

Ofcom Broadcast Bulletin

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Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives¹. Ofcom must include these standards in a code or codes. These are listed below. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act².

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes below, as well as licence conditions with which broadcasters regulated by Ofcom are required to comply. We also report on the outcome of ODPS sanctions referrals made by ATVOD and the ASA on the basis of their rules and guidance for ODPS. These Codes, rules and guidance documents include:

- a) [Ofcom’s Broadcasting Code](#) (“the Code”).
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
 - the prohibition on ‘political’ advertising;
 - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
 - ‘participation TV’ advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including ‘adult’ chat), ‘psychic’ readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and ‘message board’ material where these are broadcast as advertising³.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) rules and guidance for both [editorial content and advertising content on ODPS](#). Ofcom considers sanctions in relation to ODPS on referral by the Authority for Television On-Demand (“ATVOD”) or the Advertising Standards Authority (“ASA”), co-regulators of ODPS for editorial content and advertising respectively, or may do so as a concurrent regulator.

[Other codes and requirements](#) may also apply to broadcasters and ODPS, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant

¹ The relevant legislation is set out in detail in Annex 1 of the Code.

² The relevant legislation can be found at Part 4A of the Act.

³ BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases.

licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

It is Ofcom's policy to describe fully the content in television, radio and on demand content. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.

Standards cases

In Breach

Youth Show

Sangat TV, 17 February 2013, 20:30

Introduction

Sangat TV broadcasts religious and general entertainment content in English and Punjabi. It is primarily directed towards the Sikh community in the UK, and is available on the Sky digital satellite platform. The licence for Sangat TV is held by Regis 1 Limited (“Regis 1” or “the Licensee”).

A complainant alerted Ofcom to the above programme, which discussed the imprisoned Sikh militant, Balwant Singh Rajoana¹. The complainant objected to the programme containing positive references to Balwant Singh Rajoana.

Ofcom noted this was a 75 minute live broadcast, which featured a young adult male speaker, dressed in a Sikh turban, talking to camera who gave an account in English of the life story of Balwant Singh Rajoana. During the programme, he conducted a brief interview, by telephone and in Punjabi, with the sister of Balwant Singh Rajoana. We were concerned that the speaker made a number of positive references to Balwant Singh Rajoana, including as follows:

“Freedom fighters aren’t just people who are robots and they don’t love life, they don’t value life. And they’re willing to give their life in just a second. On that day [Beant Singh was assassinated] Balwant Rajoana and Babbar Dilawar Singh² are standing there and are deciding the only way to exterminate Beant is to become a human bomb”.

“People may think: ‘This sounds really extreme. You’re going to take the life of the Chief Minister of a State’. They had actually planned to go towards Beant, the Chief Minister at 2pm, when there wouldn’t be many people around. So the fact that Beant came late – he came around 5pm I think, which meant there were more people around – even their planning then was: ‘We don’t want to take any innocent lives, we just want to take the man who has been killing and authorising the killing of innocent people’. And what’s important to note that once Beant was exterminated much of the killings had stopped”.

“[Balwant Singh Rajoana] had successfully taken out the fountainhead of terror, Chief Minister Beant”.

¹ Balwant Singh Rajoana was convicted of the assassination of the former Chief Minister of Punjab, Beant Singh on August 31, 1995. Beant Singh was killed in a suicide attack by Balwant Singh's associate Babbar Dilawar Singh, with Balwant Singh Rajoana being reported to be the backup to Babbar Dilawar Singh, if the latter had failed in his attack.

² Babbar Dilawar Singh was Balwant Singh Rajoana’s associate in the killing of Beant Singh.

“[Balwant Singh Rajoana]’s someone who has awoken a nation, he’s somebody who has awoken us”.

“[Balwant Singh Rajoana]’s only crime was that he tried to get rid of a Chief Minister who was organising mass killings on a mass scale”.

“Not that we’re advocating [Balwant Singh Rajoana] going to the gallows, because he has done nothing wrong”.

“...in amongst all this rubble, all this darkness lies a little diamond that continues to sparkle – [Balwant Singh Rajoana] – which is why he has endeared himself into all of our hearts, because amongst all the rubbish in Punjab, he continues to sparkle...[Balwant Singh Rajoana] is sparkling, he is a diamond that we don’t want to let go of”.

“Here [Balwant Singh Rajoana] stands amongst us, this jewel, this diamond”.

Ofcom considered³ that the material raised issues warranting investigation under Rule 2.3 of the Code, which states:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context... Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

This was in summary because the speaker made comments warmly praising the convicted assassin of the Chief Minister of a democratic state for his act of murder and these may be capable of causing offence.

Ofcom therefore requested comments from the Licensee on how the material complied with this rule.

Response

By way of background, the Licensee said that Sangat TV is a “specialist Sikh Channel providing a bespoke service for the international Sikhs and to that end have a public duty to these audiences to present the Sikh concerns”. It added that it was “under a duty to discuss Sikh issues without fear or favour” and that it had not in any way sought to cause any offence.

³ Ofcom did also consider the content in the programme against Rule 3.1 of the Code which states: “Material likely to encourage or incite the commission of crime or lead to disorder must not be included in television or radio services.” After very careful assessment, however, Ofcom concluded that the material did not raise issues under Rule 3.1.

Regis 1 described Balwant Singh Rajoana as “the standard bearer for defending Sikh rights following the committing of Genocide by the Indian authorities against the Sikhs in India”. It added that former Chief Minister of Punjab, Beant Singh, “was long considered by the Sikh community to be a war criminal who was instrumental in perpetrating these massacres”. In this context, the Licensee stated that “we defend our right to discuss the views of the Sikh community at large”, and the presenter was reflecting the views of the Sikhs “who gave evidence in numerous public hearings citing that the chief minister (Beant Singh) was directly responsible of what the Sikhs class as genocide”. Regis 1 added that “Amnesty International and many other human rights groups conducted their own independent enquiries and found that [the killings of Sikhs] were mass state sponsored killings of innocent victims”. Therefore, the Licensee said that the programme did not intentionally seek to glorify murder, but sought to “highlight the lamented failure by the Indian Authorities to bring to account those responsible and complicit in the murders of innocent [Sikh] victims”.

Specifically in relation to Rule 2.3, the Licensee said that any offence was justified by the context because Balwant Singh Rajoana is viewed as a “freedom fighter by his community and by the authorities as a terrorists much like Nelson Mandela... [and] Gerry Adams”. In this regard, Regis 1 conceded that Balwant Singh Rajoana had been convicted for the murder of Beant Singh. However, it said that: “History has shown one man’s terrorist to be another man’s freedom fighter”; “a significant majority of the Sikh community see [Balwant Singh Rajoana] as a freedom fighter but that does not mean they condone murder”; and the audience in this case was made up of international Sikh viewers and “the fact that if one lauds a freedom fighter it [does not] mean that somehow murder of innocents is encouraged”.

Regis 1 also questioned what evidence there was to reach a conclusion that the comments would be offensive to Sangat TV’s audience, given: that Regis 1 had “not received a single complaint either in writing or during all of our phone in programmes” about this content; and the “specialist nature of our channel” whereby the “vast majority” of the audience were Sikhs who would not find the content “highly offensive”.

However, the Licensee did state that: “We accept that the presenter should have qualified his praise and in particular expressed regret at all innocent victims who died other than Beant Singh”. Furthermore, it stated that: it had suspended the presenter of the programme, and was making its own enquiry into the case; and “decided to send our presenters on media training in relation to presenting balanced views and contextualising sensitive subjects”.

In conclusion, Regis 1 said that: “We try our best to avoid the repetition of any unpleasant experiences brought to our notice, irrespective of the fact that these are isolated one off politically motivated, unrepresentative... situations”.

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “generally accepted standards are applied... so as to provide adequate protection for members of the public from the inclusion... of harmful and/or offensive material”. This objective is reflected in Section Two of the Code.

In reaching this decision Ofcom has taken careful account of Article 10 of the European Convention on Human Rights. This provides for the broadcaster’s and audience’s right to freedom of expression and, as the Legislative Background to the

Code states, “encompasses the audience’s right to receive creative material, information and ideas without interference” by public authority.

We recognise that as a channel targeted at the Sikh community, Sangat TV wants to produce content concerning issues that are of interest to Sikhs – for example about the life and actions of a well-known Sikh militant like Balwant Singh Rajoana. Importantly, Ofcom underlines that just because content praises individuals who have committed criminal acts, this does not necessarily mean that there has been a breach of Section Two of the Code.

Rule 2.3 requires that broadcasters ensure that the broadcast of potentially offensive material must be justified by the context.

Ofcom first considered whether the broadcast remarks of the presenter had the potential to cause offence.

Ofcom noted that in this programme the speaker presented a programme in English about the life and actions of the convicted Sikh militant, Balwant Singh Rajoana. In particular, we noted that the speaker made a number of highly positive references to Balwant Singh Rajoana, and the fact that he had been an accomplice in the assassination of the Indian politician Beant Singh. For example, the speaker referred to Balwant Singh Rajoana as: “*this jewel, this diamond*”; and a “*little diamond that continues to sparkle... [who] has endeared himself into all of our hearts, because amongst all the rubbish in Punjab, he continues to sparkle*”. In addition, the speaker also referred positively to the killing of Beant Singh, by saying, for example, that Balwant Singh Rajoana “*had successfully taken out the fountainhead of terror, Chief Minister Beant*” and the “*only way to exterminate Beant is to become a human bomb*”.

In Ofcom’s opinion, a programme containing numerous positive references to a living convicted killer and the act of murder that he had been convicted for was clearly capable of causing serious offence. We considered that the potential offence in this case was increased by the fact that the speaker attempted to justify the murder of Beant Singh and of the other people⁴ killed in the same suicide attack that killed Beant Singh. For example, the speaker said the following:

“People may think: ‘This sounds really extreme. You’re going to take the life of the Chief Minister of a State’. They had actually planned to go towards Beant, the Chief Minister at 2pm, when there wouldn’t be many people around. So the fact that Beant came late – he came around 5pm I think, which meant there were more people around – even their planning then was: ‘We don’t want to take any innocent lives, we just want to take the man who has been killing and authorising the killing of innocent people’. And what’s important to note that once Beant was exterminated much of the killings had stopped”.

“[Balwant Singh Rajoana]’s only crime was that he tried to get rid of a Chief Minister who was organising mass killings on a mass scale”.

⁴ It has been reported that 17 other people lost their lives in the attack that killed Beant Singh.

“Not that we’re advocating [Balwant Singh Rajoana] going to the gallows, because he has done nothing wrong”.

Ofcom therefore went on to consider whether the offence created by broadcasting this content was justified by the context.

Ofcom recognises that the Sikh community reveres figures who are regarded as martyrs or ‘freedom fighters’ by their followers, in that they have died or undergone suffering, including imprisonment, in the name of the Sikh community. We also acknowledge the long-standing dispute that has existed between members of the Sikh community in India and the Indian authorities as to the degree of self-determination that might be afforded to the Sikh community in India. Ofcom accepts that since Sangat TV is aimed at the Sikh community, it might wish to broadcast content about Balwant Singh Rajoana and his involvement in the killing of Beant Singh. It appears that a number of Sikhs regard Balwant Singh Rajoana as a freedom fighter because of his involvement in the killing of Beant Singh and subsequent imprisonment.

In accordance with the right to freedom of expression, the Code does not prevent broadcasters from referring to individuals who some in a particular community think have taken legitimate violent action against politicians considered to be responsible for violent acts against that community. However, in doing so, broadcasters must ensure that references to individuals who have carried out extreme acts of violence, including murder, are sufficiently contextualised to ensure compliance with the Code.

In this case, we noted that the speaker made a number of statements strongly praising the Sikh man, Balwant Singh Rajoana, who had been convicted for his involvement in the murder of Beant Singh. The speaker spoke directly to camera, which in Ofcom’s opinion, would have been likely to increase the impact of his words and so the potential for offence. At no point was the speaker challenged to justify his unqualified praise for Balwant Singh Rajoana, for example by a reference being made in the broadcast to the fact that, irrespective of the assassins’ motive, the suicide bombing to which Balwant Singh Rajoana was an accomplice killed 17 individuals in addition to the politician Beant Singh. Nor was the speaker challenged when he said that Balwant Singh Rajoana *“has done nothing wrong”*. This was despite the fact that the Licensee in its response to Ofcom conceded that Balwant Singh Rajoana had been convicted for the murder of Beant Singh.

We considered that the vast majority of a UK audience would find such adulatory references to a convicted murderer still serving his prison sentences for his crime to be highly offensive. Furthermore, we noted that neither the Licensee nor the speaker himself attempted to place the speaker’s positive statements in praise of Balwant Singh Rajoana in context. This might have been by acknowledging for example that (irrespective of the fact that many in the Sikh community might agree with, for example, Balwant Singh Rajoana’s grievances with the Indian authorities) it was wholly unacceptable for Balwant Singh Rajoana to have murdered Beant Singh and 17 others by means of a suicide bomb attack. For these reasons Ofcom considered that this content was not sufficiently contextualised to justify the potential offence caused by such unqualified praise for a convicted killer, currently imprisoned for his crime.

In reaching our decision in this case, we took careful account of the Licensee’s representations. Firstly, Regis 1 said that Sangat TV is a “specialist Sikh Channel providing a bespoke service for the international Sikhs and to that end have a public duty to these audiences to present the Sikh concerns”. It added that it was “under a

duty to discuss Sikh issues without fear or favour” and that it had not in any way sought to cause any offence. As mentioned above, Ofcom recognises that as a channel targeted at the Sikh community, Sangat TV will want, and has the editorial freedom, to produce content concerning issues that are of interest to Sikhs. However, in doing so, Sangat TV must comply with the Code at all times.

Second, the Licensee made several points concerning how Balwant Singh Rajoana is perceived in the Sikh community. For example, it said that he is viewed as a “freedom fighter by his community and by the authorities as a terrorists much like Nelson Mandela... [and] Gerry Adams”. Regis 1 added that “[h]istory has shown one man’s terrorist to be another man’s freedom fighter”, and that although “a significant majority of the Sikh community see [Balwant Singh Rajoana] as a freedom fighter...that does not mean they condone murder”. In response, Ofcom recognises that it appears that a number of Sikhs regard Balwant Singh Rajoana as a freedom fighter and that broadcasters are at liberty to include references to, or coverage of, the lives and actions of figures popularly referred to as ‘freedom fighters’ within particular communities. However, the Code requires that in doing so, any potential offence is justified by the context. In particular, references to any serious acts of violence by individuals must be sufficiently contextualised.

We noted Regis 1’s representation that the audience in this case was made up of international Sikh viewers and “the fact that if one lauds a freedom fighter it [does not] mean that somehow murder of innocents is encouraged”. The fact that an Ofcom licensed channel may be targeting an international audience, or that broadcast content does not constitute an incitement or encouragement of crime or violent action, does not obviate the need for a broadcaster to ensure that potentially offensive references to a convicted murderer are sufficiently contextualised.

Third, the Licensee defended its “right to discuss the views of the Sikh community at large” in relation to Beant Singh. It said that Beant Singh “was long considered by the Sikh community to be a war criminal who was instrumental in perpetrating these massacres”, and the presenter was reflecting the views of the Sikhs “who gave evidence in numerous public hearings citing that the chief minister (Beant Singh) was directly responsible of what the Sikhs class as genocide”. Regis 1 added that “Amnesty International and many other human rights groups conducted their own independent enquiries and found that [the killings of Sikhs] were mass state sponsored killings of innocent victims”. In this way, the Licensee said that the programme did not intentionally seek to glorify murder, but sought to “highlight the lamented failure by the Indian Authorities to bring to account those responsible and complicit in the murders of innocent [Sikh] victims”. We acknowledge the controversy surrounding deaths of Sikh civilians that have taken place in India. In reaching our decision in this case, we recognised that the role and actions of Beant Singh as Chief Minister of Punjab were controversial amongst certain members of the Sikh community in India and internationally. However, we considered that these factors did not remove or reduce the obligation on the broadcaster to ensure that the potentially offensive references to Balwant Singh Rajoana were sufficiently contextualised.

Fourth, we noted that the Licensee questioned what evidence there was to reach a conclusion that the comments about Balwant Singh Rajoana would be offensive to Sangat TV’s audience, given: that Regis 1 had “not received a single complaint either in writing or during all of our phone in programmes” about this content; and the “specialist nature of our channel” whereby the “vast majority” of the audience were Sikhs who would not find the content “highly offensive”. In response, Ofcom underlines that it has a duty to enforce the Code, irrespective of whether or not a

complaint has been made about particular broadcast content. We acknowledge that the majority of Sangat TV's audience is likely to be Sikh. However, the Licensee holds an Ofcom licence for its service Sangat TV and so must comply with the Code, including ensuring that generally accepted standards are applied to content. While we acknowledge that the composition of a target audience may be one factor in a particular case, it is not the only one. Other relevant contextual factors are the nature of the editorial content itself and the likely expectations of UK audiences about content broadcast on any UK channel in general. In this regard, we noted the Licensee did state that: "We accept that the presenter should have qualified his praise and in particular expressed regret at all innocent victims who died other than Beant Singh". In summary, therefore, in this case we considered that content of the highly positive references to Balwant Singh Rajoana, and the positive manner in which they were delivered, exceeded generally accepted standards for a broadcast service in the UK.

In reaching our decision in this case, we noted that Regis 1 had suspended the presenter of the programme, and was making its own enquiry into the case, and "decided to send our presenters on media training in relation to presenting balanced views and contextualising sensitive subjects". We also took into account the Licensee's statement that: "We try our best to avoid the repetition of any unpleasant experiences brought to our notice, irrespective of the fact that these are isolated one off politically motivated, unrepresentative... situations". However, given the above, we concluded that the programme included potentially offensive content that was clearly not justified by the context. The programme was therefore in breach of Rule 2.3.

In issue 222 of Ofcom's Broadcast Bulletin⁵, published on 21 January 2013, we recorded a breach of Rule 3.1 of the Code (prohibiting the broadcast of material likely to encourage crime) in relation to content broadcast by the Licensee. We said that this was a serious contravention of the Code, and put Regis 1 on notice that we would be considering this breach of the Code for the imposition of a statutory sanction.

