

Ofcom broadcast bulletin

Issue number 51
9 January 2006

Contents

Introduction	3
--------------	---

Standards cases

In Breach	4
Resolved	6
Not in Breach	10

Fairness and Privacy cases

Upheld/Upheld in Part	13
Not Upheld	20
Other programmes not in breach/outside remit	33

Introduction

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

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

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

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

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

Standards cases

In Breach

Weeds

Sky One, 11 October 2005, 22:00

Introduction

This new drama series follows the life of Nancy, a suburban mother in California who, recently widowed, turned to drug dealing to try and make ends meet. A viewer was concerned at the apparent endorsement of drug-taking, underage sex and the use of seriously offensive language, including the word “cunt”.

Response

Sky stated that this drama did not condone drug dealing or underage sex. It was a black comedy contrasting the darker side of life with family life in the superficially tranquil setting of a Californian suburban neighbourhood. Although a comedy, it dealt with real issues and this realism was also carried through to the language used by the characters, whether they were teenage boys or middle-aged women.

The broadcaster explained the context in which the word “cunt” was used. One of Nancy’s friends, Celia, was determined to find out if her daughter, Quinn, was having sex with her boyfriend. She spied on her daughter with a hidden camera but was caught out when her daughter became aware of the camera and used it to teach her mother a lesson. Celia was angry at her daughter having got the better of her and the depth of her feeling was expressed by her use of the word “cunt”. Sky believed this final exchange between mother and daughter was integral to character development and the storyline. A breakdown of their relationship had occurred and the characters used appropriately strong language.

Overall, the broadcaster believed that the adult themes in this series had been well publicised and were not contrary to audience expectation. The programme was scheduled at an appropriately late hour, with the most offensive language coming at the end of the programme. The broadcaster said that generally this series would appeal to younger adult viewers who were more tolerant of offensive language.

Given all these factors, the broadcaster considered that an announcement alerting viewers to the strength of the language was unnecessary. The general theme of the drama, the scheduling and programme information all prepared viewers for the content and, given this context, the language would be unlikely to exceed their expectations.

Decision

We consider that this series was appropriately scheduled at 22:00, well after the watershed. Although a comedy, it dealt with the themes of drug-taking and underage sex in a realistic manner which did not endorse or promote these activities.

Whilst audience research does show that generally young adults are more tolerant of seriously offensive language, the word “cunt” is considered to be one of the most

offensive words to any audience. In the context of this drama, we do not believe that most viewers would have been offended by the use of this language, but there was a possibility that some viewers would have been unprepared for the amount and level of swearing in the first episode of this new series.

The Broadcasting Code requires broadcasters to provide “appropriate information to assist in avoiding or minimising offence” if programmes contain material which may cause offence. Announcements alerting viewers to potentially offensive material may not always be necessary.

This was a new drama, broadcast on a general entertainment channel, which was unfamiliar to the audience and it contained strong offensive language from the outset, including the word "cunt". The pre-publicity for this series would have given viewers an indication of the themes of this drama, but neither this nor the title of the series would necessarily have indicated the strength of language used. Given these factors, we believe that information informing viewers of the content should have been given. This would have provided viewers with the necessary information to make an informed decision whether to view this programme.

Breach of Rule 2.3 (generally accepted standards – “appropriate information”)

Resolved

Eric Hall

BBC Essex, 6 November 2005, 15:00

Introduction

A listener entered a station competition believing the prize to be a shopping trip to New York – the prize described by the presenter. The complainant won the competition, was called back by the broadcaster and taken to air. The presenter asked her if she had ever been to New York. The complainant believed “he was just being silly” when, a little later, he said that he could not afford to send her to New York.

A few days later, she received her prize, which was a “...CD, a car sticker and a card with pictures of BBC Essex DJs.” The complainant believed that she had been humiliated on air and that the presenter had “abused the trust and reputation of the BBC.”

Response

The BBC apologised for the disappointment experienced by the complainant, adding that it had not intended to humiliate her. Part of the presenter’s style was to introduce competitions “with the mention of a prize he’d like to be able to offer, but can’t because of lack of funds”, which he usually made clear immediately. The broadcaster added that the terms in which this was normally expressed have become something of a catchphrase, with some listeners calling in to say “they’d like to give the answer, but can’t.” On this occasion, however, the presenter was distracted by a typing error in the title of a song – the subject of the competition. As a result, he omitted to mention “the usual disclaimer” until later, when he was in conversation with the complainant.

The broadcaster assured us that the station’s editor had reminded the presenter of the importance of not misleading the audience about prizes they can expect. It added that the presenter had written a personal apology to the complainant and the editor had spoken to her, with reassurance that what had happened was the result of an unfortunate error, not deliberate deception.

Decision

Rule 2.11 of the Broadcasting Code requires that “competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known”.

Listeners unfamiliar with the presenter’s usual catchphrase were likely to have expected the prize of a shopping trip to New York if they had won the competition. However, we understand how this misunderstanding came about and welcome the broadcaster’s recognition of the importance of a clear disclaimer. In view of the BBC’s apology, actions and assurance to the complainant, we consider the matter resolved.

Complaint resolved

97.4 Rock FM

19 November 2005, 11:05

Introduction

A listener complained that while he was listening with his young child, he heard the presenter use the word *'bastard'*.

Response

Rock FM explained that the swearing had occurred during an item in which listeners had been invited to text in the names of celebrities they found irritating. The response was much greater than expected and the presenter had quite a task selecting those to read on-air. Although he passed over many, including several because of inappropriate language, in haste he inadvertently read one of the texts verbatim.

Rock FM's management apologised for any offence caused by the feature. The presenter had been spoken to immediately after the incident and he recognised that the use of the word was unacceptable at that time of day. The station took the view that it was a regrettable error of judgement, made on the spur of the moment during a particularly busy segment of the programme. It was confident that the action taken would prevent any future occurrence.

Decision

In view of the action taken by the broadcaster, we consider the matter resolved.

Complaint resolved

Sponsorship Credit – Factory Direct

Metro Radio, various times and dates in November and December 2005

Introduction

Factory Direct sponsored Metro Radio's three day weather forecast. Factory Direct's credit claimed: "No one saves you more money." Budget Windows, a competitor, questioned whether the claim could be substantiated.

