme.

The Complaint

NCP's case

In summary, NCP complained that it was treated unfairly in the programme as Mr Baker's claim that the parking attendant would not speak to him while his car was being removed was incorrect and therefore misleading. NCP maintained parking attendants who are employed by NCP have very strict guidance concerning interaction with customers. On this occasion the parking attendant adhered to the guidance by telling Mr Baker the information he required: why his car was being removed; where he could pick it up; and, what documents he would require and how much his fine would be.

The BBC's case

In summary the BBC responded to NCP's complaint as follows:

The BBC said that Mr Baker stood by his claim that the parking attendant would not speak to him. Mr Baker had confirmed that neither the parking attendant nor the man who strapped his vehicle to the lorry said a word to him. They gave him no explanation and no verbal information.

In relation to whether the parking attendant adhered to very strict guidance concerning interaction with customers, by telling Mr Baker the information he required: why his car was being removed; where he could pick it up; what documents he would require; and how much his fine would be, the BBC said that Mr Baker confirmed what he said in the programme:

- when Mr Baker returned to his car, he found it was in the process of being removed. He asked the parking attendant, what was going on. The parking attendant did not respond and did not speak to him. Instead, the attendant pointed to a lamp-post further down the road, which had a hand-written sign on it;
- Mr Baker pressed the attendant for information about where his car was being taken, and eventually the attendant gave him a card with the address of the car pound on it then walked away; and,
- as Mr Baker said in the programme, when he went to the pound, he had no idea what if any documents he would need to produce in order to remove his vehicle. He had not been given this information by the parking attendant.

Decision

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

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

In this case Ofcom found the following:

Broadcasters should take special care when their programmes are capable of adversely affecting the reputations of individuals, companies or other organisations. Broadcasters should take all reasonable care to satisfy themselves that all material facts have been considered before transmission and so far as possible are fairly presented.

NCP complained that the programme was unfair in that Mr Baker stated the parking attendant did not speak to him, which was false and therefore misleading. The broadcaster said that Mr Baker stood by his comments made during the programme that the parking attendants did not speak to him while his vehicle was being towed away.

In cases where there are varied accounts of events between the complainant and broadcaster, it is important to note that Ofcom does not have remit to act as a fact finding tribunal. Rather, Ofcom is responsible for determining whether a particular broadcast resulted in unfairness to an individual or organisation.

In relation to this specific complaint Ofcom was asked to decide whether the item resulted in unfairness to NCP. Ofcom concluded that the programme did not result in unfairness to NCP as the programme was unlikely to have been capable of adversely affecting the reputation of NCP. In coming to this decision Ofcom noted that during the programme Mr Baker did not refer to NCP by name nor did he identify the parking attendant present on the scene. Further, it was Ofcom's opinion that listeners would have clearly understood that the item was a personal account of events by Mr Baker, rather than an actual measured critique of NCP, its parking enforcement policies or their employees' abilities to interact with the public when a car is to be towed away.

Accordingly, Ofcom has not upheld this complaint of unfair treatment.

Complaint by Mr Peter Harris on behalf of Care Connect UK Limited

Panorama: a Carer's Story, BBC1, 16 November 2003

Summary: Ofcom has not upheld a complaint of unfair treatment about this documentary which investigated home care provision for the elderly. Care Connect UK Limited ("the Company") a provider of home care services was one of the companies investigated and featured in the programme. Members of staff and clients were secretly filmed and some of the footage was included in the programme.

Mr Peter Harris, Director of the Company, complained that the programme was unfair to the Company.

Ofcom found the following:

- a) In the circumstances of this particular case, Ofcom considered that it was legitimate for the programme-makers to secretly film the Company's employees. Ofcom accepted that earlier research had led the programme-makers to be concerned about the possibility that the Company might have been employing individuals without appropriate experience and providing them with inadequate training.
- b) Ofcom did not consider that the Company was unjustifiably impugned in the programme. Further, Ofcom did not consider that there was evidence to support the complainant's contention that the programme included falsehoods, deliberate misinterpretation and misleading innuendo.
- c) It was legitimate for the programme to present comments by a member of staff about the need to treat clients roughly as it appeared to be illustrative of conduct that fell below what the public might expect from providers of essential care to vulnerable individuals.
- d) It was legitimate for the programme to include the footage of the Company's recruitment manager given the important position that she had held and given that the programme was presenting concerns about the recruitment process which might have led to the Company employing individuals without appropriate experience. Ofcom noted that the programme also made clear that this employee had since left the Company
- e) The Company was offered an appropriate and timely opportunity to respond to the allegations and evidence contained in the programme, which they declined.