Although on balance we do not consider that the Code breach in the present case is so serious as to warrant consideration for the imposition of a statutory sanction, we are concerned that it related to programming broadcast soon after the breach recorded against the Licensee in issue 222 of Ofcom's Broadcast Bulletin. We are also concerned that it follows a similar breach of Rule 2.3 recorded against the Licensee in issue 227 of Ofcom's Broadcast Bulletin⁶. Therefore, pending the result of Ofcom's consideration of the imposition of a statutory sanction against Regis 1 arising from the breach recorded in issue 222 of Ofcom's Broadcast Bulletin, we expect the Licensee to take any necessary action urgently to ensure compliance with Rule 2.3 of the Code. If it fails to do so, and similar Code breaches occur, Ofcom puts the Licensee on notice that it will consider whether a further possible statutory sanction is warranted.

Breach of Rule 2.3

⁵ See Broadcast Bulletin 222, published 21 January 2013, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb222/obb222.pdf>

⁶ See Broadcast Bulletin 227, published on 8 April 2013, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb227/obb227.pdf>

In Breach

Wake Up With Huggy

Bay FM Radio (Exmouth), 1 April 2013 to 16 April 2013, daily at 07:00

Introduction

Bay FM Radio (Exmouth) (“Bay FM” or “the Licensee”) is a community radio station that serves the Exmouth area of Devon and began broadcasting on 29 March 2013. *Wake Up With Huggy* is the daily weekday breakfast show broadcast on the station.

During the period immediately preceding the May 2013 English County Council Elections, a complainant alerted Ofcom to the fact that *Wake Up With Huggy* was being presented by Stuart Hughes, who according to the complainant was a candidate standing in the County Council Elections in Devon.

Ofcom assessed a recording of the edition of *Wake Up With Huggy*, broadcast on 15 April 2013. We noted that the presenter, Stuart Hughes known as ‘Huggy’, was standing as a Conservative Party candidate in the Sidmouth Sidford electoral area for the Devon County Council elections being held on 2 May 2013.

Rule 6.1 of the Code requires that programmes dealing with elections must comply with the due impartiality rules set out in Section Five of the Code. In addition, Rules 6.2 to 6.13 of the Code apply to programmes broadcast during the designated period running up to the date of elections in the UK known as the “election period”¹. Section Six of the Code under the heading ‘Meaning of “election”’ makes clear that for the purpose of this section “elections include...a local government election...”.

Ofcom considered the material raised issues warranting investigation under Rule 6.6 of the Code, which states:

Rule 6.6: “Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period”.

We therefore sought the Licensee’s comments as to how this material complied with this rule.

Response

The Licensee confirmed that the presenter of the programme in this case, Stuart Hughes, was a sitting councillor on Devon County Council, and was seeking re-election in the elections to be held on 2 May 2013. According to Bay FM, Stuart Hughes was “referred to by all at the station and on air as ‘Stuart’ or ‘Huggy’ and not Councillor Hughes”. Furthermore, the Licensee stated that: “At no point has Mr. Hughes referred to himself as a Councillor or mentioned anything relating to the [elections] or to the policies of any particular party in any specific electoral area”. In addition, Bay FM said that two of the candidates opposing Stuart Hughes in his

¹ In the case of the English County Council Elections, the “election period” ran from the last date for the publication of the notice of elections on 26 March 2013 to the close of polling on 2 May 2013.

electoral area “expressed their lack of concern about the issue in the local paper recently”.

By way of mitigation, the Licensee said that, while it accepted that “Mr. Hughes should not have been on air during the election period, we believe we overlooked this particular rule [i.e. Rule 6.6 of the Code] as we were working really hard to get the station on air” on 29 March 2013. As soon as it became aware of “[t]his regrettable error”, Bay FM said that it immediately removed Stuart Hughes from presenting his programme on 16 April 2013 and for the remainder of the election period.

In conclusion, the Licensee said that this case involved “an unfortunate error overlooked by everyone, a hard lesson learned and a mistake we will ensure will not happen again”. It added that it: had spoken to all its presenters “to reinforce all aspects of the Broadcasting Code and how they apply to what we broadcast with special reference to the rules covering election periods”; and would ensure that “in future our training for volunteers covers all relevant rules”.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content of programmes as appear to it best calculated to secure the standards objectives, including that due impartiality is preserved within television and national radio services on matters or political or industrial controversy and matters relating to current public policy. This objective is reflected in Section Five of the Code. Broadcasters are required to comply with the rules in Section Five of the Code so as to ensure that the due impartiality requirements of the Act are complied with. In addition, Section Six of the Code reflects the specific requirements relating to broadcasters covering elections, as laid out in the Representation of the People Act 1983 (as amended).

Rule 6.6 of the Code states that: “Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period”.

As Ofcom’s Guidance² to Section Six of the Code makes clear, Rule 6.6 is concerned not just with preventing electoral issues from being reported in a partial manner. The rule is designed to help secure the integrity of the democratic process, and the public’s trust in that integrity, through preventing any unfair electoral advantage being afforded to a particular candidate, through their appearance on licensed services.

In this case, we noted that the Licensee had included as a presenter in its service for the period 1 April 2013 to 16 April 2013 a Conservative Party Candidate standing in the English County Council Elections taking place on 2 May 2013. Rule 6.6 applies to presenters in “any type of programme”. It applied in this case irrespective of the fact (as mentioned by the Licensee) that Stuart Hughes did not refer to his own candidacy while presenting *Wake Up With Huggy* or “to the policies of any particular party in any specific electoral area”. Rule 6.6 also applied even though two of the candidates opposing Stuart Hughes in his electoral area according to the Licensee “expressed their lack of concern about” him presenting his programme on Bay FM.

We noted that the Licensee said that it had “overlooked” Rule 6.6 as it was “working really hard to get the station on air” on 29 March 2013. Ofcom acknowledges the

² See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section6.pdf>

particular challenges faced by community radio stations in preparing themselves for the commencement of broadcasting under an Ofcom licence. However, it is a requirement of that licence that the broadcaster complies with the Code at all times and has adequate procedures in place to ensure this happens.

In reaching our decision, we noted that the Licensee: accepted that Stuart Hughes should not have been presenting his programme during the election period; had removed the presenter from its schedule for the remainder of the election period, as soon as it became aware of the “regrettable error”; and, had briefed all its presenters, and would be training future volunteers, about all relevant rules in the Code.

Nevertheless, we considered that there had been a clear breach of Rule 6.6 of the Code in this case.

Breach of Rule 6.6

In Breach

Today

BBC Radio 4, 22 March 2013, 08:30

Introduction

Today is BBC Radio 4's flagship morning national news and current affairs programme, and it includes various guest interviews.

The edition on 22 March featured a live interview with crime author Lynda La Plante to discuss her induction into the Forensic Science Society.

Four listeners alerted Ofcom to the use of the word "retard" during the interview.

Ofcom noted the following sequence during the interview:

Presenter: *"In terms of your readers and your viewers, do you get people writing to you saying, you know, questioning stuff?"*

Lynda La Plante: *"Not questioning, I get a tremendous amount of fans. I mean, I have a lot of questions that I'd like to ask myself, but the misquoting of me is a consistent and really irritating fact. Today there's a headline that apparently I call people at the BBC 'retards', and it's absolutely –"*

Presenter: *"I've got it in my brief...is that not true?"*

Lynda La Plante: *"No. I was at a lecture in Dubai –"*

Presenter: *"It is in quotes –"*

Lynda La Plante: *"I know, and I was at a lecture, and I'd also been misquoted earlier on in the same article, apparently I'd said something about the BBC and Muslim boys–"*

Presenter: *"Drew gasps for your language, apparently, according to –"*

Lynda La Plante: *"Gasps? They were roaring with laughter, because I said, somebody in the front, it was a Q&A, somebody said, 'How do and where do I send a script to?', and I said 'You do not send a script, full script, anywhere, you learn how to do a treatment, because you don't know if there's a retard at the end of that envelope reading it'. Suddenly I've called everybody at the BBC a 'retard' –"*

Presenter: *"– moving on from that use of language, do you feel that the BBC is not listening to you and not wanting to use your work..."*

Ofcom considered this material raised issues warranting investigation under Rule 2.3, which states:

"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context."

Ofcom therefore requested comments from the BBC about how the broadcast of the word “retards” and “retard” complied with Rule 2.3.

Response

The BBC said that the focus of the interview was to discuss Ms La Plante’s induction into the Forensic Science Society, and there was no intention to raise the matter of her reported comments. When Ms La Plante raised the question of the reported quote, and claimed not to have said it, the presenter naturally assumed that she was denying using an offensive term.

The broadcaster considered that there was editorial justification for the first use of the word by Ms La Plante up to that point because the interviewer believed that she was about to offer an important clarification – and possibly a denial – about something for which she had been widely criticised, and this merited journalistic exploration.

The BBC said when it became apparent that the clarification was “considerably less significant” than Ms La Plante seemed to have suggested it might be, the interviewer realised there was no further justification for continuing the discussion and swiftly changed the subject.

The broadcaster added that, while Ms La Plante would ideally have been explicitly challenged on her use of the word, the circumstances of the interview were such that it was thought better to move the conversation along and avoid causing further offence. Nevertheless, during the segment the presenter challenged Ms La Plante twice, asking whether the quote was in fact true and noting that a report had said that her language “drew gasps” from those who heard it. The BBC believed this would have conveyed a clear sense that the use of the word in such a context was unacceptable, even though this was not explicitly stated.

The BBC said that, because the presenter had already made it apparent that the term was considered to be offensive, the decision to move on in order to avoid further offence (a split-second decision taken during a live programme) was an acceptable way of dealing with the situation confronting the presenter. It added that to have challenged Ms La Plante’s use of language more explicitly would have required a change to the focus and tone of the interview in a way which would have potentially increased rather than decreased the offence caused.

Nevertheless the BBC offered apologies for any offence caused.

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material. These objectives are reflected in Section Two of the Code.

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material must be justified by the context. Ofcom therefore considered first whether the language in this programme was potentially offensive; and, if so, whether the offence was justified by the context. Context includes, for example: the editorial content of the programme; the service on which it is broadcast; the time of broadcast; the likely size and composition of the potential audience; and the likely expectation of the audience.

When applying the requirement for a broadcaster to apply generally accepted standards in the context of potentially offensive language being used in a news and current affairs programme, Ofcom must take into account Article 10 of the European Convention on Human Rights. This provides for the broadcaster's and audience's right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. The broadcaster's right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to apply generally accepted standards.

The use of discriminatory language can be profoundly offensive to some viewers. Ofcom's own 2010 research¹ into offensive language has identified the word "retard" as polarising. The words "retard" and "retarded" provoked mixed responses but many people were offended by these words as they "singled out people in society and are extremely harmful and upsetting". Those people who consider it offensive do so because it is a derogatory term that refers to disability.

We considered that the inclusion of this language therefore clearly had the potential to cause offence to the audience.

Ofcom went on to consider if the use of the word was justified by the context.

We noted that it was Ms La Plante who first used the word in the programme in the context of complaining about how she was misquoted. We also took into account the BBC's comment that the presenter had assumed Ms La Plante brought up the subject to refute reports of her having used this offensive term, and thought it was a legitimate journalistic exercise to question Ms La Plante about it.

When Ms La Plante used the word a second time however it was to confirm she had in fact used it to make a derogatory remark about some script editors and their approach to reading a full script. Ms La Plante did not appear to recognise the potential for offence caused by this use of language, and did not apologise. Nor did the presenter explicitly challenge the guest's second use of "retard", choosing instead immediately to change the subject ("*– moving on from that use of language, do you feel that the BBC is not listening to you and not wanting to use your work...*").

Ofcom considered the broadcast of the word on the second and third occasions had the potential to cause considerable and gratuitous offence, and was not justified by the context. While there was an implicit criticism of these uses of the word by the guest through the presenter abruptly changing the subject as she did, in Ofcom's view it would have been preferable if the presenter had addressed the issue with a more explicit statement, to clarify the potential for this use of language to offend, and apologise for any offence caused to listeners.

This material therefore breached Rule 2.3.

Breach of Rule 2.3

¹ Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>)

In Breach

Sponsorship credits

Bloomberg Television, various dates and times

Introduction

Bloomberg Television broadcasts on cable and satellite platforms and specialises in news and discussion programmes on various aspects of the finance industry. The licence for Bloomberg Television is held by Bloomberg LP (“Bloomberg” or “the Licensee”).

During monitoring, Ofcom noted the following two sponsorship credits for the global and Asian stock market update:

CME Markets sponsorship credit for the global market update

Voiceover: *“Today’s Global Update is brought to you by CME Markets, providing spread betting, CFDs and FX. Find us at cmemarkets.co.uk”.*

The name of the sponsor and the phrases “*Spread Betting*”, “*CFDs*”, and “*and FX*” as well as the sponsor’s web address were displayed on-screen as the voiceover was broadcast.

Interactive Brokers sponsorship credit for the Asian market update

Voiceover: *“Today’s Asian market update was brought to you by Interactive Brokers. Get direct access to over 100 market centres in 19 countries. interactivebrokers.com”.*

As well as the name of the sponsor with its tagline “*The Professional’s Gateway to the World’s Markets*”, the phrases “*100 markets*” and “*19 countries*” were displayed on-screen as the voiceover was broadcast.

A graphic followed on-screen which displayed the company’s name, logo, tagline and web address and the words “*stocks*”, “*options*”, “*futures*”, “*forex*”, “*bonds*” and “*Worldwide*”.

On-screen text giving details of the sponsor’s licences and registration with a number of financial authorities and a website where further information could be accessed was displayed at the bottom of the screen, as follows:

“Interactive Brokers LLC...holds an Australian Financial Services License enabling it to deal in derivatives, foreign exchanges contracts and securities products to retail and wholesale clients. Interactive Brokers LLC is registered with HKSFCA and is a participant of the Sydney Futures Exchanges (SFE) and a member of the NYSE, FINRA and SIPC. For additional information, see www.interactivebrokers.com/bestexecution”.

Ofcom considered the material raised issues warranting investigation under the following Code rule:

Rule 9.22: “Sponsorship credits must be distinct from advertising. In particular:

(a) Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor's products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement."

We therefore asked the Licensee for its comments as to how the sponsorship credits complied with Rule 9.22(a).

Response

CME Markets sponsorship credit for the global market update

Bloomberg explained that it was mindful that the company could be confused with other market participants and the reference to the company's website served to identify the sponsor and the business in which it operates. It added that it believed the reference did not constitute the type of call to action that Rule 9.22(a) was designed to prevent.

Interactive Brokers sponsorship credit for the Asian market update

Similarly, the Licensee said the intent of the Interactive Brokers sponsorship credit was to identify the company with an express reference to its products and services. It did, however, recognise that it presented more information than was necessary to achieve that goal.

The Licensee said that it understood how the sponsorship credits could be construed as advertising messages. It apologised and explained that they had been taken off air in order for them to be modified to ensure compliance.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with". The rules in Section Nine of the Code, among others, reflect this objective.

The EU Audiovisual Media Services Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, or the focus of the credit must be the sponsorship arrangement itself and references to the sponsor's products, services or trade marks should be for the sole purpose of helping identify the sponsor and/or the sponsorship arrangement.

CME Markets sponsorship credit for the global market update

In this case Ofcom noted that the credit contained the phrase “*find us at cmemarkets.co.uk*”. Ofcom considered this direct invitation for viewers to contact the sponsor to be a call to action, in breach of Rule 9.22(a). Ofcom’s published guidance on Rule 9.22(a) makes clear that: “credits that contain direct invitations to the audience to contact the sponsor are likely to breach the Code”.

Interactive Brokers sponsorship credit for the Asian market update

Ofcom noted that this credit began by explaining that “*today’s Asian market update is brought to you by Interactive Brokers*” and went on to encourage viewers to “*get direct access to over 100 market centres in 19 countries*”. Ofcom considered this to be an advertising claim about what viewers could expect if they used the sponsor’s services.

In addition, this information was emphasised by displaying the phrases “*100 markets*” and “*19 countries*” on-screen. Ofcom also noted that further information about the company was then displayed. For example, it contained words such as “*stocks*”, “*options*” and “*bonds*” accompanied by details of its licenses and operations, and a website where “*additional information*” could be sourced.

Rule 9.22(a) makes clear that sponsorship credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement. In this case Ofcom judged that the information provided about the sponsor and its services far exceeded what was necessary for the audience to identify the sponsor and its business. The focus of this sponsorship credit was not on the sponsorship arrangement but on promoting the sponsor’s business, in breach of Rule 9.22(a).

Ofcom noted the Licensee’s decision to withdraw the sponsorship credits from its schedule but was concerned about its compliance in this area. Ofcom therefore puts Bloomberg Television on notice that it will be monitoring the channel to assess its compliance with Rule 9.22(a).

Breaches of 9.22(a)

Resolved

The Boat Race

BBC 1, 31 March 2013, 15:15

Introduction

On Sunday 31 March the BBC broadcast live coverage of the 2013 Oxford and Cambridge University Boat Race. A microphone was attached to the cox on each boat and audio from these microphones was broadcast as part of the commentary on the race.

Nine viewers alerted Ofcom to the broadcast of one of the coxes using offensive language. Some complainants questioned why the BBC had not put steps in place to cut the feed from the coxes' microphones when it became apparent that offensive language had been broadcast.

Ofcom viewed a recording and noted examples of offensive language, and related apologies, as follows at the times indicated:

(during the race)

16:45 Commentator: *"This could be a very, very close race indeed. Still the coxes [cox audible in background saying "...don't fucking..."] do their chatty work, and, at times rather unsavoury language chatty work from the coxes – apologies for that".*

16:47 Cox: *"Fucking finish..."*.

(after the race was finished and the winning Oxford boat was celebrating)

17:15 Commentator: *"It is the only time you want to see a man in the Thames at this time of year... [Oskar Zorrilla, the cox of the Oxford boat, shown being thrown into the river yells, "That's fucking cold!"] "Oh, Oskar, come on now! Apologies, again, but he is mildly hypothermic and he's slightly deluded with the champagne..."*.

Ofcom considered this material raised issues warranting investigation under Rule 1.14, which states:

"The most offensive language must not be broadcast before the watershed..."

We therefore requested comments from the BBC about how the broadcast of this material complied with Rule 1.14.

Response

The BBC said that it has been the practice of broadcasters for a number of years to attach a dedicated microphone to each team's cox during the University Boat Race, and that the sound of the coxes captured by the microphones has become an integral part of the broadcast, adding context and passion to the spectacle.