Response

Metro Radio assured us that care was taken to ensure sponsor credits were Code compliant. The broadcaster said that while adequate substantiation had not been obtained prior to broadcast, the station management had noticed the content of the credit and were already in the process of amending it when Ofcom alerted them to the complaint.

It therefore regretted its mistake on this occasion, adding that those responsible had been reminded of the requirements of Section 2 Rule 3c (Misleadingness) and Rule 6 (Fair Comparisons) of the BCAP Radio Advertising Standards Code.

Decision

The broadcaster's clearance procedures had failed to identify the potential for a misleading claim in the sponsor's credit on this occasion. However we welcome the prompt action and assurances of station management, which we believe resolves the matter.

Complaint resolved

Bikini Beach

Lucky Star TV, 6 September 2005, 23:00

Introduction

In the game, *Which Flag(s) are Incorrect?* nine flags were shown on screen. Viewers were invited to call a premium rate number to answer the question. One viewer believed that the answer provided at the end of the game was incorrect.

Response

Telecoms TV accepted that it had made an error but assured us that it had a thorough and precise checking procedure, which had resulted in only 4 mistakes in over 3,000 similar games. It apologised for the inconvenience caused to viewers and had taken steps to try to locate the one player who had actually provided the correct answer on air, so that they could be awarded the prize.

Decision

Rule 2.11 of the Broadcasting Code requires, among other things, that “competitions should be run fairly...”. We welcome the broadcaster’s action and assurance, which we believe resolves the matter on this occasion. However we would be concerned by any recurrence.

Complaint resolved

Information about the ICSTIS consultation concerning TV quiz channels/programmes using premium rate lines was published in Bulletin 46

Not in Breach

The F Word

Channel 4, 15 December 2005, 20:00

Introduction

This is a new series featuring Gordon Ramsay looking at a wide range of aspects in the food and catering industry. Produced in a contemporary style, it features both light-hearted and more challenging items. In this episode, the presenter arranges for the slaughter of a number of turkeys in preparation for Christmas. The turkeys had been brought from a specialist free-range farm to live in the garden of Gordon Ramsay's family home at the start of the series.

27 viewers complained that the slaughter of the turkeys was distressing and that it was unnecessary to show it, particularly before the 21:00 watershed when younger viewers may have been watching.

18 viewers also wrote in support of the item and to counter reported complaints to Ofcom and Channel 4.

Decision

It was clear from the first programme in the series that the turkeys were bought specifically to be slaughtered for Christmas. In the introduction to that programme, Gordon Ramsay said: "I live in the city. I want my children to learn and understand where their food comes from." His wife added: "We are going to grow Christmas lunch. He [Gordon] wants to make the children understand that Christmas lunch comes from somewhere and not just the supermarket."

There were warnings at the beginning of the programme, which featured the slaughter, (broadcast on 15 December 2005) and before the event itself. The commentary to the programme said that the slaughter of the turkeys was performed by a licensed slaughterman and in a way that complied with current UK standards. Gordon Ramsay expressed the views that, nevertheless, this was a controversial event and, in some ways, hard to take when he pointed out that he felt in some way "guilty" as he prepared to bring the first turkey to the slaughter.

In our view, the issue as a whole was treated in a responsible and professional way. The clear intention from the outset was to explain both to the viewer and Gordon Ramsay's family the process which brings turkey meat to people's tables on Christmas day. While the procedure itself was shown in full, there were no unduly distressing scenes. We do not consider that the images were sufficiently distressing for them to have gone beyond generally accepted standards in this particular programme, on this channel at this time.

Not in breach

Jamie's Great Escape

Channel 4, 9 November 2005, 20:30

Introduction

This series features the celebrity chef Jamie Oliver travelling around Italy in a camper van, sampling the cuisine and culture of different regions. In this programme, Jamie was visiting a hill farmer who invited him to help prepare for a family feast. For that reason, Jamie was encouraged by the farmer to select a lamb and slaughter it. This Jamie did.

30 viewers complained that this material was not suitable for pre-watershed viewing and/or that such a practice is illegal in this country, since the animal needs to have been stunned first before being slaughtered.

Decision

The early scenes in the programme, and the presenter's commentary itself, made it clear Jamie Oliver would be slaughtering a lamb. It was clear from the programme that the presenter found it emotionally difficult to carry out his task but the lamb did not struggle or make any distressing noises. There was almost no blood shown, and, arguably, it was hard to see what was happening at all. The sequence concluded with a comment explaining that such events go on all the time and that this particular process was part and parcel of life in the region.

The presenter went on to criticise mass, mechanical slaughter and suggested that if people had found the scenes distressing then perhaps they should consider becoming vegetarian.

We consider that the programme treated the matter responsibly and informatively. There were no graphic distressing scenes and the programme sought to reflect a tradition that has been going on throughout the world, and in that particular part of Italy, for thousands of years. Whilst it may be illegal to slaughter animals in the UK without stunning them first, the programme was clearly set in Italy and the audience would have been aware of that context, and the cultural differences that went with it. We also believe that it is unlikely that the programme would encourage anyone in this country to slaughter an animal illegally.

Not in breach

The X Factor

ITV 1, 12 November 2005, 21:15

Introduction

In this edition of the talent show, Sharon Osborne criticised one of the other judges, Louis Walsh, for choosing the 'Conway Sisters' over 'Maria'. Both Louis Walsh and the Conway Sisters are Irish.

In the course of this criticism she said: "It's a travesty. It's about where they are from and not about talent. It's like the Irish Mafia." 26 viewers complained that the comment regarding the Irish Mafia was racist and/or unacceptable.

Decision

This is an entertainment show where extreme emotions and often tempers are exposed. The expression was in the heat of an emotional moment – 'Maria', whom Sharon Osborne was sponsoring, was being rejected in favour of the 'Conway Sisters'. When it was followed by some boos from the audience, Sharon Osborne pointed out that she was part-Irish herself.

Insults have been exchanged between the judges over this and the previous series. The presenter gave Louis the opportunity to respond to the particular remark and he chose not to. She then gave 'Maria' the opportunity to continue the Irish theme but she preferred to accept Louis' reasoning for his choice – that it was "from the heart". In effect, the use of that particular expression had been addressed and dealt with within the context of the programme.