Introduction

This documentary investigated home care provision for the elderly. Care Connect UK Limited ("the Company"), a provider of home care services, was one of the companies investigated and featured in the programme. Members of staff and clients were secretly filmed and some of the footage was included in the programme. Ms Fran Baker, an undercover reporter, was shown, amongst other things: being hired with faulty references and no apparent experience; undergoing a brief induction process conducted by the recruitment manager; being told by an experienced carer on one occasion that a service user needed to be treated roughly; and required to

operate a hoist she was not qualified to operate.

Mr Harris, a Director of the Company, complained to Ofcom that the Company was treated unfairly in the programme.

Complaint

Mr Harris' case

In summary, Mr Harris complained that:

- a) The programme-makers secretly recorded and broadcast the Company's operations. The public was invited to draw conclusions about the Company's service based on evidence obtained by an unprincipled clandestine operation.
- b) The Company was unjustifiably impugned as a result of programme including falsehoods, deliberate misinterpretation and misleading innuendo. Specifically:
 - i) the evidence against the Company consisted of a small number of incidents where some individuals were seen or heard to be using bad language or acting in a way that was portrayed as callous or uncaring. The programme failed to include the many acts of kindness and dedication. In an addition an independent survey of the services provided by the Company that was available to the programme-makers, found that approximately 90% of clients had been either satisfied or very satisfied with the standard of care received;
 - ii) Ms Baker's portrayal of her undercover activities were misleading and suggested that the Company was an organisation that gave no priority to the training or welfare of its staff;
 - iii) the programme-makers presented evidence of less than ideal work practices as 'normal', when they were in fact exceptions. Also, pragmatic solutions were portrayed as evidence of wrongdoing. In particular, Ms Baker was shown attending the home of a lady who failed to answer her door. She was advised by the care co-ordinator to place a note under the lady's door. It was agreed that this was not the prescribed procedure. However, the programme failed to explain that this was a common-sense response to the situation by the care co-ordinator based on her previous experience of this lady's behaviour; and,
 - iv) the programme implied, without evidence, that vulnerable people were not receiving a good standard of care. The programme alleged that injuries had been caused as a result of the use of a hoist without any valid evidence to support the claim.
- c) An employee of the Company was filmed making an unprofessional and indefensible comment. It was unjustified to present this comment in the programme as evidence that the Company was an uncaring organisation. Mr Harris said that the comment, which concerned treating clients roughly, was made by a hardworking and conscientious, if somewhat inarticulate, carer who was expressing the need to be efficient.
- d) The recruitment manager featured in the programme was dismissed shortly after being secretly filmed and long before the Company had any knowledge of

the programme. Nevertheless, the programme-makers chose to feature her in the programme which gave the misleading impression that her behaviour had been and was acceptable to the organisation.

- e) Although the Company was offered the opportunity to contribute by the programme-makers, it declined on legal advice. The Company was not allowed editorial influence or to preview the programme.

The BBC's case

In summary, the BBC responded that:

- a) Although some of the programme's evidence was obtained by deception, it was proportionate and justified by the public interest in revealing the kind of practices which it uncovered. The Company were offered the opportunity to respond by way of an interview but the invitation was declined. The evidence showed that, in terms of the services that the company was contracted to provide and in their compliance with national standards, the Company's performance was seriously wanting.
- b) It was not disputed that there were occasions when the Company's employees performed their tasks with care and consideration, but the film accurately portrayed Ms Baker's actual experience of working for the Company. Specifically:
 - i) there was no suggestion in the programme that the Company was an uncaring organisation. However, it highlighted certain key practices and policies of the Company failed to comply with national standards. Also the behaviour and comments of some of the Company's employees betrayed, to varying degrees, an uncaring attitude. The BBC said that the findings of the "independent survey" were reflected in the programme;
 - ii) records made by Ms Baker clearly showed that her training as a carer with the Company fell woefully short of even minimum standards;
 - iii) in relation to the programme's portrayal of the 'note under the door' incident, the BBC said that they did not accept that this was a common sense response to the situation; and,
 - iv) the BBC said that the programme did not allege that injuries had been caused as a result of the incorrect use of a hoist. It was clear from the programme that it was the daughter of a client who talked of "bangs and bumps" and attributed "slight" injuries to her mother's head as being possibly due to inexpert use of a hoist. The programme makers accurately and reasonably reported this observation made by the lady's own family.
- c) There was no suggestion in the programme that the Company was an uncaring organisation. However, the programme highlighted certain key practices and policies of the Company that failed to comply with national standards. Also the behaviour and comments of some of the Company's employees betrayed, to varying degrees, an uncaring attitude. The BBC said that the "treat her roughly" comment could not simply be interpreted as expressing a need to be efficient. The carer in question accompanied her remarks with "an emphatic gesture" which made it her meaning clear.

- d) The BBC said that it was not unfair to have focussed attention on the recruitment manager. The recruitment manager's status and seniority in the management of the Company meant that the Company could not absolve itself simply by claiming that her performance was an aberration. When it came to the vital work of training new staff and setting standards for performance, the recruitment manager was the Company. The programme-makers had tried to contact the recruitment manager who had been dismissed but were unable to do so. In these circumstances, the programme made clear that she "no longer worked for Care Connect".
- e) In relation to the Company's right to reply, the BBC said that the Company was offered a full right to reply by way of an interview. Despite asking for, and being provided with a list of the areas the programme makers would have like to discuss in interview, the Company declined the invitation.

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

In this case, Ofcom found the following:

- a) Programme-makers should not normally obtain information or pictures through deception unless the disclosure is in the public interest and the material could not be obtained by any other means. In the circumstances of this particular case, Ofcom considered that it was legitimate for the programme-makers to secretly film the Company's employees. Ofcom accepted that earlier research had led the programme-makers to be concerned about the possibility that the Company might have been employing individuals without appropriate experience and providing them with inadequate training. It was also clear that it was very unlikely that the programme would have been able to secure this footage by any other means. Ofcom found no unfairness in this respect.
- b) Ofcom did not consider that the Company was unjustifiably impugned in the programme. Further, Ofcom did not consider that there was evidence to support the complainant's contention that the programme included falsehoods, deliberate misinterpretation and misleading innuendo.

However, the programme was clearly capable of adversely affecting the Company's reputation and in those circumstances it was important for the programme-makers to take reasonable care to ensure that all material facts had been considered before transmission and so far as possible fairly presented. Ofcom considered that the programme-makers took all reasonable care by offering the Company an opportunity to contribute to the programme. This would have enabled them to counter (where and if necessary) the evidence or allegations to be included in the programme.

When concluding that the Company was not unjustifiably impugned Ofcom took into account the following:

- i) In Ofcom's view there was no suggestion in the programme that the Company was an uncaring organisation. Ofcom noted that the BBC did not contest that there were occasions when the Company's employees performed their tasks with care and consideration and Ofcom did not consider that the programme implied that all employees were guilty of inappropriate conduct. Further, although the programme did not specifically refer to the independent survey or its results it was made clear in the programme that a large number of people were very satisfied with the standard of care they received from the Company. This reflected the findings of the independent survey;
- ii) It appeared from the evidence available to Ofcom that the conduct of some employees of the Company fell below what the public might expect from providers of essential care to vulnerable individuals. The incidents filmed and later broadcast in the programme were, in Ofcom's view, illustrative of a failure by the Company to provide appropriately trained staff to those who required their care. In the circumstances, it was not unfair for the programme to include footage of the incidents in the programme;
- iii) As noted above, it appeared to Ofcom that the conduct of some employees of the Company fell below what the public might expect from providers of essential care to vulnerable individuals and it was legitimate for the programme-makers to include footage of the incidents in the programme. The programme did not state that this was indicative of the Company's practices generally or widespread among employees. In fact (also noted above) the programme made clear that a large number of people were very satisfied with the standard of care they received from the Company;