The BBC said that in the four years since it had re-acquired the rights to broadcast the Boat Race, there has only been one (relatively minor) instance, during the 2012 race, of swearing on air from a cox. It was aware of the problems that ITV encountered with swearing in covering the 2006 race, resulting in complaints to Ofcom¹, so the BBC said it gave full consideration to this issue when planning its live coverage. Steps were taken to assess and mitigate the risk of any swearing by the coxes during the broadcast.

As in other years, the BBC production team met with both university teams to explain how the microphones would be used during the broadcast and required and received a clear commitment from each team to avoid the use of swear words. Given the strong track record of compliance in the previous four years, the BBC judged the risk of offensive language to be sufficiently low for a microphone to be attached to each cox without a dedicated member of the production team monitoring the live feeds to identify and deal with incidents of bad language.

Also, the production team agreed in advance measures to be taken in the (presumed unlikely) event of swearing being heard on-air. In accordance with these measures, when the first instance of the most offensive language was heard by the production team, the lead commentator was instructed to apologise on-air, which was done within a few seconds of the incident (at 16:45). A verbal exchange then took place between the Director and the Sound Supervisor emphasising that caution must be taken in broadcasting audio from the cox microphones.

The BBC said that during the live transmission from the Outside Broadcast unit during the race multiple sound feeds were being monitored. As a result unfortunately other instances of swearing that were received and broadcast from the coxes' microphones during the race were not heard by the production team. As a result no other on-air apologies were given nor were any other actions – such as cutting the live feed from the microphones – taken. The BBC emphasised that if any member of the production team had heard the subsequent use of swear words during the race a further on-air apology would have been given and the cox microphones would have been cut from live broadcast.

The BBC said that the second time the production team heard the most offensive language being used was when the Oxford cox was thrown into the river. At this stage he was not wearing his microphone but the sound was picked up as ambient noise by a camera in the water. An immediate on-air apology was given (at 17:15).

The BBC said that to minimise the risk of coxes swearing on-air in the future during coverage of the University Boat Race, from the 2014 broadcast onwards there will be a dedicated member of production whose sole responsibility will be to monitor the cox microphone feeds to identify any offensive language. The first instance of offensive language will be the subject of an immediate apology. Any repeat will result in the feed being cut immediately. Consideration will be given as to whether the microphones attached to the boats should be monitored similarly and the BBC will review the use of sound received by other equipment at the point the cox of the winning boat is thrown into the water.

The BBC added that the Boat Race organisers, who also take this issue very seriously and are answerable to key partners such as the BBC and sponsors, will be

¹ Ofcom decided to resolve the 2006 complaints. See: http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/pcb30/Issue_65.pdf at page 16.

asked “to work closely and rigorously with the university teams to eradicate the use of inappropriate language at this event”.

The BBC said it regretted the broadcast of audible swearing from one of the coxes and recognised that this offended some viewers, but was confident that its proposed procedures would minimise the risk of this happening again.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure standards objectives, including “that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of...harmful material.”

Rule 1.14 of the Code states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language² clearly notes that the word “fuck” and derivatives of this word are considered by audiences to be among the most offensive language.

In this case the word “fucking” was broadcast on three separate occasions during live coverage of the Boat Race: two from the microphone of the cox of the Oxford boat while the race was in progress, and one from equipment placed on the water as part of the coverage of the cox of the winning boat being thrown into the river after the race. This language was clearly inappropriate in the live broadcast of a traditional sporting event shown on a Sunday afternoon at a time when children were likely to be watching.

Ofcom acknowledges that broadcasters wish to share the atmosphere at major sporting events with viewers as part of their live coverage. One way of helping to achieve this is to use microphones to pick up and transmit the ambient sound. In doing this however broadcasters must be mindful of the need to take all appropriate compliance measures both before and during the broadcast to minimise the possibility of transmitting inappropriate language. Broadcasters must also monitor their output during transmission and, if offensive language is transmitted which might raise issues under the Code, they should consider taking timely steps to mitigate the offence, for example by broadcasting an apology.

In this case, we note that the BBC foresaw the risk of offensive language being broadcast from the cox microphones during the race, and took various steps to mitigate this risk both before and during the broadcast – for example by seeking and being given “a clear commitment from each team to avoid the use of swear words”. The measures taken by the BBC in advance and the procedures put in place during the broadcast were however insufficient to prevent the most offensive language being broadcast three times during the live coverage.

However, Ofcom took into account that: the BBC did take some measures before and during the broadcast to minimise the risk of offensive language being broadcast, and apologised on air twice, following those incidents of offensive language heard by the production team; and, that the offensive language aired was broadcast alongside the rolling commentary and other ambient noise (such as the sound of the oars in water and the spectators) so that its impact was correspondingly reduced.

² Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>)

In view of these specific circumstances, Ofcom therefore considers the matter resolved.

Ofcom reminds the BBC and other television broadcasters that they must take all proportionate measures for live broadcasts before the watershed to ensure compliance with Section One of the Code, if there is a reasonable likelihood of offensive language being broadcast.

Resolved

Resolved

Adrian Goldberg

BBC WM, 3 April 2013, 11:15

Introduction

BBC WM is the BBC's local radio service for the West Midlands, which includes topical discussions with guest interviews.

On this occasion presenter Nick Conrad stood in for the regular host of the morning sequence, Adrian Goldberg.

One of the subjects discussed was a forthcoming Channel 4 documentary about the sex lives of disabled people which explored the topic from the perspective of those who help enable disabled people to have sexual experiences. The BBC WM morning programme featured a representative from a sexual enabling service and a 'sacred sexual healer' to discuss the issue with the presenter.

A complainant alerted Ofcom to offensive language in the BBC WM broadcast in the late morning of Wednesday, 3 April 2013 during the Easter school holidays.

Ofcom noted the programme included a frank discussion about the philosophy and approach to help enable disabled people to have sexual experiences, including in particular the following at around 11:15:

Nick: *"I am assuming that a lot of people who are disabled or who have mental health issues who may well use both of your services [i.e. both a sexual enabling service and a 'sacred sexual healer'] will have had their only sexual experiences online, and therefore their education will be pornography – and I guess Larissa that is a problem? That's a skewed perspective."*

Larissa: *"Yeah, definitely, definitely. There's not really any heart connection in sexual energy in our society, so it's very sort of, animalistic, and fucking, and...sorry..."*

Nick: *"Sorry, let me just stop you there one second, forgive me. Half-term week, I'm going to apologise for that word. I know we're talking about sexually explicit content, but let's just be aware of the time, you know, ten, eleven twenty-five, and that children could well be listening to this programme this morning, so I apologise for that word that was used. Carry on."*

Ofcom considered that this material raised issues warranting investigation under Rule 1.14, which states:

"The most offensive language must not be broadcast ...when children are particularly likely to be listening (in the case of radio)."

Ofcom therefore requested comments from the Licensee on how the programme material complied with this rule.

Response

The BBC said that BBC WM is a predominantly speech based radio station aimed at adults and often tackles difficult issues such as sexual abuse, online pornography and various relationship and medical issues. It always sets out to do this with informed guests, an appropriate tone and careful use of language.

The BBC said that this discussion was planned and executed in a grown up and sensitive manner with an aim not to titillate or shock listeners. Before this topic went to air the production team discussed with the presenter the need to keep the tone appropriate for all listeners, especially as it was during the school holiday period. When one interviewee said the word “fucking” by mistake, the presenter immediately stepped in to stop her saying anything else, apologised on air several times and firmly reminded both guests of the need for care with their use of language given both the time of day and that it was during the school holiday period.

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “persons under the age of eighteen are protected”. These objectives are reflected in Section One of the Code.

Rule 1.14 states that the most offensive language must not be broadcast on radio when children are particularly likely to be listening. Ofcom research on offensive language¹ clearly notes that the word “fuck” and other variations of this word are considered by audiences to be among the most offensive language.

The Code states that the phrase “when children are particularly likely to be listening” particularly refers to “the school run and breakfast time, but might include other times”. Ofcom’s guidance on offensive language in radio² notes that:

“For the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all relevant information available to it. However, based on Ofcom’s analysis of audience listening data, and previous Ofcom decisions, radio broadcasters should have particular regard to broadcasting content at the following times: ...

- between 06:00 and 19:00 at weekends all year around, and in addition, during the same times from Monday to Fridays during school holidays”.

Given that the programme was broadcast at 11:15 on a Wednesday during the Easter school holiday period, Ofcom’s view is that the most offensive language was broadcast at a time when children were likely to be listening.

Ofcom however took into account that this was an isolated incident during a live unscripted interview, and that the presenter immediately reminded the guests to avoid inappropriate language and also broadcast an apology straightaway.

¹ Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>)

² Ofcom Guidance, Offensive language on radio, December 2011 (<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>)

Ofcom therefore considers the matter resolved.

Resolved

Advertising Scheduling Findings

Resolved

Resolved findings table

Code on the Scheduling of Television Advertising compliance reports

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states:

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

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
TCM2	22 March 2013, 00:00	COSTA Rule 4	<p>Ofcom noted during monitoring that TCM2 exceeded the permitted advertising allowance by 60 seconds in clock hour 24:00 on 22 March 2013.</p> <p>The licence holder for TCM2, Turner Broadcasting Systems Europe Ltd (“Turner”), explained that the overrun occurred because the proposed 23:54 centre break in a programme had in fact aired in the 24:00 clock hour.</p> <p>Turner said this was flagged in its daily minutage report, but not correctly identified by the presentation team so that the additional minutage could be removed when adjusting the final schedules.</p> <p>Turner gave assurances to Ofcom that all relevant staff had been reminded of the importance and absolute necessity of ensuring all checks are carried out correctly to ensure this does not happen again.</p> <p>Resolved</p>

Fairness and Privacy cases

Not Upheld

Complaint by Mr Christopher Hook

Watchdog, BBC1, 3 June 2010

Summary

Ofcom has not upheld this complaint of unjust or unfair treatment and unwarranted infringement of privacy made by Mr Christopher Hook.

Watchdog is a consumer affairs programme broadcast on BBC1. This edition of the programme included its regular “*Rogue Traders*” segment, which features undercover investigations into the practices of companies and individuals. The programme examined the claims made by sales representatives of the company Direct Response Security Systems Limited (“Direct Response”) about its burglar alarm systems.

One of the company’s sales representatives, Mr Christopher Hook, was secretly filmed during a sales visit to the house of an elderly lady, who was in fact an actress employed by the BBC. The programme showed some of the material filmed during the visit and commented on the claims that Mr Hook made about the efficacy of the alarm system and on the sales techniques he employed. The programme also showed a second sales visit, with a different actress purporting to be a potential customer, in which Mr Hook was confronted by a film crew and asked questions by the programme’s presenter.

Mr Hook complained to Ofcom that he was unfairly portrayed in the programme as broadcast and that his privacy was unwarrantably infringed.

Ofcom found that:

- The programme included a fair reflection of the claims made by Mr Hook during the secretly filmed sales visit and overall the broadcaster had taken reasonable care to satisfy itself that the material facts were not presented, omitted or disregarded in a way that portrayed Mr Hook unfairly.
- Mr Hook’s position was accurately reflected in the programme and viewers would not have been left with the perception he had not responded to the programme makers; therefore there was no unfairness to Mr Hook in this respect.
- Mr Hook had a legitimate expectation of privacy in relation to the broadcast of the footage shown of him. In this case the public interest in broadcasting the material, in order to show the questionable sales techniques employed by Mr Hook, outweighed Mr Hook’s expectation of privacy. Therefore, Mr Hook’s privacy was not unwarrantably infringed in connection with the programme as broadcast.

Introduction

On 3 June 2010, BBC1 broadcast an edition of its consumer affairs programme, *Watchdog*. One of the items featured in the “*Rogue Traders*” part of the programme, presented by Mr Matthew Allwright, concerned the selling techniques used by Direct

Response Security Systems Limited. In particular, it focussed on the selling style of Mr Christopher Hook, an employee of Direct Response and the complainant in this case.

The item began with Mr Allwright interviewing Mrs Katie Gall who had considered purchasing an alarm from a salesman from Direct Response. Mrs Gall said that she was offered:

“A free security system which would monitor my house to make sure that if someone broke in, if there was a fire, then it would notify the emergency services for me very quickly...[and] it would take higher priority than me making a “999” call...it was going to be...so reliable that the police would definitely respond because they recommended it as a system”.

Mrs Gall told Mr Allwright that she did not take up the offer, but decided to research Direct Response and found that they had been reprimanded in the past *“for the way that they were selling”*. Mr Allwright also reported that Direct Response had been asked by the Office of Fair Trading to give undertakings that they would no longer be able to *“guarantee a response by the police”* or be able to *“describe their product as free without mentioning any ongoing fees”*.

In order to investigate whether these undertakings were being adhered to the programme makers hired an actress, “Mrs Simmonds”, and secretly filmed a Direct Response representative making a sales pitch to her. They also engaged Mr Graeme Dow, who was described as an expert in alarm systems, to review the secretly filmed footage. Mr Hook (who was not the salesman who had visited Mrs Gall) was shown arriving at the house in his car and greeting Mrs Simmonds. The programme included secretly filmed footage of the visit. Upon entering the house, Mr Hook showed Mrs Simmonds a number of documents including a *“police identity card”*, a copy of a document which he referred to as *“Scotland Yard security clearance”* and the business card of a *“lady friend”* of his from *“Surrey Police”*. At this point, Mr Allwright commented that Mr Hook had shown:

“Many bits of police related paper to verify who he is and yet they are not quite what he says they are”.

Mr Allwright added that Mr Hook did not have a police identity card and that the *“Scotland Yard clearance”* was actually a *“four year old criminal record check”*. In relation to the business card of a member of Surrey Police, Mr Allwright stated that Surrey Police would comment on it later in the programme.

Mr Hook was shown continuing his sales pitch to Mrs Simmonds, while Mr Allwright made observations on its content. For example, Mr Hook said that Direct Response would offer *“at least a £1000 worth of equipment”*. Mr Allwright remarked that they had telephoned other companies offering similar equipment and had found that the equipment could be made available for *“half the price - not such a bargain after all”*. During his conversation with Mrs Simmonds, Mr Hook stated that there were *“20,000”* new burglaries in South East England every week. Mr Allwright said that that figure was *“absolute rubbish”* and that the Home Office had given a figure which was significantly lower at *“5,400”* domestic burglaries a week in *“the whole of England and Wales”*. Mr Allwright went on to explain that Mrs Simmonds had told Mr Hook that she was concerned about crime and the programme showed Mr Hook’s response to her concerns. Mr Allwright asked viewers to watch and listen to how Mr Hook *“preys”* on those fears. Mr Hook’s response to Mrs Simmonds was as follows:

“People have taken their lives as a result of burglary, people have got divorced as a result of burglary...it’s one of the most devastating things. A gentleman said to me ‘I’ve no idea, you know what a sexual rape feels like’ he said but ‘my wife feels absolutely soiled as a result’...999 is a marvellous service if you can afford to wait four minutes. I hate to say this Mrs Simmonds [but] it is possible to strangle someone in twenty seconds, forget about the four minutes...a lot could happen to someone in four minutes...very traumatic one would never recover from it”.

Mr Hook was then shown explaining how the alarm system worked, saying that:

“We [Direct Response] are in constant link and connection with the nearest police car to your home at the instant an incident occurs”.

The reporter then explained that Mr Hook *“seems to think that buying this system you will get special treatment from the cops”*. Mr Hook then stated that:

“If you go with this you will be getting priority response from the police”.

Mr Hook also stated that:

“you have got the police under contract to attend your home as a result of our confirmation”.

At this point, Mr Dow commented that this statement was *“criminal”* and there was no contract with the police *“under any circumstances”*.

Once Mr Hook had left the house, Mr Dow summarised his opinion on Mr Hook’s sales pitch as:

“Disgraceful, dishonest and he breaks consumer trading regulations plus the codes of conduct for the police and the alarm inspector. Absolutely disgraceful; selling on fear, painting a picture that just doesn’t exist”.

Later in the programme, Mr Allwright said that the programme makers had written to Mr Hook to ask him to *“explain himself but he hasn’t so we got back on his case”*. Mr Allwright explained that he would be confronting Mr Hook directly and set up another secret filming opportunity with a different actress pretending to be a potential customer. As Mr Hook was speaking with the actress during that secret filming in the living room of a house, Mr Allwright approached and introduced himself and asked if he could *“run through a few things”*. Mr Hook’s response to this was:

“As you know we’re already in conversation with you, you know, I have put this in the hands of lawyers. I have put some very detailed responses to your letters...we have had no positive response and until we get some response, I don’t propose to take this any further”.

Mr Allwright responded that Mr Hook had not replied to the main points made in the letters. Mr Hook then asked for the filming to be stopped, Mr Allwright replied that filming would not be stopped. Mr Hook went to leave, however a conversation ensued between Mr Allwright and Mr Hook. Following this, Mr Allwright stated that Mr Hook *“never did address our allegations fully and he referred us to his solicitor”*. Mr Hook was shown leaving in his car.

The programme then included an interview with Mr David Price, the director of Direct Response, who confirmed that Mr Hook had been given a “*final warning*”.

At the end of the programme, Mr Allwright referred to another statement from Direct Response and Mr Hook that the programme makers had received which said that:

“Neither they [Direct Response] nor Chris Hook have done anything wrong. Mr Hook told us he did make an error with the crime statistics but otherwise his sales pitch was fine.”

Mr Allwright went on to say:

“Tell that to Surrey Police. They have said that he must not suggest that they endorse Direct Response in any way and there is no link with the force. They also confirmed that many of his claims, such as the ability to patch a call straight through to a patrol car, are false”.

Mr Hook complained to Ofcom¹ that he was treated unjustly or unfairly in the programme as broadcast and that his privacy was unwarrantably infringed in connection with the programme as broadcast.

Summary of the complaint and the broadcaster’s response

Unjust or unfair treatment

- a) Mr Hook complained that he was treated unjustly or unfairly in the programme as broadcast in that material facts were presented, disregarded or omitted in a way that was unfair to him. In particular, Mr Hook cited the following parts of and matters in the programme in support of the complaint:
 - i) Mr Hook stated he did not say that the Direct Response alarm product was directly connected to the police. Mr Hook added that this statement of receiving a higher level of response was misconstrued by the BBC. Mr Hook said that earlier in the programme, Mrs Gall was “groomed” by the presenter into saying that she had been told that she would receive a higher level of police service if she purchased a security system from Direct Response. Mr Hook said that although the programme confirmed that he was not the salesperson who had visited Mrs Gall, the BBC used this interview to plant a suggestion of preferential service in viewers’ minds. Mr Hook said that Mrs Gall was filmed after Mr Hook had been filmed and that he had clearly stated to Mrs Simmonds that the police could not endorse or recommend any commercial product or service. However, in the programme Mrs Gall’s interview was shown before the secretly filmed footage of Mr Hook.