The use of the expression 'mafia' after almost any social group or nationality is a common occurrence in the English language. Its use is usually to imply that there is a preferential attitude operating to the detriment of the person using the expression. The expression was used in this context as an attack on exclusivity. We therefore do not believe that the remark was a deliberate attempt to denigrate Irish people in general or that the programme went beyond generally accepted standards.

Not in breach

Fairness and Privacy Cases

Upheld/Upheld in Part

Complaint by Waitt & Co Solicitors on behalf of Mr Jason Berry

South East Today, BBC1, 11 August 2004

Summary: Ofcom has upheld in part a complaint of unfair treatment about this regional news programme. It has not upheld a complaint of unwarranted infringement of privacy. This programme referred to the death of Jessica Leigh who died after being struck by a vehicle driven by Mr Jason Berry. Mr Berry complained that the programme presented the facts of his driving conviction in an unfair and misleading way. Mr Berry complained that his privacy was unwarrantably infringed in that he was subjected to abuse and had been ostracised by his local community as a result of the programme.

Ofcom found unfairness to Mr Berry in the following respects:

- It was misleading to state that “it was proved in court that [Mr Berry] was travelling at around 50 mph” and would have been likely to have led viewers to have reached an unfair conclusion about the extent of Mr Berry’s recklessness.
- The programme did not give the necessary context behind the reasons Mr Berry did not receive a custodial sentence and was likely to have left viewers with the impression that Mr Berry had somehow ‘got off’.
- The programme’s description of the accident itself did not fully reflect what was found by the court at Mr Berry’s trial. Ofcom considered that by not including the fact that Jessica Leigh had stepped out into the path of the vehicle when the pedestrian crossing light was red, the report had misrepresented the circumstances of the accident.

Ofcom found no unfairness to Mr Berry in the following respects:

- Although the programme incorrectly referred to the accident having occurred a year later than it actually did there was no evidence to suggest that this inaccuracy resulted in unfairness to Mr Berry. Moreover, the date of the accident in itself was not likely to have materially affected viewers’ understanding of Mr Berry’s case or the nature of his offence.
- It was not incumbent on the programme-maker to have referred to the secondary effects or consequences of Mr Berry’s conviction.
- The statement in the programme that “under the law, because he was not under the influence of drink or drugs, her death could not be taken into account for his sentence into careless driving” was inaccurate but did not suggest that Mr Berry had been suspected of being under the influence of drink or drugs at the time of the accident.

- It was made sufficiently clear to viewers that the reference by the reporter to Mr Berry's case not being the only example of "lenient sentencing", was a criticism of the current legal system in relation to sentencing in motoring offences and was not directed at Mr Berry personally.
- The lack of a view from someone opposed to the government's proposals to review sentencing policy in relation to certain motoring offences was not a fairness and privacy matter relating to Mr Berry but an issue of impartiality on a matter of political controversy or relating to current public policy. This was not unfair to Mr Berry.
- Although not all the details of Mr Berry's case were fairly represented in all the circumstances this did not mean, in itself, that Mr Berry or his solicitor should have been offered an opportunity to respond.

Finally, the programme did not disclose any information about Mr Berry or his personal life that was inherently private. Mr Berry's conviction and sentence were a matter of public record and, as such, were in the public domain. In these circumstances, Ofcom took the view that the reference in the programme to Mr Berry's case did not amount to an infringement of his privacy.

Introduction

This regional news item reported on the Government's proposal to review motoring law in the light of what it perceived to be public concern about lenient sentencing. The report referred to the death of Jessica Leigh who died after being struck by a vehicle driven by Mr Jason Berry. Mr Berry, who was named in the report, was prosecuted and found guilty of driving without due care and attention. He was fined £300 and his driving licence was endorsed with six penalty points. The report also featured interviews with Jessica's parents, who had collected 10,000 signatures in support of their campaign for tougher sentencing, and Mr Simon Collister of BRAKE, a charitable organisation that campaigned on issues relating to road safety.

Waitt & Co Solicitors complained to Ofcom on behalf of Mr Berry that he was treated unfairly in the programme and that his privacy was unwarrantably infringed in the programme as broadcast.

The Complaint

Mr Berry's case

In summary, Waitt & Co Solicitors complained on behalf of Mr Berry that:

- a) The programme incorrectly stated that the accident happened "last September", thereby giving the impression that the accident occurred in September 2003 when, in fact, it happened in September 2002.
- b) The programme incorrectly stated that "It was proved in Court that he (Jason Berry) was travelling at around 50 miles an hour". The magistrates heard conflicting evidence regarding the speed at which Mr Berry was travelling. It did not make any finding as to the exact speed at which he was travelling, though it was accepted that he was travelling above the legal speed limit.
- c) The programme stated that Mr Berry was fined "just £300" and had his

licence endorsed with six penalty points. This was misleading as it did not reflect the totality of the sentence and its effect on Mr Berry. In addition to the fine and penalty points, Mr Berry was ordered to pay £700 towards prosecution costs and, because Mr Berry was a “new driver”, the effect of the six penalty point endorsement was that his licence was revoked and he would be required to retake both his driving test and theory test.

- d) The programme inaccurately and misleadingly stated that Mr Berry “avoided” prison because he was convicted of careless and not dangerous driving. A custodial sentence was never an option available to the court and to say that Mr Berry “avoided” prison, suggested his case had “slipped through the net” or had narrowly missed a stronger prosecution. A more even-handed report would have included comments from the Crown Prosecution Service as to why a particular charge was preferred over another.
- e) The programme stated that Jessica was crossing the road with friends. This description of the accident was misleading as it omitted a key finding of the court that “Jessica had stepped out (...) against a red pedestrian crossing light”. This important piece of evidence was a factor taken into account by the court when reaching its sentencing decision.
- f) The programme stated that “under the law, as he [Mr Berry] was not on drink and drugs they [the magistrates] could not take into account the death”. The presence of drink or drugs is not a prerequisite of an enhanced sentence: A court may impose an enhanced sentence where death results. The report did not make it clear that there was never any suggestion that Jason Berry had been taking drink or drugs when the accident occurred.
- g) The programme stated that Jessica’s was not the only case of lenient sentencing and then led into a commentary on two other cases in which the drivers were imprisoned. The comments made by the reporter were an opinion that was put forward without any opposing view. Drawing parallels between Mr Berry’s case and the two cases without further qualification was misleading.
- h) The programme included an interview with Mr Collister of BRAKE, but failed to include the views of an impartial lawyer, the Crown Prosecution Service or the court to comment on the distinctions between the various offences and penalties where death arises out of an accident.
- i) Neither Mr Berry nor his solicitors were given the opportunity to comment.
- j) The programme infringed Mr Berry's privacy in the programme as broadcast. As a result of the report, Mr Berry had been subjected to abuse and has been ostracised by his local community.