With specific regard to the 'note under the door' incident, Ofcom considered that this was a straightforward representation of the incident as it happened. It was reasonable for the programme to question the appropriateness of the employee's actions as it appeared to be illustrative of conduct that fell below what the public might expect from providers of essential care to vulnerable individuals. Ofcom noted that the Company conceded that this was not the prescribed procedure. Further, viewers would have been able to form their own view of the appropriateness of the action; and,

- iv) Ofcom reviewed transcripts of the programme and was satisfied that the programme's commentary did not allege that injuries had been caused to an individual in the Company's care as a result of the incorrect use of a hoist. It was clear from the programme that it was the daughter of a client who talked of "bangs and bumps" and attributed "slight" injuries to her mother's head as being possibly due to inexperienced use of a hoist. It was clear that this was simply the opinion of a relative and not established as fact.

Ofcom therefore found no unfairness in this respect.

- c) The Company complained that programme-makers misrepresented a staff

member's comments about the need to treat a client "roughly". Having viewed the programme and read the transcript it was clear to Ofcom that the staff member had made the comments. In the circumstances, and in the absence of a response or evidence to the contrary from the Company prior to transmission, Ofcom considered that it was therefore legitimate for the programme to present the comments in the manner that it did as it appeared to be illustrative of conduct that fell below what the public might expect from providers of essential care to vulnerable individuals. Ofcom therefore found no unfairness in this respect.

- d) In our view, it was legitimate for the programme to include the footage of the recruitment manager given the important position that she had held and given that the programme was presenting concerns about the recruitment process of interviewing and vetting potential employees which might have led to the Company employing individuals without appropriate experience. Ofcom noted that the programme also made clear that the employee had since left the Company. Ofcom therefore found no unfairness in this respect.
- e) In cases where programmes allege wrongdoing or incompetence, or contain a damaging critique of an individual or organisation, those criticised should normally be given an appropriate and timely opportunity to respond to or comment on the arguments and evidence contained within that programme. In the circumstances of this case, Ofcom considered that the programme was very critical of the conduct of some of the staff who were employed by Company and as such the programme-makers were obliged, in the interests of fairness, to offer the Company an opportunity to respond to the allegations and evidence contained in the programme. Ofcom considered that it was clear from pre-transmission correspondence that such an opportunity was offered to the Company. The programme-makers were not obliged, in the interest of fairness, to allow the Company to preview the programme or have editorial influence over its content. Ofcom therefore found no unfairness in this respect.

Accordingly, Ofcom has not upheld this complaint of unfair treatment.

Complaint by Birnberg Peirce and Partners (Solicitors) on behalf of Ms Jane Andrews

Dressed to Kill, Channel 4 Television, 11 October 2001

Summary: Ofcom has not upheld this complaint of unfair treatment from Birnberg Peirce and Partners (Solicitors) on behalf of Ms Jane Andrews about *Dressed to Kill* broadcast by Channel 4 Television on 11 October 2001. The programme documented the life of Ms Jane Andrews and examined events surrounding the murder of her boyfriend Mr Thomas Cressman. Ms Andrews was found guilty of his murder and was sentenced to life imprisonment on 16 May 2001.

Ofcom found the following:

- a) It was reasonable for the programme to include the claims made by Ms Basia Briggs, an acquaintance of Ms Andrews, which were consistent with other testimony provided to the court. Further, in Ofcom's view, the programme-makers took reasonable care to ensure that all material facts relating to this issue had been considered and so far as possible fairly presented.
- b) The programme-makers took steps to gain Ms Andrews' participation in the programme at an early stage, which she declined. Nonetheless, the nature and likely content of the programme were in fact made clear to Ms Andrews before the programme was broadcast.
- c) The programme's presentation of a contribution by an expert, Dr Van Velson, was unlikely to have materially affected viewers' understanding of Ms Andrews in a way which would have been unfair to her.
- d) It was reasonable for the programme-makers to include the testimony of the late Dr West given his involvement in the case as pathologist and his forensic knowledge of the circumstances of the death. Dr West was a credible and authoritative source and in Ofcom's view, the programme presented his opinion in a straightforward and factual manner and tone.
- e) It was not unreasonable to include the recollections of Daily Mirror journalist Mr Charlie Bain relating to allegations by Mr Dimitri Horne, a former boyfriend of Ms Andrews, as they were generally illustrative of Ms Andrews' capability of aggressive and violent behaviour (which had been proved in court). It was also unlikely to have materially affected viewers' opinion of Ms Andrews in a way that was unfair to her.