In response and before addressing the particular elements of the complaint, the BBC said that this episode of “*Rogue Traders*” looked at the sales techniques of Direct Response in the light of “serious complaints about the conduct of their sales representative”.

In response to this sub-head of the complaint, the BBC stated that the programme characterised Mr Hook’s sales approach accurately and fairly and that this was supported by the unedited transcript of the undercover footage.

¹ Mr Hook first complained to the BBC Trust following the broadcast of the programme in 2010. Following the completion of that process, Mr Hook complained to Ofcom.

It referred to a number of excerpts from the undercover footage which it said showed that the programme fairly and accurately described Mr Hook's claims in relation to the connectivity of the alarm system and gave viewers sufficient evidence of the claims made to make up their own minds about the services he offered, and that viewers were therefore unlikely to be misled.

In relation to Mr Hook's complaint that his comments regarding the level of response from the police had been misconstrued, the BBC stated that Mr Hook had made explicit and unqualified claims about the alarm system and the "priority response" that Mrs Simmonds would receive from the police. The broadcaster disputed that material which was not transmitted changed the sense of these claims and stated that Mr Hook did not contradict these claims during the course of the undercover filming.

In relation to Mrs Gall's contribution, including her testimony that a sales representative from Direct Response claimed the alarm system was "recommended" by the police, the BBC said it was made clear in the programme that Mrs Gall was relating her experience in relation to the company and that it was explicitly stated that Mr Hook was not the salesman who had visited her. The BBC considered, therefore, that Mrs Gall's comments could not reflect on Mr Hook personally, in a manner that would alter viewers' perceptions of him. The BBC also stated that the chronology in which the various elements of the programme were filmed had no bearing on the fairness or accuracy of the piece, nor did it create unfairness to Mr Hook.

Despite the BBC's assertion that the programme made clear Mrs Gall's testimony did not relate to the sales techniques used by Mr Hook, the BBC stated that in the course of the undercover filming Mr Hook did make statements that a potential customer would understand to be an endorsement from the police. The BBC referred to a number of comments made by Mr Hook in support of this view.

- ii) The programme said that Mr Hook "*preys on fears*" however, it was the actress, Mrs Simmonds, who instigated the discussion relating to the effects and consequences of burglary. Mr Hook said that he simply responded with empathy to Mrs Simmonds accounts, by telling her publically known anecdotes on the effects of burglary.

The BBC said that the transcripts of the undercover filming showed that it was Mr Hook who first referred to the consequences of burglary. The BBC noted that Mr Hook's sales pitch, which it said was (ostensibly) addressed to an elderly woman living alone included references to suicide, murder by strangulation and sexual assault. The BBC said the programme acknowledged that Mrs Simmonds had expressed concern about crime, but it considered that the manner in which Mr Hook responded to those concerns was his responsibility; it stated that the characterisation of Mr Hook's approach and the description of him in the programme were supported by the unedited footage.

- iii) The programme makers misled Surrey Police in their interview with them by telling them that Mr Hook had indicated that Surrey Police would "vouch" for or endorse Mr Hook. By way of background, Mr Hook said that his complaint was investigated and subsequently upheld by Surrey Police.

The BBC stated that the programme makers interviewed Chief Superintendent Gavin Stephens of Surrey Police in relation to the claims made by Mr Hook. This interview was not used in the programme but some points were reflected at the end of the report by Mr Allwright. The BBC explained that verbatim quotes from the undercover footage were put to Chief Superintendent Gavin Stephens of Surrey Police. The BBC stated that the presenter's comments regarding Surrey Police in the programme fairly and accurately reflected Surrey Police's position and that Mr Hook's sales presentation was not misrepresented in the interview with Chief Superintendent Stephens.

- iv) The burglary statistics which Mr Hook gave in the programme were a mistake and Mr Hook admitted this to the programme makers before the programme was broadcast. However despite this, the presenter sneered and inferred from his response that he did not accept that Mr Hook admitted that he had got this wrong. By way of background, Mr Hook added that the source the BBC used for the burglary statistics is well known to underestimate true crime figures.

In response to this sub-head of complaint, the BBC stated that Mr Hook had been offered a right of reply but "found the terms unacceptable". It stated that in correspondence, Mr Hook had acknowledged he had used incorrect figures and that acknowledgement was reflected in the programme. The BBC did not agree that the tone used by the presenter resulted in unfairness to him. The BBC stated the crime figures used were issued by the Home Office; and that by Mr Hook's own admission the figures he had used in the course of the undercover filming were incorrect.

- b) Mr Hook said that despite his willingness to meet with the programme makers and discuss the issues and his request for a full transcript made by the programme makers (which was refused), Mr Hook was still filmed using staged appointments, which gave the impression to the public that he had not responded to the programme makers enquiries, which was false.

In response the BBC said that Mr Hook had been offered a formal right of reply but had made clear, via his solicitors, that he did not accept the terms of the proposed interview. It explained that the programme makers had offered Mr Hook the opportunity to view the undercover footage but that no agreement could be reached. The BBC considered that given the "repeated negative responses" to their requests for an interview "this approach was warranted, and offered the best means of asking him [Mr Hook] to account for his actions". It stated that Mr Hook was made aware of the cameras shortly after he arrived at the property and was allowed to leave the filming.

The BBC said that Mr Hook's position in relation to the right of reply was fairly and accurately reflected in the programme in that it was made clear that Mr Hook had written letters in response to the programme, and that he did not believe he had a case to answer. The BBC said that this was a "reasonable and fair way of explaining his position" which would not lead viewers to conclude that Mr Hook had offered no opportunity to respond.

Unwarranted infringement of privacy

Mr Hook complained that his privacy was unwarrantably infringed in the programme as broadcast in that:

- c) Mr Hook said that he had not given his consent for the programme to broadcast his name or reveal his identity.

By way of background, Mr Hook said that the impact on him and his family has been devastating. Following the broadcast of the programme, Mr Hook received obscene messages and has been vilified by the media.

In response the BBC said that it considered that the public interest in Mr Hook's actions outweighed his right to privacy. It stated that there would in any case be "little or no reasonable expectation of privacy" attached to an individual conducting business in the home of a potential client.

It said that the filming was arranged in order to establish whether Direct Response were abiding by the terms of an agreement with the Office of Fair Trading regarding misleading customers and that the programme had been made aware of serious complaints from customers which suggested the practices were ongoing. The BBC stated it would not have been possible to "investigate and expose the conduct of those working at Direct Response" without the use of undercover filming, and that it considered there was a strong public interest in exposing such behaviour. The BBC stated that there was a strong public interest in filming Mr Hook's actions "in misleading an apparently vulnerable older person and misrepresenting the services he was selling".

Representations on Ofcom's Preliminary View

Ofcom prepared a Preliminary View in this case that Mr Hook's complaint should not be upheld. In commenting on the Preliminary View, Mr Hook submitted a considerable amount of material to Ofcom. Ofcom considered this all carefully. In taking account of this material to finalise the current decision, however, Ofcom restricted itself to the points made by Mr Hook that were relevant to the complaint responded to by the broadcaster and considered by Ofcom. The BBC did not make any representations on Ofcom's Preliminary View.

Mr Hook's representations

Mr Hook said that the scenario created by the BBC for the purposes of undercover filming was not explained to viewers and that the actress had portrayed herself for two and a half hours as a widowed home owner, with a burgled friend living in sight of the property with the actress receiving external advice from relatives living some distance away. Mr Hook said that this scenario, combined with the "planned distortion and corruption of facts", amounted to a conspiracy against him.

Mr Hook noted differences in the transcripts of the programme he had been provided by the BBC in the course of a complaint he made to the BBC Trust, and the transcript that the BBC had provided to Ofcom. He noted that in the transcript provided to Ofcom a section of transcription, when Mr Hook and Mrs Simmonds went to the kitchen of the house, was termed "chatter" by the BBC and had not been fully transcribed. Ofcom carefully considered the transcript provided by the BBC to Ofcom against this section of unedited footage and was satisfied with its accuracy in that the section described as "chatter" did not include any material that was relevant to Mr Hook's complaint. The accuracy of the transcript previously provided to Mr Hook by the BBC during its consideration of Mr Hook's complaint to the BBC Trust is not a matter for Ofcom.

Mr Hook said that the BBC had misled the public regarding the filming of Mrs Gall's interview and stated that Ofcom should have ascertained the date and time of the filming of that interview. Mr Hook said that, although the programme had said that he was not the salesman who had visited Mrs Gall, Mr Hook said that he was not sufficiently distanced from the implication in her statements.

Mr Hook argued that he made clear that all calls from the Direct Response alarm product were routed to an Alarm Receiving Centre during the course of the undercover filming and that he had made it clear that a similar system was used by four competitors in the industry, and was not unique to Direct Response in any way. Mr Hook said that at no point in the transcript did he say that customers of Direct Response would receive a preferential level of response from the police. Mr Hook commented that Surrey Police in their email of 16 February 2010 confirmed that a crime in progress, in this case burglary, would be dealt with as a priority.

Mr Hook noted the following comment he had made during the undercover filming (with Ofcom's emphasis):

*"if you go with **this** you will be getting a priority response from the Police."*

Mr Hook said that in this sentence he was referring specifically to the personal attack feature of the alarm, not making a claim about a higher priority or preferential level of service from the police solely by becoming a Direct Response customer. Mr Hook said that the programme's presenter and expert then commented on the altered meaning. Mr Hook also provided Ofcom with a handwritten note he had made of a conversation with a Surrey Police officer, in which he says the officer told him that a crime in progress would be dealt with as a priority and that the personal attack feature would be "likely to lead to higher vehicle speeds".

Mr Hook stated that without the fee paid to the police, the alarm system could not be installed and connected to the Alarm Receiving Centre. He said that the police swear an oath to uphold the law of the land and that the Surrey Police Pledge is a publicly stated declaration. Mr Hook said that such a pledge could be given to mean security for performing a contract.

Mr Hook said that Surrey Police had confirmed in a letter of 8 November 2010 that they would expect an officer or PCSO to "verify upon request" Mr Hook's bona fides. Mr Hook noted that there was no condemnation from Surrey Police in this letter that the Surrey Police Community Support Officer ("PCSO") business card was shown. Mr Hook said that during the interview with Chief Superintendent Gavin Stephens the presenter did not properly explain how Mr Hook had used the business card of the PCSO.

Mr Hook said that he provided Mrs Simmonds with a "Key Facts Summary", a document which he said was handed out to all potential Direct Response customers and which stated that the company is not endorsed by the police. Mr Hook also noted that this document states that the alarm system is connected to a "monitoring station".

Mr Hook said that the Direct Response system was Police approved and that he had therefore been justified in confirming to Mrs Simmonds that he was "Scotland Yard approved". Mr Hook disputed that the words "approved" and "endorsed" had essentially the same meaning.

Mr Hook added that viewers were not made aware that he had misspoken the crime statistics during the undercover filming. Mr Hook added that the crime statistics used by the BBC were misleading and that on another BBC programme, prior to *Watchdog's* transmission, a higher figure for domestic burglaries for the same period was cited and that Mr Hook had drawn the programme makers' attention to this prior to transmission of the programme. Mr Hook maintained that his admission that he was mistaken on the figures was made by the presenter in a "sneering and conspiratorial manner".

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 unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, the unedited footage and transcript of the undercover filming and both parties' written submissions, including supporting material. Ofcom also took carefully into account the representations made by Mr Hook in response to being given the opportunity to comment on Ofcom's Preliminary View on this complaint (which was not to uphold). While Ofcom had attentive regard to all of Mr Hook's comments in finalising this decision, it concluded that the further points raised by Mr Hook did not materially affect the outcome of this complaint.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals or organisation, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its decision on the complaint.

- a) Ofcom first considered the complaint that Mr Hook was unjustly or unfairly treated in the programme as broadcast in that material facts were presented, disregarded or omitted in a way that was unfair to him.

When considering the complaint and the individual sub-heads of complaint below, Ofcom took into consideration Practice 7.9 of the Code which states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom assessed the following sub-heads of complaint in order to reach an overall decision as to whether Mr Hook was portrayed unfairly in the programme as broadcast.

- i) Ofcom considered Mr Hook's complaint that he did not say that the Direct Response alarm product was directly connected to the police and that this

statement of receiving a higher level of response was misconstrued by the BBC.

Mr Hook said that earlier in the programme the BBC used the interview with Mrs Gall to plant a suggestion of preferential service in viewers' minds and that the interview was shown before the secretly filmed footage of Mr Hook.

In assessing this sub-head of the complaint Ofcom also had regard to Practice 7.6 of the Code which states that when a programme is edited, contributions should be represented fairly.

In relation to Mr Hook's complaint that he did not say that the Direct Response alarm product was directly connected to the police, Ofcom noted that Mr Allwright stated in the programme that:

"It seems his [Mr Hook's] company's got the power to deploy the police team. Calling all cars".

Ofcom carefully considered the unedited footage and transcript of the undercover filming and noted the following exchange (part of which was in used in the programme as broadcast) in which Mr Hook commented on the alarm product's connection with the police. Ofcom has marked the sections included in the programme in bold.

Mrs Simmonds: *"And so the Police would react immediately to your?"*

Mr Hook: *Yes, and **we don't have to make a 999 phone call either ourselves, we are in constant link and connection with the nearest Police car to your home at the instant the incident occurs...we don't have to ring Kingston Police Station or Epsom.***

Mrs Simmonds: ***So you're in contact with the cars?***

Mr Hook: *Yes, yes..your signal comes to us... we patch it to the nearest Police Unit to your home. **It could just happen, the nearest Police Unit to your home at that moment is a Policeman who's just come off duty who lives in round the corner who lives in Tattenham Crescent,** it could be that close...It could be an off duty or an on duty Policeman...the nearest Police representative to your home at that moment is sent here".*

Following Mr Hook's comments regarding the connection of the alarm product to the police (as set out in bold above) in the programme Graeme Dow commented that Mr Hook's claims were:

"Absolute and utter tripe. All phone calls go through to the alarm receiving centre, to the police control room. The police control room contact the police car. There is no way under the sun that this could ever be remotely true. Blatant lies".

In his written representations, Mr Hook pointed to section of the transcript from the undercover filming in which he stated that:

“...we connect you to a nation wide database alarm receiving centre not a call centre in India”.

Taking into account the unedited transcript of the undercover filming and Mr Hook’s written representations, Ofcom considered that, as set out above, Mr Hook had given a clear indication that Direct Response, as a company entity, was directly connected to individual police units or officers and that the broadcaster had fairly and accurately reflected his claims in the programme as broadcast. Ofcom does not consider that the broadcaster stated or suggested that Mr Hook claimed that the alarm box installed in the customer’s home was directly connected to the police and hence does not consider that the broadcaster unfairly or inaccurately reflected Mr Hook’s claims in the programme.

Ofcom next considered whether the comments Mr Hook made regarding the level of response potential customers would receive from the police were misconstrued by the broadcaster.

In the programme, Mr Allwright introduced this section of the report by stating:

“Chris Hook seems to think that buying the system you will get special treatment from the cops”.

In the programme, Mr Hook was then shown explaining to Mrs Simmonds that:

Mr Hook: *“If you go with this you will be getting priority response from the police.”*

Mrs Simmonds: *And do you always get a priority response from the police then?*

Mr Hook: *Yes because you are going to pay the police for it”.*

Mr Allwright then commented:

“There is a tier of society in the UK that has paid for a priority response from the police. Why have I not got this service?”.

Mr Dow commented that this was because *“It doesn’t exist. He’s selling a third party service he has no control over; his company has no control over”.*

Later in the programme Mr Hook also stated that *“...you have got the police under contract to attend your home as a result of our confirmation”* and that *“the Police are under a binding contract to attend your home”.* In the unedited footage (not shown in the programme) Mr Hook continued this was *“on what’s called Class 1 immediate and urgent”.*

Ofcom also noted the following exchange during the sales visit which was not broadcast in the programme. Mr Hook informed Mrs Simmonds that:

“...you’ve then got to pay the Surrey Police a one-off fee. Now this fee is just under 50 pounds, it’s £48.68 and it lasts forever more and that’s your contractual arrangement with the Police to come to your home when we say go and it’s a burglary or you’ve pressed your personal attack”.

In correspondence with the BBC Mr Hook stated that for police to respond to a “Level 1 – Immediate/Urgent” burglar alarm they are required to have “installed specific equipment together with monitoring, servicing and maintenance arrangements in place” and the fee as described above meant that customers were allocated with a unique reference number from the police on payment of the fee. Mr Hook stated that this could be considered by some to constitute an “obligation on the part of the Police to respond according to ACPO guidelines”. Ofcom did not consider that such a fee was a contract with the police as described by Mr Hook above.

Mr Hook provided Ofcom with a number of documents with his complaint which he said supported the claims he had made during the undercover filming. The documentation included a leaflet entitled “The Surrey Police Pledge” produced by Surrey Police in which it sets out the service it provides. The document states “We have added some extra pledges to deliver a higher level of Service”; one such pledge, which Mr Hook had highlighted stated:

“We aim to answer 999 calls within 10 seconds, deploying to emergencies immediately...”.

Mr Hook also provided Ofcom with an email from Surrey Police to Mr Hook which stated that: “In the case of an intruder in a person’s house, this would generally be viewed as a “crime in progress” and the call handler would deploy an officer (or officers) as a priority”. Mr Hook had emphasised the word ‘priority’ on this document. In his written representations Mr Hook also highlighted a handwritten note he had taken following a conversation with a Surrey Police officer. Mr Hook stated in this conversation the officer had told him that a crime in progress would be dealt with as a priority and that the personal attack feature would be “likely to lead to higher vehicle speeds”.

Ofcom considered whether the documentation provided by Mr Hook supported the statements made by him during the course of the sales visit and whether the BBC, taking account of the unedited footage which was not broadcast in the programme, had fairly represented his comments.