The BBC’s case

In summary, the BBC responded that:

- a) It was accepted that the programme incorrectly stated when the accident occurred. The BBC, who had apologised for the error in earlier correspondence with the complainant, said that the error did not affect the substance of the report or raise any issue of fairness or privacy.

- b) The BBC said that Jessica's mother had told the reporter that "it was proved in court that Berry was travelling at around 50mph". However, it was accepted that this statement was inaccurate and that the reporter should have checked it.
- c) The BBC said that the entry in the court register relating to Mr Berry's sentence read "Fine only. Licence endorsed with 6 penalty points". The reporter's statement was therefore a correct account of the sentence. The report did not include cost orders for any of the cases mentioned. This was consistent with previous reports broadcast at the time of the court case. As for the effect of the addition of these six points to Mr Berry's existing total, there was no unfairness in not drawing attention to this in the context of the report.
- d) The BBC accepted that Mr Berry could not have been convicted and sentenced for an offence with which he was not charged, and that the choice of charge was a matter for the Crown Prosecution Service. The BBC said that viewers would have been well aware that it was not the defendant who decided the charge and that they would not have seen any implication of avoidance on Mr Berry's part. However, the point of the statement, and the reason why the case attracted public attention was that, as the law stood, situations arose where drivers who have killed people in the course of committing a traffic offence might not have faced, as many would view, an appropriate and proportionate penalty.
- e) The BBC said that it was stated in court, and subsequently reported, that a friend of Jessica who had been with her at the time of the accident said that "Jessica couldn't have been a couple of steps into the road when he [Mr Berry] hit her". The BBC said that this was a fair account of the accident. Although it was not disputed that Jessica had stepped out against a red pedestrian light, the court did conclude that Mr Berry had been travelling above the legal speed limit and in any event at a speed inappropriate for the circumstances of the busy town centre junction where the accident occurred. Had Mr Berry been driving with due care and attention, the accident might not have occurred, or if it had occurred, might not have had fatal consequences.
- f) The report did not suggest that Mr Berry had taken drink or drugs. The BBC admit that the presence of drink or drugs is not a prerequisite for an enhanced sentence, but that this seemed to be a matter of law rather than a matter of unfairness to Mr Berry.
- g) The BBC said that a sentence of a £300 fine and six penalty points endorsed on a licence for an offence which resulted in death could be reasonably described as lenient, even though it might be the most appropriate court sentence in light of the options available in cases of driving without due care and attention. It was precisely because the options were so limited in relation to this offence that the issue was one of public concern. The BBC said that the item made it clear to viewers that the other two cases referred to in the report were not being presented as being of equal gravity or similarity, but were presented to illustrate the perception of the law's leniency to which the cases had given rise.
- h) The BBC said that the item was not primarily about Mr Berry or the rights or wrongs of his case, but was about the fresh development in the debate about whether the law should be changed. It was therefore appropriate to include comment from a representative from a group who wanted to see a change in

the law. Whether the item should have included a contribution from someone who would argue that the law should remain unchanged raised issues of impartiality, rather than unfairness to Mr Berry.

- i) The BBC said that there was no obligation to invite comment from or on behalf of offenders on occasions when their offences are mentioned by way of illustration in a news story. There was an obligation to present the matters fairly which was an issue for Ofcom to decide.
- j) Mr Berry was convicted of a motoring offence which was a matter in the public domain. The issue of reviewing motoring law was a subject of intense public interest and, therefore, it was entirely legitimate for the BBC to report on it and refer to relevant cases. In this instance, the references to Mr Berry did not go beyond what was in the public domain.

Decision

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

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

In this case Ofcom found the following:

- a) Ofcom noted that the commentary was incorrect in referring to the accident having occurred a year later than it actually did and noted that the BBC had apologised to Mr Berry in earlier correspondence. However, while recognising the error, Ofcom has not seen any evidence to suggest that this inaccuracy resulted in unfairness to Mr Berry. Moreover, the date of the accident in itself is not likely to have materially affected viewers' understanding of Mr Berry's case or the nature of his offence.
- b) Ofcom noted that the BBC accepted that the report was wrong in stating that the court had proved that Mr Berry was travelling at around 50 mph. Broadcasters should take special care when their programmes are capable of adversely affecting the reputation of individuals. Although it was accepted by the court that Mr Berry exceeded the legal speed limit at the time of the accident in which a child was killed, it was misleading to state that "it was proved in court that [Mr Berry] was travelling at around 50 mph". Ofcom considered that this statement was misleading and had resulted in unfairness to Mr Berry, in that the statement would have been likely to have led viewers to have reached an unfair conclusion about the extent of his recklessness. In such circumstances, broadcasters should take reasonable care to satisfy themselves that all material facts have been considered before transmission and so far as possible are fairly represented. In this particular case, the programme-maker should have checked whether the statement by Jessica Leigh's mother that "it was proved in court that Berry was travelling at around 50 mph" was accurate. In this case, reasonable care had not been taken and

the inaccuracy, in Ofcom's view, had led to unfairness to Mr Berry.