Following her conviction for the murder of Mr Cressman and after the broadcast of this programme, Ms Andrews appealed against her conviction. Ofcom and its predecessor, the Broadcasting Standards Commission, were therefore precluded from considering this complaint when it was first submitted as the matters complained of were the subject of relevant legal proceedings.

Introduction

This programme documented the life of Ms Jane Andrews and examined events surrounding the murder of her boyfriend Mr Thomas Cressman. Ms Andrews was found guilty of his murder and was sentenced to life imprisonment on 16 May 2001. During sentencing the judge stated that Ms Andrews had struck Mr Cressman first with a cricket bat and then stabbed him with a knife, leaving him to die.

The programme included interviews with those involved directly in the case including DCI Jim Dickie who headed the Metropolitan Police's investigation and the late Dr Ian West, the case pathologist. Dr West described and demonstrated, in the programme, the fatal injuries received by Mr Cressman.

The programme included an interview with Mrs Basia Briggs who claimed that after giving evidence Ms Andrews confessed to her that she had placed a pillow over Mr Cressman's head as she wanted to make sure that he was dead. She also claimed that Ms Andrews had admitted to her that Mr Cressman was not violent towards her despite previously alleging that he was.

It included an interview with an independent forensic psychologist Dr Van Velson who suggested that Ms Andrews' behaviour, as reported in court, was consistent with a borderline personality disorder.

It included an interview with *Daily Mirror* journalist Mr Charlie Bain who recounted allegations made by a former boyfriend of Ms Andrews, Mr Dimitri Horne, who claimed that during an argument she once picked up a pair of scissors and threw them at his head.

It also included contributions from friends of Ms Andrews, Mr Gil Hancox and Ms Lucinda Ellery.

Birnberg Peirce and Partners (Solicitors) complained that Ms Andrews was treated unfairly in the broadcast of the programme.

Complaint

Birnberg Peirce and Partners' Case (on behalf of Ms Andrews)

- a) Mrs Briggs' account of events relating to the alleged confession suggested that Ms Andrews felt no remorse about the death of Mr Cressman and that she was in fact a cold and callous killer.
- b) Ms Andrews was not given an appropriate or timely opportunity to respond to the account provided by Mrs Briggs in the programme. Had it not been for news reports of the programme contents and Ms Andrews' solicitor's efforts to intervene she would not have had any opportunity to respond. Following lengthy correspondence with the programme-makers a short statement was broadcast at the end of the programme, however, Ms Andrews was not given the opportunity to provide her own evidence that would have undermined Mrs Briggs' account as given in the programme. The programme-makers failed to take all reasonable care to satisfy themselves that all material facts have been considered before transmission.

For example, the timing and venue of the alleged confession could be disproved as Ms Andrews had already moved out of Mrs Briggs' home at that time.

It was correct that there was no evidence found by the prosecution to show that Ms Andrews had complained of the deceased's previous violence, most particularly of his sexual violence, towards her. However, it was a well documented fact that victims of sexual violence are frequently unable to disclose such violence whilst they remain in the relationship. Nevertheless,

there was medical evidence available to show Ms Andrews had visited Charing Cross Hospital and that she sustained other injuries

The allegation that Ms Andrews confessed that the deceased had been smothered by pillows could have easily been tested by reference to the forensic evidence that had been collected at trial.