In Ofcom’s view although these documents might indicate that an ongoing burglary was a “priority” for Surrey Police, the impression created by Mr Hook in his sales presentation was that customers of Direct Response would receive priority or a preferential level of service from the police above that which was received by a member of the general public. This was made apparent amongst other comments by Mr Hook’s comment that the police would be under contract to attend (with Ofcom’s emphasis) “*as a result of our [Direct Response’s] confirmation*” and the statements that “*if you go with this [alarm product²] you will be getting priority response from the Police*”. This impression was strengthened by the reference to the fee to be paid to the Police and Mr Hook’s description of this fee as “*your contractual*

² In his written representations Mr Hook said that he was in this statement making a comment about a feature of the alarm product i.e. the personal attack feature. Ofcom again carefully viewed the unedited footage of the undercover filming. Although Mr Hook did not mention the personal attack feature directly in this section of the filming Ofcom accepted he may have been referring to a feature of the alarm product in this exchange. Notwithstanding this, and for the reasons set out above, Ofcom’s view about the impression Mr Hook created during the sales presentation was not changed by this clarification.

arrangement with the Police to come to your home when we say go” and his statement that *“you are going to pay the police for it [the priority response]”*. Ofcom did not consider this administrative fee to be a contract which would give Direct Response’s customers priority over members of the public in relation to the response they would receive on reporting a burglary. However in Ofcom’s view, this is the impression which was created by Mr Hook. Ofcom did not consider the note of the conversation with the Surrey Police officer provided confirmation that acquiring an alarm system from Direct Response would lead to a priority response from the police. The note suggested that a crime in progress would be treated as a priority but, in Ofcom’s view, that would seem to apply to any individual who called the police to report such a crime.

Ofcom did not consider that the claims made by Mr Hook in his sales presentation could be supported by the documentation he provided. Ofcom also did not consider that a police pledge to the public in general amounted to having Surrey police *“under a binding contract”* and would not be generally understood by potential customers in this way.

Ofcom also considered, amongst other things in light of the unedited material not broadcast in the programme, that the BBC did not misconstrue Mr Hook’s comments and that they were presented by the BBC in a fair and accurate way. In relation to the qualification that the police are under binding contract to attend on what is called a *“Class 1 immediate and urgent”* in the unedited transcript Mr Hook did not explain what this meant. Mr Hook’s position is that this was explained in the *“Key Facts Summary”* documentation supplied to the customer. However, in Ofcom’s opinion the impression the customer was left with during the sales visit was that the contract with Surrey police gave customers of the Direct Response alarm product a higher level of service than the general public.

Ofcom therefore concluded that Mr Hook’s comments in this regard, were not misconstrued in the programme as broadcast. They were presented by the BBC in a fair and accurate way, and were a reflection of Mr Hook’s testimony about the alarm product during the course of the undercover filming.

Ofcom next considered whether Mrs Gall’s contribution to the programme resulted in unfairness to Mr Hook. Ofcom recognises that while programme makers have editorial discretion over what material to include in a programme, there is an obligation to ensure that material facts are presented fairly. Ofcom noted that the programme stated that Mrs Gall:

“...was visited in January by a salesman from Direct Response Security Systems, based in Sutton Coldfield”.

Mrs Gall recounted her experience of that visit, including that the salesman had told her that the police recommended the alarm service provided by Direct Response and that customers were afforded a higher priority than *“999 calls”*.

Ofcom noted that following the interview with Mrs Gall, the presenter explained they were going to *“find ourselves a house and see what the salesmen get up to”*. Mr Hook was seen arriving at the house, over a shot of Mr Hook’s car the presenter stated *“here’s a representative from Direct Response”* as Mr Hook exited the car, and as his face became visible the

presenter continued *“it’s a different guy to the one who came out and saw Katie [Mrs Gall]”*.

Ofcom considered that given that the programme was an investigation into the practices of Direct Response, it was legitimate for the programme makers to talk to other customers about their experiences. As to whether such comments resulted in unfairness to Mr Hook in the programme as broadcast, Ofcom considered that the programme made it sufficiently clear that Mr Hook was not the same representative and that it was a different employee from the same company who had visited Mrs Gall and that her testimony related to a different representative from the same company. (Ofcom sets out in sub-head iii) below its decision on whether Mr Hook made claims that he or the company were endorsed by the police).

Ofcom therefore did not consider that viewers’ perceptions of Mr Hook would be materially or adversely altered by Mrs Gall’s comments. For that reason, it was not necessary for Ofcom to consider if Mr Hook’s statements during the sales visit could justify statements made by Mrs Gall about her experiences with a different sales representative or whether Mrs Gall was “groomed” to elicit certain answers, given that it was clear her comments were made about a different sales representative.

Ofcom further considered whether the order in which Mrs Gall’s interview was filmed and then presented in the programme created unfairness to Mr Hook. As set out above, Ofcom considered it was made clear in the programme that: Mrs Gall’s comments related to another salesman from the company; and, that viewers’ perception of Mr Hook would not have been materially or adversely altered in a way that was unfair to him by the order in which the elements of the interview were presented in the programme.

Taking these factors into account, Ofcom considered that the broadcaster had taken reasonable care to ensure that the material facts had not been presented in the programme in a way that was unfair to Mr Hook and had not been edited in a way that was unfair.

- ii) Ofcom considered the complaint that the programme said that Mr Hook “preys on fears” but that it was the actress, Mrs Simmonds, who instigated the discussion relating to the effects and consequences of burglary.

Ofcom noted that in the programme as broadcast Mr Allwright introduced this section of the report by stating that:

“Our Beryl [Mrs Simmonds] has told the salesman that she’s worried about crime. Now, listen to how he preys on those fears and put yourself in her position”.

This was followed in the programme by Mr Hook stating:

“People have taken their lives as a result of burglary, people have got divorced as a result of burglary. It’s one of the most devastating things. A gentleman said to me ‘I’ve no idea, you know what a sexual rape feels like’ he said but ‘my wife feels absolutely soiled as a result”.

Ofcom carefully considered the unedited footage and transcript of the undercover filming. Ofcom noted the following comments by Mr Hook, which

was the first time during this footage that crime in the local area was discussed. Mr Hook stated:

“...if you retire for the evening, in this particular postcode if you have an alarm of any sort, it should always be on at night because the vast majority of break-ins in Epsom happen after midnight and before 4 o'clock in the morning... regrettably about a quarter of them now, more than a quarter are actually on drugs when they decide they need money”.

Shortly after this exchange, Mr Hook asked Mrs Simmonds *“are you the only person living in [the] property at the moment?”* When she replied that she was, he stated *“night setting is absolutely crucial for you”*; and less than a minute later that *“burglary has gone stratospheric”*.

Ofcom noted a further exchange, a few minutes later where Mr Hook showed Mrs Simmonds an article from a local newspaper from an area near to her home about a woman in her seventies who had been a victim of burglary. Mr Hook then quoted statistics for the number of burglaries committed in South East England every week.

It was at this point in the conversation that Mrs Simmonds volunteered the anecdote about a friend of hers who had been *“knocked...for six”* as a result of a burglary. This was then followed by Mr Hook’s comments about the effects of burglary as broadcast in the programme. Later in the sales visit in a section not broadcast in the programme, Mr Hook talked about how some burglary was driven by drug addicts looking for money to feed their addiction. He commented that *“they’re just gonna target the first little old lady, or gentleman’s property they can think of”*.

During a later exchange, Mr Hook stated that 999 was *“a marvellous service if you can afford to wait four minutes”* but that *“it is possible to strangle someone in twenty seconds, forget the four minutes...very traumatic, one would never recover from it”*.

Ofcom considered that the presenter’s introduction set out clearly that Mr Hook’s statement came after comments from Mrs Simmonds about her fear of crime, and that the programme’s assertion that Mr Hook *“preys on those fears”* was consistent with unedited undercover footage. As set out above, it was Mr Hook who first introduced the issue of crime and he made a number of references to the vulnerability of a woman of Mrs Simmonds’ age, circumstances and geographical location during the course of the sales visit in relation to the effects and consequences of burglary.

Ofcom therefore concluded in relation to this sub-head that the broadcaster had taken reasonable care to ensure that the material facts had not been presented in the programme in a way that was unfair to Mr Hook.

- iii) Ofcom next considered the complaint that the programme makers misled Surrey Police in their interview with them by telling them that Mr Hook had indicated that Surrey Police would “vouch” for or endorse Mr Hook. By way of background, Mr Hook said that his complaint was investigated and subsequently upheld by Surrey Police.

The BBC interviewed Chief Superintendent Stephens of Surrey Police regarding the claims made by Direct Response and Mr Hook. This was not

shown in the programme as broadcast, however Chief Superintendent Stephens' comments were reflected by Mr Allwright in commentary:

"They [Surrey Police] said he [Mr Hook] must not suggest that they endorse Direct Response in any way and there is no link with the force. They also confirm that many of his claims, such as the ability to patch a call straight through to a patrol car are false".

In addressing this part of Mr Hook's complaint, Ofcom was provided by the BBC with the full transcript of Mr Allwright's interview with Chief Superintendent Gavin Stephens of Surrey Police.

Ofcom noted that the interview began with Mr Allwright reading from part of the transcript of the undercover filming and that Mr Allwright quoted verbatim from the transcript of the undercover filming in his questions to Chief Superintendent Stephens. Mr Allwright stated that *"Chris Hook says...you are literally, you have got the police under contract to attend your home as a result of our confirmation"*; and asked Chief Superintendent Stephens: *"What do you make of that?"*.

Chief Superintendent Stephens replied:

"I'd just [like] to make it really clear that that's not something the police would ever do, we're not going to enter into contracts with alarm companies, we don't...give any preferential treatment as a result of any calls...we assess all our calls as they come into the control room and they get a response depending on the nature of that call at the time".

Mr Allwright also asked about the documents that Mr Hook had produced during the sales visit including the Criminal Records Bureau check. Mr Allwright stated that Mr Hook had described this as a *"police identification card"*. He also referred to the business card of a Surrey Police Community Support Officer ("PCSO"), who Mr Hook indicated could *"verify"* he was *"bona fide"*.

Chief Superintendent Stephens stated this conduct was *"not something he [Mr Hook] should do"* and that a PCSO would *"never give permission to anybody else to use that card to verify their own identity"* and that a Criminal Records Bureau check was *"not a form of identification for the police to verify who somebody is"*.

Mr Allwright asked Chief Superintendent Stephens to comment on *"a salesman who is giving the appearance of being approved by, verified by, endorsed by the police, what should their reaction be?"* The Chief Superintendent advised that customers should *"check that thoroughly"* as *"that's not something that the police service do"*; he also confirmed that there was no equipment available that would *"patch anybody's alarm system straight through to one of our cars"*.

As stated above, Chief Superintendent Stephens' interview was not used in the programme as broadcast but Mr Allwright reflected Surrey Police's comments in the programme.

Ofcom first considered whether the statements put to Chief Superintendent Stephens were an accurate reflection of the unedited transcript of the sales

visit. Ofcom noted, as set out above, that Mr Allwright had quoted verbatim from the sales visit. Ofcom also considered Mr Hook's written representations that the manner in which he had used the business card of the PCSO had not been properly explained to Chief Superintendent Stephens. Ofcom considered that the presenter had accurately reflected the way in which Mr Hook had described and used the Criminal Records Bureau document and the business card of the PCSO during the sales visit. Ofcom also noted that Mr Hook provided a copy of a letter from Surrey Police, which Mr Hook had received on 8 November 2010 sometime after the broadcast of the programme, and which Mr Hook said did not condemn the manner in which he had used the PCSO's business card. Given the seniority of Chief Superintendent Stephen's position, and that the presenter had accurately described the manner in which Mr Hook had used the business card, Ofcom considered that the programme makers had taken reasonable care to ensure that the facts were presented in a way that was not unfair to Mr Hook. If Surrey Police did subsequently revise its position on the propriety of Mr Hook presenting the business card (and it was not clear to Ofcom from the documentation that Mr Hook provided that it had), then that was not information that was available to programme makers at the time the programme was broadcast.

Ofcom also considered the following statements made by Mr Hook during the course of the sales visit which were not put to Chief Superintendent Stephens:

"the police must not sponsor or endorse anything - all they can say to you is 'yep they're on the right list'³".

Shortly after this Mrs Simmonds asked Mr Hook, "So, Scotland Yard approved then Chris?" He replied by stating, "Indeed yes".

Ofcom noted Mr Hook submission that the words "approved" and "endorsed" had different meanings. In Ofcom's opinion however these words are substantively similar in meaning and would have been understood by viewers as such.

Ofcom therefore considered that, on balance, the impression given by Mr Hook during the sales visit would lead a potential customer to consider that he was approved or verified by the police and that that was fairly reflected by Mr Allwright in his interview with Surrey Police.

Ofcom next considered whether the statement setting out Surrey Police's comments was an accurate reflection of the interview given by Chief Superintendent Stephens and whether it had resulted in unfairness to Mr Hook.

Ofcom noted correspondence from Surrey Police to Mr Hook regarding the interview which stated that: "Surrey Police were misrepresented by the BBC regarding their response to questions put to them in relation to the Watchdog programme resulting in this complaint...The interview was on the understanding that any response would be generic and not specific to any individual or company". Surrey Police then stated that they had viewed the

³ Mr Hook had earlier in the programme referred to the company being on "the recognised list of all 26 police forces".

interview and that Chief Superintendent Stephens “does not refer to you or Direct Response directly at any point during the interview which he...conducted as agreed in generic terms to points put to him.” Surrey Police apologised to Mr Hook for any distress caused by the non-broadcast interview with Chief Superintendent Stephens.

Ofcom carefully considered this correspondence and the apology Mr Hook had received from Surrey Police; however the transcript of the interview with Chief Superintendent Stephens shows that Chief Superintendent Stephens did in fact answer questions put to him in which the presenter directly asked about verbatim comments made by Mr Hook during the sales visit. For example, Mr Allwright begins the interview by stating:

“I’m going to read to you...the transcript of what was said during the sales pitch, Chris Hook says...you are literally, you have got the police to attend your home as a result of our confirmation”.

Chief Superintendent Stephens replies:

“I’d like to make it really clear that that’s not something the police would ever do, we’re not going to enter into contracts with alarm companies.”

Later in the interview Mr Allwright says:

“One of the first things our salesman Chris Hook does, when he comes through the door, he puts down his police identification card and then he follows that up with a business card from a police community support officer. What do you make of that, as an opening gambit”.

Chief Superintendent Stephens replies:

“Well, we wouldn’t give a police identification card to an alarm company salesman, that’s just not something that we do”.

Although Chief Superintendent Stephens does not refer to Mr Hook by name in the interview, Mr Allwright refers directly to the verbatim quotes from Mr Hook’s sales visit and to his actions in that visit throughout the course of the interview and Chief Superintendent Stephens answered those questions by addressing specifically the actions of Mr Hook as set out by Mr Allwright.

For this reason, Ofcom considered that the inclusion of the statements in the programme did not result in unfairness to Mr Hook because they were a fair and accurate reflection of Surrey Police’s interview with the programme makers and Mr Hook’s actions and comments were fairly represented during that interview.

- iv) Ofcom considered the complaint that the burglary statistics which Mr Hook gave in the programme were a mistake and Mr Hook admitted this to the programme makers before the programme was broadcast. However despite this, the presenter sneered and inferred from his response that he did not accept that Mr Hook admitted that he had got this wrong. By way of background, Mr Hook added that the source the BBC used for the burglary statistics is well known to underestimate true crime figures.

Ofcom noted that during the undercover filming Mr Hook referred to there being “20,000 new burglaries every week” in South East England. Mr Allwright in the programme described this as “absolute rubbish” and referred to Home Office figures published in January 2010 which “gave a much lower average of 5,400 domestic burglaries a week” for the whole of England and Wales. Later in the programme, Mr Allwright reflected a response from Mr Hook regarding the crime statistics, in which he said “Mr Hook told us he did make an error with the crime statistics but otherwise his sales pitch was fine”.

Ofcom noted that in correspondence with the programme makers before transmission of the programme Mr Hook stated that: “I must have made a mistake in telling Mrs Simmonds there were 20,000 burglaries each week in the South East...and meant to have said 20,000 a month, this would have been a mistake for which I would apologise unreservedly”.

Ofcom considers that Mr Hook’s response was fairly reflected in the programme. Also it was delivered in a neutral tone which did not undermine Mr Hook’s response or suggest in any way to the viewer that Mr Hook’s mistake with the crime figures was intentional. Ofcom also considered Mr Hook’s written representations that the crime figures given by the BBC were misleading, Ofcom considered that the BBC had used a reputable source for its figures (i.e. the Home Office) and referred to the source of those figures in the programme so viewers would have been aware of their provenance. Ofcom did not consider that the reporting of these figures could have materially or adversely altered viewers’ perceptions of Mr Hook in a way that that was unfair. Ofcom therefore concluded in relation to this sub-head that the material facts were not presented in a way that was unfair to Mr Hook.

Having considered separately each of the specific sub-heads of the complaint made by Mr Hook that the programme portrayed him unjustly or unfairly, and in the context of the programme overall, Ofcom concluded that the broadcaster had taken reasonable care to satisfy itself that the material facts (as detailed in the sub-heads above) were not presented, omitted or disregarded in a way that portrayed him unfairly.

- b) Mr Hook said that despite his willingness to meet with the programme makers and discuss the issues and his request for a full transcript made by the programme makers (which was refused), Mr Hook was still filmed using staged appointments, which gave the impression to the public that he had not responded to the programme makers’ enquiries, which was false.

In considering this head of the complaint Ofcom considered Practice 7.14, which states that broadcasters should not normally obtain or seek an agreement to contribute through misrepresentation or deception, unless it is warranted and cannot reasonably be obtained by other means.

Ofcom carefully read all the pre-transmission correspondence between Mr Hook, Mr Hook’s legal representatives and the programme makers, which was extensive.

Ofcom noted that the broadcaster offered Mr Hook, in a series of letters, the opportunity to respond to the allegations in the programme. Mr Hook and his legal representatives responded to the allegations in those letters by denying any wrong doing (apart from being mistaken in the crime figures as set out in part a)

subhead iv) above) and requesting access to the unedited undercover footage or a transcript of the footage.

The programme makers explained that the BBC “does not supply recordings of any footage prior to transmission” but stated that if Mr Hook would agree to a filmed interview, it would show Mr Hook some of the relevant sections of the undercover filming during that interview. It also stated, following a request by Mr Hook, that the broadcaster would not supply questions in advance of any interview.

Ofcom noted that in the correspondence, Mr Hook agreed to meet with the programme makers but did not agree this meeting could be filmed. Following this exchange, the broadcaster set up a second sales visit with Mr Hook and a different actress as a potential customer. Mr Hook’s arrival at the property and the beginning of the sales visit was filmed by undercover cameras. Shortly afterwards the presenter and film crew entered the room in which Mr Hook was conducting the sales presentation and put to him a series of questions and statements about the first secretly filmed sales visit.