- c) Ofcom was satisfied that the report accurately and fairly represented the sentence of the court and that it was not incumbent on the programme-maker to have referred to the secondary effects of the sentencing on Mr Berry. The focus of the report had been on the debate about the supposed leniency of sentences in certain motoring offences, not on the effect of particular sentences on Mr Berry or on any of the other motorists convicted of an offence referred to in the report. In these circumstances, there was no unfairness to Mr Berry by not referring to the consequences flowing from his conviction.
- d) In Ofcom's view, the BBC did not give the necessary context behind the reasons Mr Berry did not receive a custodial sentence. The report in stating that: "the driver was given a fine and penalty points but avoided prison because he was convicted of careless and not dangerous driving" was likely to have left viewers with the impression that Mr Berry had somehow 'got off'. This is because the BBC did not explain at the appropriate time the differences in sentencing powers connected to careless and dangerous driving. This, taken in the context of the other inaccuracies in the report (referred to in this adjudication) was unfair to Mr Berry because the report did not make it clear that a custodial sentence was not a penalty that was available to the court in his case; and Ofcom was not satisfied that viewers would necessarily have been aware of the technical differences between dangerous and careless driving and the penalties available to the court in respect of each offence.
- e) Ofcom considered that the report's description of the accident itself did not fully reflect what was found by the court at Mr Berry's trial. Although there was no question that Mr Berry was exceeding the legal speed limit and was found guilty of driving without due care and attention, Ofcom considered that by not including the fact that Jessica Leigh had stepped out into the path of the vehicle when the pedestrian crossing light was red, the report had misrepresented the circumstances of the accident. Ofcom took the view that this resulted in unfairness to Mr Berry.
- f) Ofcom noted the BBC's acceptance that the presence of drink or drugs was not a prerequisite for an enhanced sentence. However, in Ofcom's view, the legal inaccuracy in the statement "under the law, because he was not under the influence of drink or drugs, her death could not be taken into account for his sentence into careless driving" did not, in itself, result in unfairness to Mr Berry. It did not, in any way, suggest that Mr Berry had been suspected of being under the influence of drink or drugs at the time of the accident. There was therefore no unfairness to Mr Berry in this respect.
- g) Ofcom considered that it was made sufficiently clear to viewers that the reference by the reporter to Mr Berry's case not being the only example of "lenient sentencing", was a criticism of the current legal system in relation to sentencing in motoring offences and was not directed at Mr Berry personally. In the circumstances therefore, Ofcom was satisfied that the reference to lenient sentencing did not result in unfairness to Mr Berry.
- h) Whether BBC South East Today should have broadcast in the programme a view from someone opposed to the government's proposals to review sentencing policy in relation to certain motoring offences is not a fairness and

privacy matter relating to Mr Berry but an issue of impartiality on a matter of political controversy or relating to current public policy. As such, the lack of such a view in the programme did not result in any unfairness to Mr Berry.

- i) Where decided legal cases are referred to in programmes, broadcasters have no obligation to provide persons convicted of offences with an opportunity to comment on their cases where the programme's presentation of these matters stays within the bounds of what has already been proven to the satisfaction of the court. Ofcom did not therefore consider that it was unfair in itself for Mr Berry and/or his solicitor not to be invited to comment on Mr Berry's case. However, it is the responsibility of broadcasters to take reasonable care to satisfy themselves that all material facts have been considered before transmission and so far as possible are fairly represented. This may involve checking the facts through the parties concerned (in this case Mr Berry and/or his solicitor), but not necessarily. In the first instance, it is for broadcasters to ensure by appropriate means that any reporting of facts on the public record is factually accurate. In this case, for the reasons given above, Ofcom did not consider that the details of Mr Berry's case were fairly represented in all the circumstances (see b), d) and e)) but this did not mean, in itself, that Mr Berry or his solicitor should have been offered an opportunity to respond.
- j) Ofcom considered that the programme did not disclose any information about Mr Berry or his personal life that was inherently private. Mr Berry's conviction and sentence were a matter of public record and, as such, were in the public domain. In these circumstances, Ofcom took the view that the reference in the programme to Mr Berry's case did not amount to an infringement of his privacy.

Accordingly, the complaint was upheld in part in relation to unfair treatment but was not upheld in relation to unwarranted infringement of privacy.

Ofcom directed the BBC to broadcast a summary of its findings.

Not Upheld

Mr U

The Cowboy Trap, Channel 4, 23 August 2004

Summary: Ofcom has not upheld this complaint of unfair treatment about this consumer affairs programme which looked at, among other things, the alleged high pressure sales tactics of the double glazing company Weatherseal Holdings Limited. Mr U, a sales representative for the company, was secretly filmed giving a sales presentation. Mr U complained that he was treated unfairly in the programme.

Ofcom found that:

- Having viewed the untransmitted secretly filmed footage of the event, and in light of the comments provided in the programme by a Trading Standards expert, Ofcom considered that it was reasonable for the programme to describe Mr U as a “certified cowboy”.
- The programme did not state or suggest that Mr U was “robbing an old man”. It simply presented elements of his behaviour which raised legitimate concerns about his treatment of the customer.
- Given the relevant expert opinion, it was reasonable for the programme to suggest that Mr U used high pressure sales tactics and that he was trying to wear out the customer.
- In these circumstances, and given Mr U’s own conduct when dealing with the customer, Ofcom considered that it was legitimate to secretly film him, name him and not to obscure his face.

Introduction

This consumer affairs programme included a report on the alleged high pressure sales tactics of the double glazing company Weatherseal Holdings Limited (“Weatherseal”). Mr U, a sales representative for the company, was secretly filmed giving a sales presentation to an actor posing as a potential customer called ‘Mr Derek Evans’. Some of the secretly filmed footage was included in the programme as broadcast. The programme named Mr U and referred to him as a “certified cowboy”.

The programme also included comments on Mr U’s conduct from Mr Richard Nowacki, an independent Trading Standards expert.

Mr U complained that he was treated unfairly in the programme as broadcast.

The Complaint

Mr U’s case

In summary, Mr U complained that:

- a) He was referred to in the programme as a “certified cowboy” and the programme created the false impression that he was “robbing an old man”. Mr U stated that the fact that, the customer, Mr Evans was old was irrelevant. Mr U also

said that he was always polite to customers and that he was carrying out his job the way Weatherseal required him to do so.

b) The programme suggested that he was using high pressure sales tactics. Mr U said that his sales approach was what was expected of Weatherseal sales representatives and that any criticism of the techniques should have been directed at Weatherseal and not to him personally. The programme also suggested falsely that he was trying to “wear out the customer” as he had been in the customer’s house for over three hours. Mr U said that Weatherseal required its sales representatives to follow 12 steps in delivering their “pitches” which included paperwork that was checked by the company the next day.

c) The programme targeted him unfairly by showing his face and naming him. Mr U said that it was not necessary to identify him in this manner in order to highlight how sales representatives go about selling products in customer’s homes in general.