- c) Dr Van Velson's account that Ms Andrews had borderline personality disorder was juxtaposed with images of a morgue, cold steel and sharp knives and was accompanied by jarring background music. This added to the impression that Ms Andrews was an unstable, dangerous and violent person.
- d) The interview with the pathologist Dr West describing and demonstrating the track of the knife wound received by Mr Cressman was gratuitous and unnecessary and the manner in which the contribution was juxtaposed with descriptions of the personality of the deceased was deliberately sensationalist.
- e) The interview with the Daily Mirror journalist, Mr Bain, contained an allegation by a former boyfriend of Ms Andrews, Mr Horne, that during an argument she picked up a pair of scissors and threw them at his head. There was no evidence of this allegation in all the statements that Mr Horne gave to the police. This allegation suggested that Ms Andrews was a dangerous person with a tendency to use knives or blades.

Channel 4's Case

- a) Viewers were already entitled to draw the conclusion that Ms Andrews was a cold and callous killer who felt no remorse about the death of Mr Cressman on the basis that the jury did not accept her defence of provocation and concluded that she did murder him.
- b) Ms Andrews was given an appropriate and timely opportunity to respond to the claims made by Mrs Briggs in the programme. The programme-makers wrote to Ms Andrews on 27 June 2001 inviting her to participate in the programme but received no reply. The programme-makers also requested permission to interview Ms Andrews through the Prison Service who replied on her behalf indicating that she did not wish to talk to the media. Approaches were also made through her former solicitors, her barrister and her parents, but it was made clear to the producers that she did not want to participate in the programme in any way.

Prior to Ms Andrews' new solicitors contacting Channel 4 in September 2001, the programme-makers were already discussing with Channel 4 the possibility of re-approaching Ms Andrews directly one last time to invite her to respond. At this time the programme was not finalised, although early press tapes had been sent out for reviewers. However, before an approach could be made, Ms Andrews' new solicitors contacted Channel 4.

A statement provided by Ms Andrews was fairly and accurately reflected in the programme, although the solicitors were made aware that Channel 4 would not include parts of the statement that were defamatory of Mrs Briggs.

The programme made clear that Mrs Briggs claims were never heard in court nor were they subject to further police investigation. Mrs Briggs agreed to provide the Metropolitan Police with a statement before transmission of the

programme but because of the police's availability this could not be taken until shortly after transmission. The programme-makers were advised that the account given by Mrs Briggs to the police and that given in the programme were the same.

There were numerous inconsistencies highlighted at trial in the evidence given by Ms Andrews. For example she claimed that she visited Charing Cross Hospital in December 1999 after Mr Cressman pushed her down the stairs. However, she made no mention of these facts to any doctor or police officer. Indeed, in police interviews she only identified one act of violence despite claiming Mr Cressman was prone to black moods and was frequently violent. However, all witnesses without exception said that they had never heard a complaint by Ms Andrews of physical violence by Mr Cressman prior to the trial.

The prosecution and the police believed Ms Andrews made a half-hearted attempt to smother Mr Cressman with the pillow after he had been violently attacked.

- c) Dr Van Velson never objected to the way in which her contribution was presented in the programme and the manner in which it was presented was in no way unfair to Ms Andrews.
- d) The description given by the late Dr West was the same as the evidence he gave at trial on which Ms Andrews was convicted. Dr West's family never objected to the way in which his contribution was presented in the programme. Careful consideration was given to the manner in which Dr West's contribution was included, with particular regard to Mr Cressman's next of kin, to ensure that the scenes were treated with due respect and dignity and did not cause unnecessary distress to the family. Dr West's contribution was not deliberately sensationalist or unnecessary.
- e) The comments attributed to Mr Horne were previously published as part of an interview with him in the Daily Mirror and he made no complaint after publication. The programme-makers did speak to Mr Horne on the telephone in Greece during the making of the programme. Although he declined to take part he agreed to allow them to phone him to check facts. As the production company closed down it was not possible to establish to what extent all the facts were checked. However, no complaint was made by Mr Horne after broadcast.

Mr Bain's comments were not intended to suggest that Ms Andrews had a tendency to use knives or blades but were used to illustrate that she had a volatile and at times violent relationship with ex-boyfriends, a fact which formed part of the prosecution case. Mr Horne's own account described how Ms Andrews tried to beat him up in a violent attack.

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.