Ofcom considered whether the secret filming in this case was warranted. In so doing, Ofcom noted that Mr Hook had denied the allegations put to him by the BBC and had not agreed to address their concerns. Ofcom noted that the correspondence was extensive. In one letter to the programme makers Mr Hook stated:

“I now consider that the vast majority of your allegations have been refuted, [and are] technical issues” and “the Company [is] standing by its claims”.

In relation to the specific claims Mr Hook said, amongst other things, that:

“I have not ever stated that Direct Response Security Systems’ Ltd has a direct link to the Police... the issue of crime fear and awareness were raised by her [Mrs Simmonds]”.

Ofcom noted that the BBC had given Mr Hook a number of opportunities to address the main allegations made in the first sales visit, and also offered him the opportunity to meet for a filmed interview. The BBC offered Mr Hook the opportunity to view relevant sections of the undercover filming at the filmed interview but he did not agree to this. The deadline for the interview passed without Mr Hook agreeing to the filmed interview.

Ofcom considered that the concerns raised by the BBC in their correspondence were serious and while denying any wrongdoing Mr Hook had not addressed the substance of those allegations. Ofcom therefore concluded that there was a public interest in confronting Mr Hook about the claims he had made during the first sales visit and in this case, the secret filming was warranted.

Ofcom next considered the manner in which Mr Hook was confronted by programme makers and considered whether the manner in which this was reflected in the programme created unfairness to Mr Hook. Ofcom noted the meaning of “doorstepping” as set out in the Code as “filming or recording of an interview...with someone, or announcing that a call is being filmed or recorded for broadcast purposes, without prior warning” (See Practice 8.11) and that it should not take place unless “a request for an interview has been refused...and it is warranted to doorstep”.

Ofcom considers that doorstepping has the potential to create unfairness to contributors because of the lack of opportunity afforded to them to prepare their response to serious allegations and the potential adverse impression it can give to viewers about a complainant who has been approached in this manner.

Ofcom considered that in its correspondence with Mr Hook the broadcaster had set out in detail the main allegations that they had sought Mr Hook's response to, and Mr Hook had responded to such letters. Ofcom therefore considered that in this case before he was approached Mr Hook would have been aware of the allegations made and prepared in general terms to answer questions. Therefore no unfairness to him was created in this regard.

Ofcom next went on to consider how the material was presented in the programme as broadcast. Ofcom noted that the presenter introduced this part of the programme by stating that: *"We have written to salesman Chris Hook and asked him to explain himself, but he hasn't so we got back on his case"*. It also noted that the programme also stated that Mr Hook's *"...letters to us suggest that he doesn't think that when we last called him out he did or said anything wrong...Chris Hook's correspondence kept saying we weren't answering his questions. He wasn't answering ours. That's why we're here"*.

Mr Allwright was then shown confronting Mr Hook who said:

"I've put some very detailed responses to your letters. Very detailed. A nine page letter. My solicitor has written the BBC a seven page letter. We've had no positive response to anything of it and, until we get some response, I don't propose to take this any further".

At the end of the exchange the presenter stated that:

"Chris Hook never did address our allegations fully and he referred us to his solicitors".

The programme therefore stated explicitly that Mr Hook and the programme makers had been in correspondence. In Ofcom's view, it would have been apparent to viewers that Mr Hook had been in contact with the programme makers. Mr Hook was also shown in the programme explaining his position in relation to the correspondence.

For these reasons Ofcom concluded that Mr Hook's position was accurately reflected in the programme and that viewers would not have been left with the impression he had not responded to the programme makers. Therefore it is Ofcom's conclusion that there was no unfairness to Mr Hook in this respect.

Unwarranted infringement of privacy

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

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

- c) Ofcom considered the complaint that Mr Hook's privacy was unwarrantably infringed in the programme as broadcast in that he had not given his consent for the programme to broadcast his name or to reveal his identity.

In considering this complaint, Ofcom had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. Ofcom also took into consideration Practice 8.14 of the Code, which states that material gained by surreptitious filming and recording should only be broadcast when it is warranted.

In considering whether or not Mr Hook's privacy was unwarrantably infringed in connection with the material included in the programme as broadcast, Ofcom first considered the extent to which Mr Hook had a legitimate expectation of privacy that secretly filmed footage of him would not be broadcast without his consent.

In Ofcom's view Mr Hook had a legitimate expectation of privacy as regards the broadcast of his visit to, and conversations with, Mrs Simmonds. This was because they were secretly filmed in a private home when he was discussing with someone whom he thought was a potential client her possible need for the company's products and services in light of her individual concerns about crime and security.

Having found that Mr Hook had a legitimate expectation of privacy, Ofcom went on to weigh it against the broadcaster's competing right to freedom of expression and the audience's right to receive information and ideas without unnecessary interference.

Ofcom noted first the public interest in general terms of broadcasters examining dubious sales techniques in order to help protect consumers. Ofcom took the view in particular that the investigation of the sales practices of a company which had already made undertakings to the Office of Fair Trading about their sales techniques following complaints from customers to Trading Standards was a matter of public interest. In the circumstances, Ofcom considered it was reasonable for the programme makers to have reached the view that there were reasonable grounds to suspect that further material evidence could be obtained by surreptitious filming and that such evidence was necessary to the credibility and authenticity of the programme. Ofcom considered that the inclusion of the secretly filmed footage of Mr Hook's sales visit to Mrs Simmonds provided evidence that a sales representative from Direct Response was making unjustifiable claims about the nature and efficacy of its products and services, specifically in relation to the response customers would get from the police and in using sales techniques which appeared to exploit the fears of vulnerable members of the public. Ofcom took the view that there was a public interest in showing the footage of Mr Hook's sales visits.

On balance, therefore, and given all the factors set out above, Ofcom concluded that the broadcaster's right to freedom of expression, in the circumstances of this particular case, outweighed Mr Hook's expectation of privacy in relation to the broadcast of the secretly filmed sales visit and the subsequent "doorstep"

interview with the film crew. Ofcom therefore found that the broadcast of this material was warranted.

In these circumstances, Ofcom found that there was no unwarranted infringement of Mr Hook's privacy in the programme as broadcast.

Accordingly, Ofcom has not upheld Mr Hook's complaint of unfair treatment and of unwarranted infringement of privacy in the programme as broadcast.

Not Upheld

Complaint by Motor Depot Limited

The David Burns Show, BBC Radio Humberside, 18 October 2012

Summary

Ofcom has not upheld this complaint of unjust or unfair treatment in the programme as broadcast made by Motor Depot Limited (“Motor Depot”).

On 18 October 2012, BBC Radio Humberside broadcast an edition of *The David Burns Show*. The programme, presented by Mr David Burns, included a section called “*Bring it to Burnsy*” in which Mr Burns discussed consumer related problems with callers and studio guests. This particular edition of the programme featured a studio interview with Mr Tony Brien who had bought a second-hand car for his wife from Motor Depot, a local car dealership. Mr Brien recounted his experience with the dealership and his dissatisfaction with the level of service he had received.

Following the broadcast of the programme, Mr Stephen Butterley, a director of Motor Depot, complained to Ofcom that the company was treated unjustly or unfairly in the programme as broadcast.

Ofcom found that:

- The programme makers took reasonable care to satisfy themselves that material facts had not been presented, disregarded or omitted in a way that was unfair to Motor Depot. This was because they had verified Mr Brien’s complaint with Motor Depot, made clear that the account of events given was Mr Brien’s and not that of the programme, and had used an independent consumer advisor to comment on Mr Brien’s account.
- The programme makers had given Motor Depot an appropriate and timely opportunity to respond.

Introduction

On 18 October 2012, BBC Radio Humberside broadcast an edition of *The David Burns Show*. The programme, presented by Mr David Burns, includes a section called “*Bring it to Burnsy*” in which Mr Burns discusses consumer related problems with callers and studio guests.

This particular edition of the programme featured a studio interview with Mr Tony Brien who had bought a second-hand car for his wife from Motor Depot Limited (“Motor Depot”), a local car dealership. Mr Brien recounted his experience with the dealership and his dissatisfaction with the level of service he had received.

During the interview, Mr Brien explained that he had bought a car from Motor Depot and had expected to pick it up on 2 October 2012. However, delivery of the car was delayed until 6 October 2012 and, when Mr Brien collected it, he found “*13 different faults*” with the car, including scratches and a damaged wing mirror. Mr Brien said on the programme that he complained to Motor Depot and was told that the sales manager would contact him and that while the car was being repaired a courtesy car would be given to his wife to use. Mr Brien said that the sales manager did not

contact him at this time, and the courtesy car his wife had been given was too small for her to fit a pram into it.

Mr Brien said that when he eventually spoke to the sales manager on 17 October 2012, he told him that he did not want the car he planned to purchase any more and that he wanted his money back. Mr Brien explained that the finance company had agreed in principle to the cancellation of the contract, but had told him that it was at the discretion of the Motor Depot sales manager. However, Mr Brien said that the sales manager would not agree to cancel the contract and that when he told the sales manager that he was going to take the story to *"Radio Humberside"* and the *"Hull Daily Mail"*, the sales manager laughed and said: *"do you want Trading Standards' number while you're there as well fella...?"*.

Mr Brien told the programme that he had been assured that the car would be ready for collection on 2 October 2012 which would have meant that he would have been within the *"cooling-off period"*, since he signed the contract on 26 September 2012. He said that this would have enabled him to cancel the deal on seeing the condition of the car. He added that *"if this is the way they [i.e. Motor Depot] send cars out, I want nothing to do with this company"*.

Mr Brien said that he was now left with the car, which he accepted had been returned to him after the repairs in *"mint condition"*. However, he explained that he no longer wanted the car as it had too many *"bad memories"* attached to it.

At this stage of the programme, Mr Burns introduced Ms Michelle Shambrook, a consumer affairs adviser, who spoke generally about consumer rights and gave Mr Brien some advice based on the information he had given in the programme. Ms Shambrook said that although Mr Brien may have experienced trouble getting the car, it did not appear to her that he had a right to cancel the contract or expect his money back. She said that because the contract was signed on the dealership premises, it was unlikely that there would be any *"cooling-off period"* and advised Mr Brien that that he should seek a gesture of goodwill from the dealership for the trouble he had experienced.

Towards the end of the interview with Mr Brien, further advice was given to him by *"Bernard"* a caller who recounted his own experience of buying a second hand car (not from Motor Depot). The interview concluded with Mr Burns reading out an email from a listener who claimed to have had *"six months hell"* with Motor Depot. Mr Burns also said that the programme had contacted Motor Depot for a response and that he hoped for a *"happy resolution"* between Mr Brien and Motor Depot.

Following the broadcast of the programme, Mr Stephen Butterley, a director of Motor Depot, complained to Ofcom that the company was treated unjustly or unfairly in the programme as broadcast.

Summary of the complaint and the broadcaster's response

Motor Depot complained that it was treated unjustly or unfairly in the programme as broadcast in that:

- a) Mr Brien misrepresented the sequences of events relating to his experience as a client of Motor Depot which resulted in Motor Depot being portrayed in the programme in a negative light. Motor Depot also said that BBC Radio Humberside took no time to investigate whether Mr Brien's assertions were true or not. In particular, Motor Depot complained that:

- Mr Brien had been aware that the delivery date he was given (i.e. 2 October 2012) was only an estimate as the car he was purchasing was not on site. It said that Mr Brien was kept informed of any delays as soon as they became known.
- Motor Depot had told Mr Brien that it wanted more time before he collected the car to ensure it was in the best condition. Motor Depot said that it was not the company's policy to release a vehicle before all the pre-collection checks had taken place and it had been given a full valet. However, Motor Depot said that Mr Brien had been adamant that he wanted to collect the car on 6 October 2012 and that he had been aware that he was collecting a car which had not yet been approved for collection. Motor Depot said that Mr Brien's recollection of events as presented in the programme would lead the general public to believe, wrongly, that Motor Depot released its vehicles in a poor condition.
- Motor Depot said that neither Mr Brien nor his wife complained about the courtesy car provided to them and had not specified to the company that the car needed to accommodate a child's pushchair. However, Motor Depot said that the way in which this was presented by Mr Brien in the programme would lead the general public to believe that Motor Depot had provided an inadequate courtesy car and had ignored a request for a specific requirement.
- Motor Depot said that Mr Brien was never referred to as "*fella*" by the sales manager and was not spoken to in a sarcastic manner. It said that Mr Brien's recollection of the conversation misrepresented the customer service given by Motor Depot.
- Motor Depot said that Mr Brien had been wrong to assert that there was a "*cooling-off period*" and that the company had deliberately prevented him from pursuing his statutory rights. It said that Mr Brien's comments inferred, falsely, that Motor Depot had acted maliciously and deceitfully, which gave a wrong and detrimental impression of it as a business.
- Motor Depot said that Mr Brien's assertion about the willingness of the finance company to cancel the contract (while the sales manager was not willing to exercise his discretion and cancel the contract), made Motor Depot seem unreasonable and unsympathetic to Mr Brien's situation, when it had, in fact, done everything possible to appease him as a customer. Motor Depot said that the finance company would only put pressure on a dealer to rescind a finance agreement if it felt that a consumer had the right to reject a vehicle. In this case, no pressure was put on Motor Depot by the finance company who had told Mr Brien that the cancellation of the contract was a matter of discretion for the dealership.

In response to this head of complaint, the BBC said that it was not in a position to respond to the complainant's particular claims that Mr Brien's account was inaccurate and misleading. It said that in reporting stories such as this, it was important to keep in mind that what was being reported was not the outcome of a journalistic investigation, but a dispute between parties, in which there were invariably at least two points of view as to the rights and wrongs of the case. The BBC said that in these circumstances it did not believe that there was a requirement for the broadcaster to get to the truth of the matter. Rather, it

believed that the broadcaster's responsibility was to set out fairly the issues in dispute and ensure, as far as possible, that the positions of the respective parties were fairly represented. The BBC said that it did not, however, believe that a refusal by one party to participate should have the chilling effect of preventing the issues being ventilated. It said that in such circumstances, the broadcaster should ensure that, so far as possible, the missing protagonist's views were nevertheless represented or, where this was not possible (because, for instance, issues of fact are in dispute), that it was made clear to the audience that the other protagonist might take issue with what was being alleged.

The BBC said that it had used its best endeavours to put Mr Brien's account to Motor Depot and obtain the company's version of events. The BBC provided Ofcom with a record of the contact the programme makers had had with the complainant. The BBC said that the day before the broadcast, the programme makers had tried to contact the Motor Depot showroom by telephone throughout the afternoon, but their calls went unanswered. In the absence of an email address, even on Motor Depot's website, the programme makers attempted to contact the company through the "Contact Us" link on its website. The BBC submitted to Ofcom correspondence that it had received from Motor Depot's legal representatives which, the BBC said, suggested that it was not attended to on that day, because it had arrived outside of normal working hours. The BBC noted that according to Motor Depot's website, the company's normal weekday opening hours are from 08:30 to 19:00 hours. The BBC said that, in any event, the programme makers did not receive a response to this email, nor was its receipt acknowledged.

The BBC said that the programme makers had tried to contact Motor Depot repeatedly from 08:30 hours the next morning (i.e. the date of broadcast). It said that after several unanswered calls, the programme makers managed to speak to an employee of Motor Depot at 09:30 hours and was told that as far as the company was concerned the issue was resolved and that the matter was closed because the customer (i.e. Mr Brien) had collected the car that morning. The employee also said, specifically, that those details should not be broadcast. The BBC said that the employee, after consulting, said that no one from Motor Depot would be available to participate in the programme, or give a statement. The BBC said that the programme makers considered this and, in the absence of any public statement from Motor Depot, decided that the programme's presenter should say on-air that Motor Depot had been contacted and were aware of the story, but had not responded to the allegations.

The BBC said that because of the categorical nature of the company's response, the programme-makers concluded that nothing would be gained by delaying broadcast of the story. The BBC said that it should be noted that the company did not ask for more time to consider the allegations. It said that had Motor Depot done so, the broadcast of the story would have been deferred, but it was clear that more time was not an issue and there was no consideration of fairness which might require delay. The BBC said, however, that it was also made clear to the company, in the course of the 09:30 hours telephone conversation on the day of broadcast between the programme makers and Motor Depot, that if they changed their minds and decided to respond later that every facility would be made available to them to do so. The BBC said that Motor Depot were assured by the programme makers that any contribution would be included, and were told that the programme was on-air until noon that day and that their response would be welcomed any time until then, or indeed, at any time in the future. However, the

BBC said that no further communication was received from the company until the letter from its legal representatives almost two weeks later.

The BBC said that although the presenter was not, in the absence of a contribution from the company, in a position to challenge the sequence of events described by Mr Brien, the discussion did have the effect of challenging one of the most serious claims that he made, specified at bullet point five of the particulars of Motor Depot's complaint above. Mr Brien had said that he believed that the reason the company had delayed delivery of the car was so that his legal "cooling-off period" would expire and that he would not be able to cancel the transaction. This point was put by the presenter to a representative of Consumer Advice Line, Ms Shambrook, who explained that, given the circumstances in which Mr Brien signed the agreement, he would not have been entitled to a "cooling-off period". The BBC said that Ms Shambrook also pointed out that Mr Brien might have acted unwisely in signing the purchase agreement without having seen the car and said:

"... you don't have the right to cancel these sorts of agreements generally speaking unless you sign them at home or you have got a clear cooling-off period and Tony suggests that he might have done that. But if that period has passed and the car is in a satisfactory condition, he's inspected it and it's reasonable for the fact that its second hand and its price, and that cooling-off period has passed, he hasn't cancelled within that, then I think legally he probably doesn't have any – very many – if any rights at all. Now Tony can contact the consumer service direct and give a bit more detail and they can ask him a few more questions and work out if that is definitely the case but the bottom line is normally that if you buy something and it is of a satisfactory quality in the end albeit that you have nothing but trouble to get there – then you possibly don't have the right – to cancel or reject – and have your money back".

The BBC said that Ms Shambrook's contribution made it clear that Motor Depot was acting within its rights in taking the position that it had and that Mr Brien had no basis for seeking to have the transaction cancelled, other than his grievance about the degree of inconvenience that he said he was caused. It said that whilst the facts concerning this inconvenience could not be explored in the absence of information from Motor Depot, the more serious allegation that they were seeking to deny him a right to a refund by illegitimate means – delaying delivery of the car time until a "cooling-off period" had expired – was explored and discounted. The BBC said that this demonstrated the programme makers' commitment to acting fairly in respect of Motor Depot.