Channel 4’s case

In summary, Channel 4 said that:

a) Mr U went to considerable lengths to persuade Mr Evans to purchase the windows. He was well aware that Mr Evans was being “worn down”, which was evident from his telephone conversation with his manager (see below), and he appeared to relish the fact that he believed that he was about to secure a sale. It was also clear that Mr U repeatedly lied to Mr Evans and pressured him, an elderly man living on his own, into purchasing the windows and signing up to a costly credit agreement. In all the circumstances, Channel 4 said that the programme’s description of Mr U as a “certified cowboy” was entirely accurate.

No commentary was used in the programme that would have created the impression that Mr U was “robbing an old man” nor did the programme dispute that Mr U was polite and courteous. However, hidden behind this were his attempts to manipulate and pressurise Mr Evans. In Weatherseal’s response to the allegations referred to in the programme it was clear that the company itself did not condone any attempt to exploit or mislead its customers.

b) Despite Mr U’s denial that he used pressure tactics, the unedited secretly filmed footage and the opinion of Mr Richard Nowacki, the independent Trading Standards expert who appeared in the programme, clearly demonstrated that pressure tactics were used. Mr U in fact spent over four hours with Mr Evans, during which time Mr Evans hinted that he was tiring and even fell asleep. Notwithstanding such obvious signs that Mr Evans was getting tired, Mr U continued with the sales presentation. Channel 4 said that when Mr Evans went to the toilet, Mr U was heard to say to his manager (with a smile) that “he’s just gone into the toilet quickly...[be]cause he couldn’t handle it anymore”. Mr Nowacki said that such sales techniques were commonly used to wear down the customer. It was also clear from Mr U’s comments to his manager that he was aware that Mr Evans was tiring and that he had overstayed his welcome.

c) The programme examined the dishonest behaviour of salesmen and traders who routinely took advantage of customers in their home. Mr U was Weatherseal’s representative in the customer’s home and in many ways the “human face” of Weatherseal. He was therefore a legitimate subject for investigation into the practices operated by the company. Channel 4 said that Mr U used disreputable methods in

order to secure a sale. In these circumstances, it was entirely justifiable to identify his face and his first name, given his secretly recorded conduct.

Decision

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

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

In the circumstances of this case Ofcom found the following:

a) Having viewed the untransmitted secretly filmed footage of the event, and in light of the comments provided in the programme by Mr Nowacki (Trading Standards expert), Ofcom considered that it was reasonable for the programme to describe Mr U as a "certified cowboy". In reaching this decision Ofcom took into account the following:

- the sales pitch lasted for over four hours (considered by the relevant expert, Mr Nowacki, as an excessive and unreasonable length of time);
- the footage showed that, despite the fact that Mr Evans was clearly tiring (see finding (b) below), Mr U continued to make the sales pitch and apply pressure on him to purchase products;
- Mr U appeared from the footage to acknowledge in a telephone call to his manager that he was aware of the pressure he was putting on Mr Evans; and,
- Mr U appeared to use a technique of 'sale by fear', preying on the apparent vulnerability of Mr Evans, by frequently referring to the prospect of being burgled.

In all, Ofcom took the view that Mr U's conduct, whether company policy or not, fell far below what people could reasonably expect from a reputable salesperson.

However, Ofcom noted that the programme did not go so far as to state or suggest (either explicitly or implicitly) that Mr U was "robbing an old man". It simply presented elements of his behaviour which raised legitimate concerns about his treatment of Mr Evans. Ofcom also accepted that Mr U was polite and courteous throughout his sales presentation.

b) Ofcom considered that the programme did suggest that Mr U used high pressure sales tactics and that he was trying to wear out the customer. However, for the reasons stated above, and in light of the relevant expert opinion, Ofcom considered that it was reasonable for the programme to make these claims. Ofcom accepted that it was legitimate for sales representatives to use appropriate sales techniques. However, as already noted, it was Ofcom's view that Mr U's conduct, whether company policy or not, fell far below what people could reasonably expect from a reputable salesperson.

c) Factual programme-makers should not normally obtain information or pictures through deception unless the disclosure is in the public interest and the material could not be obtained by any other means. In the circumstances of this particular case, Ofcom considered that the programme examined areas of legitimate public concern about the use of high pressure sales tactics (particularly when used on vulnerable individuals) by sales representatives. It was also clear that it was very unlikely that the programme would have been able to secure this footage by any other means. In these circumstances, and given Mr U's own conduct when dealing with Mr Evans, Ofcom considered that it was legitimate to secretly film him, name him and not to obscure his face.

Accordingly, Ofcom did not uphold the complaint of unfair treatment.

Complaint by Ms Beata Bishop obo The Gerson Support Group

Watchdog, BBC1, 5 and 26 October 2004

Summary: Ofcom has not upheld a complaint of unfair treatment submitted by Ms Beata Bishop on behalf of the Gerson Support Group (GSG) about two editions of Watchdog. The programmes looked at the efficacy of alternative cancer therapies and focussed on a therapy promoted by the Nutritional Cancer Therapy Trust (NCTT). The programmes also referred to the Gerson Therapy. The GSG complained that they were treated unfairly in both programmes as broadcast.

Ofcom found the following:

5 October 2004

- The programme's suggestion that the NCTT diet was based on that of the Gerson Therapy was not unfair to the GSG given the similarities of the diets and the complainant's own admission that it was in fact based on an "altered version of some parts" of the Gerson Therapy.
- The programme-makers took sufficient steps to separate the two therapies in the programme as broadcast and although the programme contained some limited criticism of the Gerson Therapy the main focus of the programme's criticism was clearly the NCTT.

26 October 2004

- The programme presented a range of opinion and testimony on the efficacy of the Gerson therapy and did not, in Ofcom's view, amount to a damaging critique. In the circumstances it was not necessary, in the interests of fairness, for the programme-makers to provide the GSG with an opportunity to contribute to this programme.
- Further, on the basis of the material before Ofcom, we found no compelling evidence that the programme had deceived the GSG during the making of this programme or that they failed to honour any promises made to the GSG.