Ofcom is not a fact finding tribunal and only considered matters raised in the complaint insofar as they might have amounted to specific unfairness to Ms Andrews in the programme as broadcast. It did not consider any secondary effects on Ms Andrews.

Ofcom takes the view that there can be no objection in principle to revisiting a past event of this nature, namely a trial that has been very widely reported both at the time and since, and which involved a figure accused of serious offences who had gained public notoriety. Ofcom acknowledges that revisiting these events was potentially distressing for Ms Andrews and her family but finds no unfairness in the decision to revisit these events.

At the time of broadcast Ms Andrews had been found guilty of the crimes referred to in the programme; the conviction had not been overturned on appeal and, in Ofcom's view, the programme's presentation of the conviction was straightforward and factual.

Ofcom concluded that the programme-makers were entitled to rely on the decision of the courts.

Specifically, Ofcom found the following:

- a) It was reasonable for the programme to include the claims made by Ms Basia Briggs, which were consistent with other testimony provided to the court. Further, in Ofcom's view, the programme-makers took reasonable care to ensure that all material facts relating to this issue had been considered and so far as possible fairly presented. In reaching this finding Ofcom took into account the following:
 - Ms Briggs' claims were unlikely to have materially affected viewers' understanding of Ms Andrews' crime, given that she had been convicted of the murder and the trial judge had told Ms Andrews that "nothing could justify what you did" and later that "it was a brutal attack" and "you left him [Mr Cressman] to die without remorse";
 - the programme made clear that Ms Briggs' claims were never heard in court nor were they subject to further police investigation; and,
 - the programme made clear that Ms Andrews' refuted the claims and fairly represented a statement to this effect, provided by Ms Andrews' solicitors, in the programme. The programme stated that "Jane Andrews' solicitors told Channel 4 that she utterly and unequivocally refutes the alleged confession. They said that supportive letters written by Basia to Jane in prison show Basia to be inconsistent. Jane Andrews has now lodged an appeal against her conviction."

We therefore found no unfairness to Ms Andrews in this respect.

- b) Where a programme alleges wrongdoing or incompetence, or contains a damaging critique of an individual or organisation, those criticised should normally be given an appropriate and timely opportunity to respond to or comment on the arguments and evidence contained within that programme.

Ofcom considers that normally convicted criminals have no legitimate expectation of an opportunity to respond to claims that have already been presented to the court and proven to the satisfaction of the jury.

In any event, on the evidence before us, Ofcom considered that the programme-makers took steps to gain Ms Andrews' participation in the programme at an early stage, which she declined. Nonetheless, the nature and likely content of the programme were in fact made clear to Ms Andrews before the programme was broadcast. Ms Andrews' solicitors also obtained a 'press preview' recording of the programme and were able to make representations on the allegations and evidence contained in the programme prior to transmission. In particular, Ms Andrews' solicitors were able to refute the specific allegations made by Ms Briggs, not made or tested in court, and provided a statement to this effect (referred to above). This statement was, in Ofcom's view, represented fairly in the programme as broadcast (see above). We therefore found no unfairness to Ms Andrews in this respect.

- c) In Ofcom's view the programme's presentation of Dr Van Velson's contribution; the use of imagery and the accompanying background music was reasonable. Given Ms Andrews' conviction for Mr Cressman's murder and the trial judge's description of the "brutal attack" and Ms Andrews' lack of remorse, it was unlikely that the programme's presentation of Dr Van Velson's contribution would have materially affected viewers' understanding of Ms Andrews in a way which would have been unfair to her. Ofcom therefore found no unfairness in this respect.
- d) Ofcom considered that it was reasonable for the programme-makers to include the testimony of the late Dr West, and his description of Mr Cressman's murder, given his involvement in the case as pathologist and his forensic knowledge of the circumstances of the death. Dr West was a credible and authoritative source and in Ofcom's view, the programme presented his opinion in a straightforward and factual manner and tone. We therefore found no unfairness to Ms Andrews in this respect.
- e) Ofcom noted that the comments attributed to Mr Horne were previously published as part of an interview with him in the Daily Mirror and he made no complaint after publication. Ofcom considered that although Mr Horne made no allegation in his police-statement that Ms Andrews had attacked him with a pair of scissors it was not, in our view, unreasonable to include Mr Bain's recollection of Mr Horne's account as it was generally illustrative of Ms Andrews' capability of aggressive and violent behaviour (which had been proved in court). It was also unlikely to have materially affected viewers' opinion of Ms Andrews in a way that was unfair to her.