The BBC said that, overall, and despite working within the limitations created by Motor Depot's refusal to respond to Mr Brien's allegations, the programme used every reasonable endeavour to ensure that Motor Depot was treated with fairness and that the material gathered for broadcast was used fairly and responsibly.

- b) Motor Depot was not given an appropriate or timely opportunity to respond to the allegations made in the programme. In particular, Motor Depot said that the programme makers had given the company less than 24 hours notice that the programme was to be broadcast, illustrating that a decision had been made to broadcast the allegations with or without Motor Depot's contribution. Motor Depot said that it had not been able to put forward a balanced argument and had not been told that the programme would include other contributions from listeners who criticised it.

In addition to the relevant submissions set out in its response to head a) above, the BBC reiterated that, in the absence of a response from Motor Depot, there was no reason to delay the broadcast of the item. It said that Motor Depot did not say, at any time, that it required more time to make an informed response. On the contrary, the BBC said that the company had made it clear to the programme makers that it had no intention of responding. The BBC said that, in such circumstances, the point at which a decision to broadcast was actually made was immaterial. However, the BBC said that the decision to broadcast would certainly have been reviewed had Motor Depot provided any information which cast serious doubt on Mr Brien's version of events.

The BBC said that had there been a proposal to interview anyone else in the programme that might have criticised Motor Depot, the company would have been informed of this. However, it was not anticipated that other contributors would address the specifics of Mr Brien's complaints and, in the event, whilst the other two interviewees predicated some of their remarks on the narrative put forward by Mr Brien (not unnaturally, given that Motor Depot had declined to provide its version of events), neither of them specifically criticised Motor Depot and one of them, Ms Shambrook, made comments which contradicted some of Mr Brien's allegations and that tended to endorse the company's position.

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 unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

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

Ofcom provided the parties with the opportunity to make representations on Ofcom's Preliminary View (which was not to uphold the complaint). Neither party made any representations on the Preliminary View.

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

- a) Ofcom first considered the complaint that the programme portrayed Motor Depot unfairly in that Mr Brien misrepresented the sequences of events relating to his experience as a client of Motor Depot which resulted in it being portrayed in the programme in a negative light, and that BBC Radio Humberside took no time to investigate whether Mr Brien's assertions were true or not.

When considering this head of complaint, Ofcom had regard to whether the portrayal of Motor Dept was compliant with the Practice 7.9 of the Code which states that broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way which is unfair to Motor Depot.

The Code recognises the importance of freedom of expression and the need to allow broadcasters the freedom to broadcast matters of a genuine public interest. However, in presenting material that could be regarded as amounting to significant allegations, reasonable care must be taken not to do so in a manner that does not cause unfairness to individuals or organisations. In this particular case, Ofcom considered that it was in the public interest for the programme to report Mr Brien's account of his experience with Motor Depot, but that this needed to be consistent with the requirements of the Code.

In assessing this complaint, Ofcom first examined the nature of Mr Brien's contribution in the context of the programme and the manner in which it was presented to the listener.

With regard to Mr Brien's contribution, it is not Ofcom's role to establish whether the substance of Mr Brien's account as told in the programme was correct or not, but to determine whether, in broadcasting his view of events and opinions, the broadcaster took reasonable care not to present, disregard or omit material facts in a way that was unfair to Motor Depot. In doing so, Ofcom considered the context of Mr Brien's contribution as expressed in the programme and whether the programme's presentation of it resulted in unfairness.

Ofcom noted that Mr Brien's contribution appeared in the part of the programme that provided consumer advice and enabled listeners to contribute to the programme by discussing their complaints with the programme's presenter and getting some advice from an independent consumer rights adviser, in this case, Ms Shambrook from the Consumer Advice Line. Ofcom considered that given this context, it would have been reasonably clear to listeners that the facts as presented were not found as a result of an investigation conducted by the programme makers, but were instead, based on the personal account given by one of the programme's contributors, namely Mr Brien. Ofcom considered that it was legitimate for the programme to include Mr Brien's own account of his experiences with Motor Depot.

In these circumstances, Ofcom went on to consider the manner in which Mr Brien's contribution was presented in the programme and whether it resulted in any unfairness to Motor Depot. Ofcom noted the following extract from the programme in which Mr Brien was introduced by the programme's presenter:

"We got an email from a Hessle couple who are not chuffed...a bit fed up with their dealings with a local car dealer...So let's find out the story first, let's talk to Tony Brien whose with me in the studio this morning. Tony, ta for coming in, tell us your story..."

In Ofcom's view, the manner in which Mr Brien was introduced to the programme and the language used by him in recounting his experience of dealing with Motor Depot was couched in terms that would have left listeners in no doubt that Mr Brien's comments constituted his opinion only and were not presented as or intended to be regarded as statements of unequivocal fact. In Ofcom's view, the

programme's presentation of Mr Brien's contribution and the nature and content of his comments would have made it clear to listeners that he was a dissatisfied customer giving an his personal account of his experience, as he perceived it, with buying a second hand car from Motor Depot.

Having assessed the context in which Mr Brien's contribution was made and the nature and manner in which it was presented in the programme, Ofcom went on to consider the particular elements of the complaint as set out in bullet point form at head a) of the complaint in the "Summary of the complaint and the broadcaster's response" section above.

- Mr Brien had been aware that the delivery date he was given (i.e. 2 October 2012) was only an estimate as the car he was purchasing was not on site. It said that Mr Brien was kept informed of any delays as soon as they became known.

In considering this element of the complaint, Ofcom took into account the following excerpt from the programme

Mr Brien: *"On 26 September, I walked into the showroom at Motor Depot and tried to buy a car. Was approached by a salesman which I would expect to be done 'cos he's a good salesman. We agreed to purchase a Seat Ibiza from them which would be delivered on the 2 October. So I signed for the car there and then in good faith thinking that the car would be delivered on the 2 October. We then got a phone call from the motor depot on the 1 October saying the car wouldn't be available until the Friday. Then on the Thursday we got a phone call saying the car wouldn't be ready until the following Monday.*

Mr Burns: *Which date would that be?*

Mr Brien: *I think it would have been about the 9 October. I then spoke to one of the salesmen and said look you know we've changed all the insurance over on the car we've got, the car was supposed to be delivered last Tuesday, and you know you haven't kept to the contract. And he said well we didn't know, state it was going to come in Mr Brien or anything like that".*

While Ofcom noted that it could not resolve whether the date of 2 October 2012 was given as an estimate of the date of delivery or not, it was not disputed that 2 October 2012 was the first date given for collection by Motor Depot. It was also not disputed that the delivery date had to be delayed. Ofcom also noted that it would have been clear to listeners that Mr Brien was providing his own version of the events as he recalled them rather than the programme presenting them to be facts. Ofcom noted too that it was clear from Mr Brien's account that the car in question was not on site when he bought it and that Mr Brien told the programme that Motor Depot did contact him on more than one occasion to inform him of the revised dates for collection.

Ofcom therefore considered that the broadcaster had taken reasonable steps to ensure that the programme presented Mr Brien's account on this point in a way that was not unfair to Motor Depot.

- Motor Depot had told Mr Brien that it wanted more time before he collected the car to ensure it was in the best condition. Motor Depot said that it was not the company's policy to release a vehicle before all the pre-collection checks had taken place and it had been given a full valet. However, Motor Depot said that Mr Brien had been adamant that he wanted to collect the car on 6 October 2012 and that he had been aware that he was collecting a car which had not yet been approved for collection. Motor Depot said that Mr Brien's recollection of events as presented in the programme would lead the general public to believe, wrongly, that Motor Depot released its vehicles in a poor condition.

Ofcom considered the following excerpts of Mr Brien's account from the programme.

"I think it would have been about the 9 October. I then spoke to one of the salesmen and said look you know we've changed all the insurance over on the car we've got, the car was supposed to be delivered last Tuesday, and you know you haven't kept to the contract. And he said well we didn't know, state it was going to come in Mr Brien or anything like that.

So when we actually got to pick the car up on the Saturday which I think was the 6 October, the car was all scratched, a wing mirror was in – was, er, damaged, the side door was damaged, there was two scratches on the actual bumper at the back –there was about 13 different faults. So I was away on business at the time so the Motor Depot said to my wife to bring the car back for the next week and they would replace with a courtesy car to put the things right with it".

From this, Ofcom considered that it was clear that Mr Brien collected the car before Motor Depot would have intended to deliver it, i.e. 6 October, rather than the 9 October. It also demonstrated that Motor Depot responded to its customer's complaint by offering to address the problems with the car and offering a replacement courtesy car in the interim.

As regards whether the programme suggested to viewers that Motor Depot released its vehicles in a poor condition, Ofcom took the view that it would have been clear to listeners that the account given in the programme only represented the experience Mr Brien, and the other individual consumers that contributed to the programme, said that had had with Motor Depot. The programme did not expand upon these experiences and made no general comment about the veracity (or otherwise) of those experiences or the competence and practices of the company.

Ofcom therefore considered that the broadcaster had taken reasonable steps to ensure that the programme presented Mr Brien's account in a way that was not unfair to Motor Depot.

- Motor Depot said that neither Mr Brien nor his wife complained about the courtesy car provided to them and had not specified to the company that the car needed to accommodate a child's pushchair. However, Motor Depot said that the way in which this was presented by Mr Brien in the programme would lead the general public to believe that Motor Depot had provided an inadequate courtesy car and had ignored a request for a specific requirement.

Ofcom noted from the programme that Mr Brien said that *“When it came to Thursday I got a courtesy car off them, and the courtesy car was a Peugeot 107 and my wife can’t even fit a pram in the back of a Peugeot 107, so she’s had to walk everywhere for the last few days”*.

Ofcom noted that at no stage in the programme did Mr Brien state that he had specifically requested for the courtesy car to be able to accommodate a child’s pushchair or pram, or that he had complained about the courtesy car. Ofcom further noted that the only grievance expressed by Mr Brien was the size of the car his wife had been given.

Given these factors, Ofcom took the view that it would have been unlikely that listeners would have inferred from Mr Brien’s account that he had made a specific request concerning the size of the courtesy car or that he had complained about it. Ofcom therefore considered that the broadcaster had taken reasonable steps to ensure that the programme presented Mr Brien’s account in a way that was not unfair to Motor Depot.

- Motor Depot said that Mr Brien was never referred to as *“fella”* by the sales manager and was not spoken to in a sarcastic manner. It said that Mr Brien’s recollection of the conversation misrepresented the customer service given by Motor Depot.

Ofcom noted the relevant part of the programme as broadcast in which Mr Brien said that:

“Now the thing is Dave, is that we got off to a bad, bad start – straight away – because of the state the car was in – I did express my disappointment at that – I think what the final straw for me was that I told them that I was going to take it further – and he said well where are you going to take it? And I said well Radio Humberside and Hull Daily Mail and he said “ha” – he said do you want Trading Standards’ number while you’re there as well, fella?”

Ofcom noted that Motor Depot accepted that this conversation took place and that Motor Depot had offered to provide the contact telephone number for Trading Standards.

Ofcom regarded this particular element of the complaint to represent a clear factual dispute between Motor Depot and Mr Brien as to whether or not Motor Depot used the word *“fella”* in the relevant conversation. While Ofcom is not in a position to determine whether or not Mr Brien was spoken to in a particular way, it did consider that the issue as to whether or not the word *“fella”* was used was not one that could reasonably be considered as being capable of amounting to unfairness. In any event, Ofcom again considered that it would have been clear to listeners that Mr Brien was expressing his own account of his experience and that it was not presented by the programme as a matter of fact.

Ofcom therefore considered that the broadcaster had taken reasonable steps to ensure that the programme presented Mr Brien’s account in a way that was not unfair to Motor Depot.

- Motor Depot said that Mr Brien had been wrong to assert that there was a *“cooling-off period”* and that the company had deliberately prevented him from

pursuing his statutory rights. It said that Mr Brien's comments inferred, falsely, that Motor Depot had acted maliciously and deceitfully, which gave a wrong and detrimental impression of it as a business.

Ofcom again identified the relevant comments made in the programme:

Mr Brien: *"I've picked the car up this morning because they've insisted that I pick the car up – they won't back down on it – but the car is two weeks late in being delivered – so in my opinion they have broke the contract. I signed on 26 September for a car I haven't seen so I have to take responsibility for that myself as well – but I was assured that the car was going to be there on 2 October – I still would have been within my cooling-off period then. If I didn't like the car I could have said no I want to cancel this deal. They made sure we didn't see the car until Saturday 6 October – I didn't get to see it until the 7 October – and straight away I went 'If this is how they send cars out, I want nothing to do with this company'"*.

and:

Ms Shambrook: *"Well in a situation like Tony's it is quite a complex situation because if he has bought it on finance and the finance was arranged for him by the dealership, then actually his contract is not with the dealer but rather with the finance company. But you don't have the right to cancel these sorts of agreements generally speaking unless you sign them at home or you have got a clear cooling-off period and Tony suggests that he might have done there. But if that period has passed and the car is in a satisfactory condition, he's inspected it and it's reasonable for the fact that its second hand and its price, and that cooling-off period has passed, he hasn't cancelled within that, then I think legally he probably doesn't have any – very many – if any rights at all"*.

Ofcom considered that it was clear from the programme that described by Mr Brien's account was clear presented in the programme as being his own interpretation of the events as he perceived them. Ofcom also considered that the view given by Ms Shambrook, the Consumer Rights Advisor featured in the programme, demonstrated that Mr Brien's interpretation of events was misguided because he had misunderstood what rights he had under the contract he had with Motor Depot. Ofcom was satisfied that that Mr Brien's comments were presented in the programme as being his own perception of events and were not presented as unequivocal fact by the programme.

Ofcom therefore considered that the broadcaster had taken reasonable steps to ensure that the programme presented Mr Brien's account in a way that was not unfair to Motor Depot.

- Motor Depot said that Mr Brien's assertion about the willingness of the finance company to cancel the contract (while the sales manager was not willing to exercise his discretion and cancel the contract), made Motor Depot seem unreasonable and unsympathetic to Mr Brien's situation, when it had in

fact done everything possible to appease him as a customer. Motor Depot said that the finance company would only put pressure on a dealer to rescind a finance agreement if it felt that a consumer had the right to reject a vehicle. In this case, no pressure was put on Motor Depot by the finance company who had told Mr Brien that the cancellation of the contract was a matter of discretion for the dealership.

Again, Ofcom noted from the relevant part of the programme that Mr Brien stated that *“On the Monday 16 October I phoned the finance company and told them that I wanted to cancel the car – they said they were happy to do it but it was at the discretion of the manager of the Motor Depot”*. It also noted the remarks made by a caller identified as *“Bernard”* that advised Mr Brien to *“Go to the finance company and say to them you’re rejecting ‘em, you’re not paying the finance, you’re going to cancel the direct debit, if you want to take me to court by all means go ahead and do it”*. In response, Mr Brien said *“Bernard I have tried doing that with the finance company but they have said that it’s down to the discretion of the manager or the sales manager of Motor Depot”*.

Ofcom considered that the account given by Mr Brien made clear that the cancellation of the contract was a matter of discretion left to the sales manager of Motor Depot and it was not disputed that Motor Depot did not allow Mr Brien to cancel the contract. Ofcom also considered that the programme did not state that the finance company had put pressure on Motor Depot, or that the finance company was sympathetic to Mr Brien’s complaint.

From the comments made by the contributors in the programme, Ofcom was satisfied that listeners would have understood the situation regarding the cancellation of the finance agreement and that, essentially, it was a matter of discretion for the Motor Depot sales manager to make. Ofcom therefore considered that the broadcaster had taken reasonable steps to ensure that the programme presented Mr Brien’s account in a way that was not unfair to Motor Depot.

Having considered each of elements particularized in the complaint at head a) that the programme portrayed Motor Depot unfairly both separately and in the context of the programme as a whole, Ofcom concluded that, overall, the broadcaster had taken reasonable care to satisfy itself that Mr Brien’s contribution to the programme had not been presented, omitted or disregarded in a way that resulted in unfairness to the complainant. Ofcom also noted that the broadcaster had presented in the broadcast that the programme had approached Motor Depot for a response (see head b) below) towards the end of the report. Ofcom took the view that Mr Brien’s contribution had been presented as his own account of his experiences with Motor Depot and that listeners would have been able to reach their own conclusions on the issues raised in the programme.

Ofcom found therefore that there was no unfairness to Motor Depot in this regard.

- b) Motor Depot was not given an appropriate or timely opportunity to respond to the allegations made in the programme. In particular, Motor Depot said that the programme makers had given the company less than 24 hours notice that the programme was to be broadcast, illustrating that a decision had been made to broadcast the allegations with or without Motor Depot’s contribution. Motor Depot said that it had not been able to put forward a balanced argument and had not

been told that the programme would include other contributions from listeners who criticised it.

In assessing this part of the complaint, Ofcom had regard to Practice 7.11 of the Code when considering this part of the complaint. This states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond. It also had regard to Practice 7.13 of the Code which states that where it is appropriate to represent the views of a person not participating this must be done in a fair manner.

Ofcom first examined the steps taken by the programme makers to provide Motor Depot with an opportunity to respond to the allegations made in Mr Brien's account that would be presented in the programme.

Ofcom noted that the programme makers had received an email from Mr Brien on 17 October 2012 and considered that it could form the basis of a consumer item in the programme. Mr Brien was contacted that afternoon, and at the same time, the programme makers sought to contact Motor Depot. This was the day prior to the intended broadcast of the programme.

Ofcom observed that the programme makers had tried to speak to a representative of Motor Depot by telephone, but that their calls went unanswered. The programme makers had then emailed Motor Depot using the email address given on Motor Depot's website, but that no response was received from Motor Depot on that day. The programme makers' email to Motor Depot was sent shortly after 17:00 hours on 17 October 2012 and the BBC's submission to Ofcom stated that Motor Depot advertised its opening hours to be between 08:30 to 1900 hours.