We found no unfairness to the GSG in either programme as broadcast.

Introduction

5 October 2004

This edition of the consumer affairs programme included an item questioning the efficacy of an alternative cancer therapy offered by the Nutritional Cancer Therapy Trust ("the NCTT"). The item included some secretly filmed footage of an NCTT therapist. The practices of the NCTT were examined and surviving relatives of some past users of the NCTT spoke about the NCTT therapy.

The item stated that the NCTT therapy was based on the Gerson Therapy. The Gerson Therapy was invented by Max Gerson and the therapy is owned and promoted by the Gerson Institute. A photograph (uncaptioned) of the founders of the Gerson Therapy was included at this point in the item.

The Gerson Support Group (“the GSG”) are recognised by the Gerson Institute and authorised to use that name in the UK. The GSG has a central and exclusive role in promoting and providing practical support for users of the Gerson Therapy in the UK.

Ms Beata Bishop complained, on behalf of the GSG, that the programme as broadcast was unfair to the GSG.

26 October 2004

This edition of the consumer affairs programme followed up on viewers’ responses to the earlier programme of 5 October 2005 (detailed above) which, the programme said, took a critical look at the Gerson Therapy and concluded that there was no scientific evidence that it could prolong the lives of cancer sufferers. This edition included interviews with two cancer sufferers using the diet, who believed that it had helped them.

It also included an interview with the widow of one patient who had died in spite of using the therapy. An interview with a professor of Oncology was also included. He suggested that there was no clinical proof that the diet was effective; and that most users of the diet had taken some form of conventional medicine as well. He also said that, though there was evidence that the power of belief and a positive attitude can help sufferers, he did not think the extreme diet was worth it to most patients and it may harm some of them.

Ms Beata Bishop complained, on behalf of the GSG, that the programme as broadcast was unfair to the GSG.

Complaint

Ms Bishop’s Case

5 October 2004

Ms Bishop complained that the GSG was treated unfairly in that:

- a) The programme stated that the NCTT therapy was based on the Gerson Therapy when in fact it used an adulterated version of the Gerson Therapy called the Plaskett Therapy.
- b) The item, which included secretly recorded footage of an NCTT therapist giving irresponsible advice to a breast cancer sufferer, gave an overall misleading impression that the NCTT were using the Gerson Therapy, despite the fact that the founders of the NCTT were biochemists with no experience of the Gerson Therapy. The use of the photograph of the founders of the Gerson therapy compounded the erroneous impression that the Gerson Therapy was linked to the NCTT. This confusion meant that the reputation of the Gerson Therapy was damaged by association, from the critique levelled at the NCTT.

26 October 2004

Ms Bishop complained that the GSG was treated unfairly in that:

- a) In spite of a promise to the contrary, the GSG were not interviewed or included in the programme to distinguish their therapy from that of the NCTT.

Instead the reputation of the therapy was further damaged. The GSG's co-operation during the making of this programme was obtained under false pretences that the programme would do justice to the Gerson Therapy.

The BBC's Case

5 October 2004

The BBC responded that:

- a) It was the NCTT's bogus claims that were the main subject of this programme. The programme's statement that the NCTT therapy was based on the Gerson Therapy was factually accurate. The two therapies were very similar. The photographs of the Gerson founders were used appropriately when referring to the fact that the NCTT therapy was based on the Gerson therapy.
- b) It was made clear that the individual therapist secretly filmed was speaking on behalf of the NCTT and this was therefore not unfair to the GSG.

26 October 2004

The BBC responded that:

- a) It would have been unfair to include Ms Bishop's claims about the NCTT in the second programme without giving NCTT an opportunity to respond. Two enthusiasts of the Gerson therapy were featured in the programme and to include Ms Bishop would have tilted the balance unfairly in favour of Gerson advocates. The programme editor made no commitment to include Ms Bishop in the programme.

Decision

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

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

In this case Ofcom found the following:

5 October 2004

- a) The programme's suggestion that the NCTT diet was based on that of the Gerson Therapy was not unfair to the GSG. In reaching this conclusion Ofcom took into account the fact, although the two diets may differ in some ways, they are nevertheless very similar. Further, Ofcom noted that Ms Bishop admitted in her complaint that NCTT was based on the Plaskett therapy which in turn was an "altered version of some parts" of the Gerson Therapy.

- b) Broadcasters should avoid creating doubts on the audience's part as to what they are being shown if it could mislead the audience in a way which would be unfair to those featured in the programme. In this case Ofcom considered that there was a risk that juxtaposing material that was highly critical of the NCTT with material concerning the Gerson Therapy might create confusion in the audience's mind as to what they were being shown.

Nevertheless, we considered that the programme-makers took sufficient steps to separate the two therapies in the programme as broadcast. In reaching this decision we took particular note of the following:

- when the programme showed secretly recorded footage of an NCTT employee the footage was clearly labelled as such;
- the programme used the photographs of the founders of the Gerson Therapy when it was specifically referring to the Gerson Therapy, not the NCTT, and immediately before footage of the Prince of Wales speaking positively about the Gerson Therapy; and,
- although comparisons were drawn between the two therapies the commentary made clear throughout that they were two distinct therapies and it was the claims made by NCTT that were the main subject of the programme.

In all the circumstances, Ofcom considered that although the programme contained some limited criticism of the Gerson Therapy the main focus of the programme's criticism was clearly the NCTT. In our view, the programme's treatment of the Gerson Therapy did not amount to an allegation of wrongdoing or a damaging critique and was not unfair to the GSG.

26 October 2004

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

As mentioned above, Ofcom considered that the first programme on this subject, broadcast on 5 October 2005, did not amount to an allegation of wrongdoing or a damaging critique and was not unfair to the GSG. In the circumstances, it was not necessary, for this reason and in the interests of fairness, for the programme-makers to provide the GSG with an opportunity to contribute to this subsequent programme, broadcast on 26 October 2005.