Accordingly, Ofcom has not upheld this complaint of unfair treatment.

Other programmes not in breach/out of remit

28 December – 17 January 2006

Programme	Trans Date	Channel	Category	No of Complaints
Anglia News	22/12/2005	ITV1	Violence	3
Bad Girls	19/12/2005	ITV1	Violence	2
BBC London 94.9	18/09/2005	BBC London 94.9	Offence	1
BBC News	19/12/2005	BBC1	Sexual Portrayal	1
BBC News 24	11/03/2005	BBC News 24	Language	1
Big Game TV	28/10/2005	ITV2	Offence	1
Channel 4 News	22/12/2005	Channel 4	Offence	1
Chicago	01/01/2006	BBC1	Sexual Portrayal	1
Coronation Street	25/12/2005	ITV1	Offence	1
Coronation Street	26/12/2005	ITV1	Offence	1
Coronation Street	28/12/2005	ITV1	Offence	1
Damien St John	21/12/2005	Red Dragon FM	Offence	1
Deal Or No Deal	09/12/2005	Channel 4	Misleading	1
Department S	28/12/2005	ITV4	Offence	1
Derren Brown: The Gathering	02/12/2005	Channel 4	Offence	1
Derren Brown: The Heist	04/01/2006	Channel 4	Offence	1
Emmerdale	30/12/2005	ITV1	Sexual Portrayal	1
Emmerdale	02/01/2006	ITV1	Sexual Portrayal	1
Friends	22/12/2005	Channel 4	Language	1
Grease	02/01/2006	ITV1	Offence	1
I Killed John Lennon	08/12/2005	Channel 4	Offence	1
It'll Be Alright on the Night 19	31/12/2005	ITV1	Language	1
ITV News	23/12/2005	ITV1	Language	1
Live TV	26/11/2005	Live TV	Sexual Portrayal	1
Lizzie Maguire	05/01/2006	BBC1	Offence	1
Match of the Day	18/12/2005	BBC2	Offence	1
Open Wide	21/12/2005	ITV1	Offence	1
Paramount Comedy Channel	20/11/2005	Paramount Comedy Channel	Religious Offence	1
Paul Zenon's Revenge Squad	23/12/2005	ITV1	Violence	1
Pets Are People	05/01/2006	BBC2	Offence	1
Rock FM	05/01/2006	Rock FM	Offence	1
Shameless	03/01/2006	Channel 4	Violence	2
Signal 1	22/12/2005	Signal 1	Language	1
Sky News	08/12/2005	Sky News	Other	1
Smile	18/12/2005	BBC2	Other	1
Soccer AM	29/12/2005	Sky Sports 1	Other	1
Sunrise Radio	24/12/2005	Sunrise Radio	Religious Offence	1
T4	31/12/2005	Channel 4	Offence	1
Television X	04/01/2006	Television X	Sexual Portrayal	1
The Bloody Circus	03/01/2006	Channel 4	Offence	1
The F Word	14/12/2005	Channel 4	Violence	1

The F Word	18/12/2005	More4+1	Violence	1
The Magic of Jesus	30/12/2005	Channel 4	Religious Offence	3
The Pamela Anderson Roast	17/11/2005	E4	Offence	1
The Planet's Funniest Animals	26/12/2005	ITV1	Offence	1
The Thick of It	02/01/2006	BBC2	Language	2
Three Men in a Boat	03/01/2006	BBC2	Language	4
Today with Des & Mel	28/12/2005	ITV1	Other	1
UTV News	16/11/2005	UTV	Advertising	1
Vision FM	12/12/2005	Vision FM	Offence	2
What Not to Wear	29/12/2005	BBC1	Language	1
Whatever Love Means	28/12/2005	ITV1	Offence	1
You Are What You Eat	27/12/2005	Channel 4	Other	1
You Are What You Eat	03/01/2006	Channel 4	Other	2