On 18 October 2012, Ofcom noted that the programme makers had not received an email response from Motor Depot. Extra telephone calls to Motor Depot were made by the programme makers between 09:00 and 09:30 hours. It was agreed between the BBC and Motor Depot that the first dialogue between them was at 09:30 hours when the programme makers' call was answered by an employee of Motor Depot. From the BBC's statement in response to the complaint, Ofcom took note that in this conversation, Motor Depot confirmed that Mr Brien's complaint with them was "real" and that it was "well aware" of it. Motor Depot also said to the BBC that Mr Brien had collected his vehicle and that it had considered the matter closed.

In this regard, Ofcom took the view that Motor Depot was clearly aware of Mr Brien's concerns and the issues involved. In these circumstances, Ofcom considered that Motor Depot was in a position to respond to the issues Mr Brien had raised in his email to the programme makers. In addition, Motor Depot did not ask the programme makers for more time in order to provide a response.

Furthermore, Ofcom took into account from the BBC's submission that the programme makers offered an opportunity for a representative of Motor Depot to contribute to the programme and that Motor Depot had declined this offer, stating that the company's representative was in a meeting and was unable to leave it. The programme makers had also asked Motor Depot if it wanted the comments it did make to be included in the programme, and again, Motor Depot declined the offer. Ofcom noted too that Motor Depot told the programme makers that it would not be providing a statement. Finally, Ofcom noted that the programme makers

provided Motor Depot with an open offer for it to respond during the programme or to participate in a programme thereafter. No response to this further offer, it seemed to Ofcom, was received by the programme makers.

Turning to the programme as broadcast, Ofcom had regard to the fact that the presenter stated towards the end of the item that:

“Right - so we’ve contacted Motor Depot, we have sent them an email, we have made various calls, asking them to respond, they’ve not responded as yet, they’re aware of this story”.

Ofcom noted that the presenter’s comments did not include the comments made by Motor Depot to the programme makers in the telephone conversation and that this was at the request of Motor Depot. In these circumstances, Ofcom considered that the presenter’s statement was an accurate reflection of the attempts the programme makers had made to contact Motor Depot in seeking its contribution to the programme or, at least, its response to Mr Brien’s complaint about the unsatisfactory service he perceived he had received from the company.

Given all these factors detailed above, Ofcom considered that Motor Depot had been given an appropriate and timely opportunity to respond to the allegations included in the programme. Being given less than 24 hours to respond to allegations made in a programme may seem a short period of time, but Ofcom considered that since Motor Depot was already aware of the detail of Mr Brien’s complaint it would have been in a position to respond to the issues within this time limit. Furthermore, Ofcom took the view that Motor Depot had been given the opportunity by the programme makers to contribute to the programme after Mr Brien had recounted his experiences on the programme, or indeed, on subsequent programmes, but had the company had chosen not to accept this offer.

Ofcom found therefore that there was no unfairness to Motor Depot in this regard.

Accordingly, Ofcom has not upheld Motor Depot’s complaint of unjust or unfair treatment in the programme as broadcast.

Other Programmes Not in Breach

Up to 3 June 2013

Programme	Broadcaster	Transmission Date	Categories
Advertisements	Aaj Tak	Various	Advertising minutage
Little Man	Comedy Central	06/04/2013	Generally accepted standards
Something for the Weekend / School's Out	Meridian FM	Various	Political advertising
The Incredible Hulk	ITV	30/03/2013	Scheduling
The Mummy: Tomb of the Dragon Emperor	ITV	31/03/2013	Scheduling
The Wright Stuff	Channel 5	27/03/2013	Disability discrimination/offence

Complaints Assessed, not Investigated

Between 21 May and 3 June 2011

This is a list of complaints that, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
5 Live Breakfast	BBC Radio 5 Live	15/05/2013	Religious/Beliefs discrimination/offence	1
5 News Update	Channel 5	26/05/2013	Due accuracy	1
8 Out of 10 Cats	E4	21/05/2013	Generally accepted standards	1
Advertisements	Colors	20/05/2013	Advertising minutage	1
Advertisements	ITV	n/a	Advertising minutage	1
Advertisements	ITV	n/a	Advertising scheduling	1
Ant and Dec's Saturday Night Takeaway	ITV	06/04/2013	Scheduling	1
Aunt Bessie's sponsorship of The Chase	ITV	13/05/2013	Generally accepted standards	1
BBC Breakfast	BBC 1	23/05/2013	Outside of remit / other	1
BBC iPlayer promotion	BBC 1	07/05/2013	Advertising content	1
BBC Look North	BBC 1	21/05/2013	Outside of remit / other	1
BBC News	BBC 1	25/05/2013	Generally accepted standards	1
BBC News	BBC News Channel	29/05/2013	Drugs, smoking, solvents or alcohol	1
BBC News	BBC Radio 2	28/05/2013	Outside of remit / other	1
BBC News at Six	BBC 1	29/05/2013	Generally accepted standards	1
BBC News at Ten	BBC 1	20/05/2013	Outside of remit / other	1
BBC News at Ten	BBC 1	31/05/2013	Outside of remit / other	1
Born to Kill?	Channel 5	02/05/2013	Scheduling	1
Brainiac: Science Abuse	Challenge	14/05/2013	Gender discrimination/offence	1
Capital Breakfast With Dave Berry and Lisa Snowden	Capital FM	11/05/2013	Generally accepted standards	1
Celebrity Juice	ITV2	n/a	Generally accepted standards	1
Champions League 2013 promotion	ITV channels	n/a	Generally accepted standards	1
Channel promotion	TLC	09/05/2013	Scheduling	1
Checkatrade sponsorship credit	ITV Tyne Tees	08/05/2013	Sponsorship credits	1
Chelsea Flower Show 2013	BBC 1	19/05/2013	Product placement	1
Chelsea Flower Show 2013	BBC 1	21/05/2013	Outside of remit / other	1
Competition graphic	E4	18/05/2013	Scheduling	1
Confessions of a Male Stripper	Channel 4	29/05/2013	Generally accepted standards	1

Confessions of a Male Stripper	Channel 4	29/05/2013	Sexual material	1
Coronation Street	ITV	26/05/2013	Undue prominence	1
Countdown	Channel 4	21/05/2013	Generally accepted standards	4
Crank	ITV	25/05/2013	Generally accepted standards	1
Criminal Minds	Sky Living	n/a	Advertising minutage	1
Daybreak	ITV	27/05/2013	Due impartiality/bias	1
Daybreak	ITV	29/05/2013	Sexual orientation discrimination/offence	1
Deal or No Deal	Channel 4	16/05/2013	Generally accepted standards	1
Dirty Britain	ITV	22/05/2013	Animal welfare	3
Doctor Who	BBC 1	04/05/2013	Violence and dangerous behaviour	1
Doctors	BBC 1	21/05/2013	Sexual material	1
Down the Line	BBC Radio 4	15/05/2013	Scheduling	1
Down the Line	BBC Radio 4	22/05/2013	Offensive language	1
EastEnders	BBC 1	29/05/2013	Generally accepted standards	1
Embarrassing Bodies	Channel 4	21/05/2013	Scheduling	3
Embarrassing Bodies	Channel 4	28/05/2013	Scheduling	2
Emmerdale	ITV	23/05/2013	Violence and dangerous behaviour	1
Emmerdale	ITV	29/05/2013	Offensive language	1
Emmerdale	ITV	29/05/2013	Sexual orientation discrimination/offence	1
Emmerdale	ITV	n/a	Generally accepted standards	1
Emmerdale	ITV2	23/05/2013	Generally accepted standards	1
Emmerdale	STV	13/05/2013	Drugs, smoking, solvents or alcohol	1
Eurovision Song Contest 2013	BBC 1	18/05/2013	Generally accepted standards	1
Eurovision Song Contest 2013	BBC 1	18/05/2013	Outside of remit / other	1
FA Cup Final	ITV	11/05/2013	Advertising/editorial distinction	1
FA Cup Final	ITV	11/05/2013	Gambling	1
Foxy Bingo's sponsorship of The Jeremy Kyle Show	ITV	22/05/2013	Generally accepted standards	1
Friday Night Dinner	Channel 4	n/a	Disability discrimination/offence	1
Geoff Lloyd's Hometown Show	Absolute Radio	28/05/2013	Generally accepted standards	1
Good Luck Charlie	Disney Channel	25/05/2013	Generally accepted standards	1
Grand Designs	More4	27/05/2013	Offensive language	1
Greg Burns	Capital FM	16/05/2013	Outside of remit / other	1
Greg James	BBC Radio 1	24/05/2013	Scheduling	1
Greggs: More Than Meats the Pie	Sky1	27/05/2013	Generally accepted standards	1

Halfords sponsorship credit	Dave	12/05/2013	Generally accepted standards	1
Halfords sponsorship credit	Dave	n/a	Sponsorship credits	1
Have I Got News for You	BBC 1	17/05/2013	Outside of remit / other	1
Have I Got News for You	BBC 1	24/05/2013	Generally accepted standards	1
Holby City	BBC 1	21/05/2013	Scheduling	1
Hollyoaks	Channel 4	30/05/2013	Violence and dangerous behaviour	1
House	Sky Atlantic	16/05/2013	Outside of remit / other	1
How to Win Eurovision	BBC 3	19/05/2013	Scheduling	3
Iain Dale	LBC 97.3FM	14/05/2013	Commercial communications on radio	1
Ian Dale	LBC 97.3FM	03/05/2013	Generally accepted standards	1
International Football	ITV	29/05/2013	Race discrimination/offence	2
International Football	ITV	02/06/2013	Outside of remit / other	1
ITV News and Weather	ITV	21/05/2013	Generally accepted standards	2
ITV News and Weather	ITV	29/05/2013	Privacy	1
ITV News London	ITV London	09/05/2013	Due accuracy	6
ITV News Meridian	ITV Meridian	20/05/2013	Due accuracy	1
Julia George	BBC Radio Kent	20/05/2013	Sexual orientation discrimination/offence	1
Kind Hearts and Coronets	BBC 2	11/05/2013	Offensive language	1
Kind Hearts and Coronets	BBC 2	11/05/2013	Race discrimination	1
Kismet Radio	Kismet Radio	02/05/2013	Generally accepted standards	1
Kismet Radio	Kismet Radio	09/05/2013	Generally accepted standards	1
Lambrini's sponsorship of the British Soap Awards 2013	ITV	20/05/2013	Generally accepted standards	1
Life of Crime	ITV	10/05/2013	Offensive language	1
Live Youth Show	Sikh Channel	05/05/2013	Religious/Beliefs discrimination/offence	1
Live: Probate Show	Sikh Channel	16/04/2013	Materially misleading	1
Loose Women	ITV	20/05/2013	Generally accepted standards	1
Loose Women	ITV	30/05/2013	Generally accepted standards	1
Loose Women	STV	28/05/2013	Disability discrimination/offence	1
Lorraine	ITV	27/05/2013	Violence and dangerous behaviour	1
Mary Queen of the High Street	Channel 4	07/05/2013	Materially misleading	1
Mating Season (trailer)	Channel 4	24/05/2013	Scheduling	1
Mating Season (trailer)	Channel 4	29/05/2013	Generally accepted standards	1
Mating Season (trailer)	Channel 4	02/06/2013	Generally accepted standards	1
Miranda	BBC 1	20/05/2013	Scheduling	1

Mornings with Toby Anstis	Heart FM	07/01/2013	Outside of remit / other	1
News programming	Geo News / ARY News	24/05/2013	Flashing images/risk to viewers who have PSE	1
Newsnight	BBC 2	22/05/2013	Generally accepted standards	1
Night at the Museum 2	Film4	12/05/2013	Offensive language	1
Off Their Rockers	ITV	05/05/2013	Under 18s in programmes	1
Off Their Rockers	ITV	12/05/2013	Nudity	1
Off Their Rockers	ITV	12/05/2013	Under 18s in programmes	1
Panorama: Hillsborough - How They Buried the Truth	BBC 1	20/05/2013	Outside of remit / other	1
Phones4U's sponsorship of Mission Impossible	Film4	20/05/2013	Sponsorship credits	1
Pokemon (trailer)	CITV	22/05/2013	Scheduling	1
Police, Camera, Action!	ITV4	21/05/2013	Age discrimination/offence	1
Programme trailers	Sky Sports	n/a	Scheduling	1
Programming	5USA / ITV3	n/a	Outside of remit / other	1
Programming	BBC	n/a	Advertising/editorial distinction	1
Programming	Various	n/a	Gender discrimination/offence	1
Punk'd	VIVA	20/05/2013	Generally accepted standards	1
Q and A English	Iqra TV	04/05/2013	Religious/Beliefs discrimination/offence	1
Radio 1 Teen Awards	BBC 1 (Red Button)	07/10/2012	Offensive language	1
Ramsay's Kitchen Nightmares USA	Channel 4	29/04/2013	Violence and dangerous behaviour	1
Rugby coverage	BBC Radio 5 Live and Talksport	01-Jun	Outside of remit / other	1
Russell Howard's Good News	Dave	27/05/2013	Religious/Beliefs discrimination/offence	1
Saturday Kitchen Live	BBC 1	11/05/2013	Product placement	1
Scott and Bailey	ITV	23/05/2013	Generally accepted standards	5
Scott and Bailey	ITV	23/05/2013	Violence and dangerous behaviour	1
Secrets of the Seven Sisters	Al Jazeera	11/04/2013	Religious/Beliefs discrimination/offence	1
Seven Seas Multivitamin's sponsorship of ITV National Weather	ITV	25/05/2013	Sponsorship credits	1
Simply Bhangra with DJ Harpz	Fever FM	11-May	Outside of remit / other	1
Sketchorama	BBC Radio 4	29/05/2013	Generally accepted standards	1
Skint	Channel 4	13/05/2013	Crime	1
Skint	Channel 4	13/05/2013	Generally accepted standards	2
Skint	Channel 4	13/05/2013	Materially misleading	1
Skint	Channel 4	20/05/2013	Crime	3

Skint	Channel 4	20/05/2013	Materially misleading	1
Skint	Channel 4	20/05/2013	Outside of remit / other	1
Sky News	Sky News	21/05/2013	Generally accepted standards	1
Sky News	Sky News	22/05/2013	Promotion of products/services	1
Sky News with Charlotte Hawkins	Sky News	22/05/2013	Outside of remit / other	1
Sky News with Kay Burley	Sky News	31/05/2013	Due accuracy	1
Sky Sports News	Sky Sports News	22/05/2013	Generally accepted standards	1
Sky World Review and Business Report	Sky News	21/05/2013	Offensive language	1
Studio 66	Studio 66 TV	n/a	Generally accepted standards	1
The Americans (trailer)	ITV	28/05/2013	Violence and dangerous behaviour	1
The Chris Evans Breakfast Show	BBC Radio 2	17/05/2013	Outside of remit / other	1
The Daily Politics	BBC 2	20/05/2013	Outside of remit / other	1
The Dam Busters	Channel 5	25/05/2013	Race discrimination/offence	1
The Dam Busters	Channel 5	25/05/2013	Television Access Services	1
The Devils Ride	Discovery	05/06/2013	Outside of remit / other	1
The Hunt for Britain's Sex Gangs (trailer)	Channel 4	20/05/2013	Scheduling	1
The Jeremy Kyle Show	ITV2	22/05/2013	Generally accepted standards	1
The Job Lot	ITV	20/05/2013	Disability discrimination/offence	7
The Job Lot	ITV	20/05/2013	Materially misleading	1
The Martin Lewis Money Show	ITV	24/05/2013	Materially misleading	1
The One Show	BBC 1	22/05/2013	Generally accepted standards	2
The One Show	BBC 1	24/05/2013	Generally accepted standards	1
The One Show	BBC 1	28/05/2013	Outside of remit / other	1
The Only Way is Marbs (trailer)	ITV	31/05/2013	Scheduling	1
The Premier League's Most Amazing Moments	BBC 3	19/05/2013	Gender discrimination/offence	1
The Voice UK	BBC 1	25/05/2013	Outside of remit / other	1
The World at One	BBC Radio 4	28/05/2013	Outside of remit / other	1
The Wright Stuff	Channel 5	15/04/2013	Disability discrimination/offence	1
The Wright Way	BBC 1	28/05/2013	Generally accepted standards	1
This Morning	ITV	03/06/2013	Competitions	1
Traffic Cops	BBC 3	23/05/2013	Offensive language	1
UEFA Champions League Final	ITV	25/05/2013	Race discrimination/offence	1
Vicious	ITV	20/05/2013	Sexual material	1

Wannabes	CITV	20/05/2013	Gender discrimination/offence	2
Waterloo Road	BBC 1	16/05/2013	Scheduling	3
Waterloo Road	BBC 1	29/05/2013	Scheduling	1
Who Wants to be a Millionaire?	ITV	21/05/2013	Race discrimination/offence	1
William Hill's sponsorship of the ITV FA Cup	ITV	11/05/2013	Gambling	1
X2	5*	20/05/2013	Advertising scheduling	1
You've Been Framed!	ITV	25/05/2013	Generally accepted standards	1
You've Been Framed!	ITV	25/05/2013	Violence and dangerous behaviour	1

Investigations List

If Ofcom considers that a broadcast may have breached its codes, it will start an investigation.

Here is an alphabetical list of new investigations launched between 23 May and 5 June 2013.

Programme	Broadcaster	Transmission date
5 News at 6.30	Channel 5	22 May 2013
Advertising scheduling	CNN International	23 April 2013
Al Jazeera News Live	Al Jazeera	22 May 2013
Ambur Radio sponsorship credit	Ambur Radio	25 March 2013
BBC News	BBC News channel	22 May 2013
BBC News at Six	BBC 1	24 May 2013
Bradford: City of Dreams	BBC 2	9 May 2013
Channel 4 News	Channel 4	22 May 2013
Channel 4 Racing	Channel 4	8 May 2013
Dave Kelly (Neil or No Neil)	Radio City 96.7FM	17 May 2013
Doctors	BBC 1	13 May 2013
Fundraising appeal	ATN Bangla	26 April 2013
Good Afternoon	Gateway 97.8 FM	15 May 2013
ITV News	ITV	22 May 2013
ITV News London	ITV	22 May 2013
News	PTC Punjabi	21 April 2013
News	IBC Tamil	3 December 2012
News, Sport, Weather	Sky News	22 May 2013

Pakistan International Airways' sponsorship credits	Asian Sound Radio	12 April 2013
Station promotion	2BR	1 May 2013
The Pitch	Controversial TV	11 May 2013
World News Today	BBC4	22 May 2013

It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster has done anything wrong. Not all investigations result in breaches of the Codes being recorded.

For more information about how Ofcom assesses complaints and conducts investigations go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

For fairness and privacy complaints go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.