With specific regard to the content of this programme, Ofcom considered that the programme presented a range of opinion and testimony on the efficacy of the Gerson Therapy and did not amount to a damaging critique. In the circumstances it was not necessary, in the interests of fairness, for the programme-makers to provide the GSG with an opportunity to contribute to this programme. Further, we noted that the programme included powerful personal testimony from two enthusiasts of the Gerson Therapy.

Further, on the basis of the material before Ofcom, we found no compelling evidence that the programme had deceived the GSG during the making of this programme or that they failed to honour any promises made to the GSG.

In the circumstances, Ofcom found no unfairness to the GSG in the programme as broadcast.

Accordingly, Ofcom did not uphold the complaint of unfair treatment

Complaint by Mr Eugene Lanny

The Secret Life of the Shop, BBC3, 8 May 2005

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy. Mr Lanny complained that he was treated unfairly and that his privacy was unwarrantably infringed in the making and the broadcast of *The Secret Life of the Shop*. The documentary series followed the daily life of Psyche, a fashion department store in Middlesbrough over the course of a year. The episode complained of included scenes concerning problems at a café within the shop. Eugene Lanny, who ran the café, was filmed on a number of occasions, discussing the problems with Steve Cochrane, the owner of the shop, and with the producer/director of the film. During the period when the BBC was filming, the café closed. After the café had closed, Mr Lanny was filmed removing furniture from the café onto a lorry. Footage of Mr Lanny and conversations with him were included in the programme.

Ofcom concluded that:

- a) Although some of the wording used, taken on its own, might have given the impression that Mr Lanny was taking property that did not belong to him, it was clear from the programme as a whole that this was not the case and that the items Mr Lanny was removing from the café belonged to him.
- b) Using a number of different methods, such as interviews, filmed discussions and commentary, the programme included the points of view of both Mr Cochrane and Mr Lanny regarding the dispute.
- c) Mr Lanny agreed in principle to filming at the outset of the project. In relation to a meeting he asked not to have filmed, while Ofcom considers that the programme makers could have accepted his refusal more quickly, it notes they did not actually film the meeting. There was therefore no infringement of privacy in the making of the programme in this respect.
- d) Apart from the brief shot broadcast of discussions before the meeting with Mr Cochrane that Mr Lanny refused to allow to be filmed, all the footage of him that was broadcast was filmed with his consent. Mr Lanny agreed at the outset to filming of day-to-day life at the shop, including his café. While Mr Lanny's situation at the shop may have taken an unexpected direction, the remit of the programme did not change. In these circumstances, the BBC was entitled to rely on Mr Lanny's consent to participation in the programme. There was therefore no infringement of Mr Lanny's privacy in the broadcast.

Introduction

This documentary series followed the daily life of Psyche, a fashion department store in Middlesbrough, over the course of a year. The series included interviews with the owner, members of staff and customers. The episode complained of included scenes concerning problems at a café within the shop. Eugene Lanny, who ran the café, was filmed on a number of occasions, discussing the problems with Steve Cochrane, the owner of the shop, and with the producer/director of the film. During the period when the BBC was filming, the café closed. After the café had closed, Mr Lanny was filmed removing furniture from the café onto a lorry. Footage of Mr Lanny and conversations with him were included in the programme.

Complaint

Mr Lanny's case

In summary, Mr Lanny complained as follows:

Fairness

- a) It was implied that he took goods that did not belong to him, thereby calling into question his integrity and honesty. Two scenes in particular suggested that his actions amounted to theft. Firstly there was a reference to him "hurriedly" removing items and later the narrator referred to Mr Cochrane having "lost" certain items. This suggested that the goods belonged to Mr Cochrane, when in fact they belonged to Mr Lanny.
- b) The programme only included the point of view of the other party to the dispute, namely Mr Cochrane. It showed Mr Cochrane expressing his version of the situation, much of which was contentious and open to interpretation. It did not present the facts as Mr Lanny saw them.

Privacy

- c) On a number of occasions Mr Lanny was filmed despite asking not to be filmed. On one occasion a meeting with Mr Cochrane was filmed from a distance, although Mr Lanny had asked the programme makers to leave and not film the meeting. In addition, prior to that meeting, Mr Lanny was "harangued and browbeaten" by the producer/director. A few seconds of this were broadcast, but the dialogue actually went on for an uncomfortably long time. This unwarrantably infringed his privacy in the making of the programme.
- d) The programme included matters that Mr Lanny did not wish to have filmed. He wrote to the programme makers informing them that he did not wish to be involved in the programme. This unwarrantably infringed his privacy in the programme as broadcast.

The BBC's case

In summary the BBC responded as follows:

Fairness

- a) The only basis for saying that the programme suggested Mr Lanny had removed items from the café that did not belong to him was the script line "At the end Steve has lost two tables, a few stools and a friend of 15 years". Taken in isolation this might have given the impression that the items were Mr Cochrane's property. However, in the context of the programme, it was impossible to understand the line in that sense. There had already been a discussion that established that Mr Lanny was in debt to Mr Cochrane and that Mr Cochrane was willing to accept Mr Lanny's furniture and catering equipment in settlement of the debt. The scenes of removal of the items were preceded by the script line "Then I notice Eugene in Café Murano. He was

dismantling **his** tables and chairs” (emphasis added). The scenes that followed included another reference to Mr Lanny removing “his” furniture and discussions that once again made entirely clear that Mr Cochrane intended to retain Mr Lanny’s goods in lieu of the debt. The reference to Mr Lanny “hurriedly” removing furniture did not reinforce any impression that the items did not belong to him, as the sequence as a whole made it impossible to conclude that the furniture was Mr Cochrane’s property.

- b) The programme did not show only Mr Cochrane’s point of view. It did not show any point of view, but merely reflected the dispute between the two men.

Privacy

- c) Before filming began, Mr Cochrane asked the producer/director to brief all employees at a staff meeting. The producer/director then made a point of talking to all staff members to find out if they were happy to be filmed. Mr Lanny was one of the first to give his consent to being filmed and was happy for filming to take place in his café. On one occasion, shown in the programme, Mr Lanny asked the producer/director not to film a meeting with Mr Cochrane about the café. That was the only occasion the producer/director could remember Mr Lanny asking him not to film. He denied haranguing or browbeating Mr Lanny and complied with the request, as could be seen in the programme. All that was filmed, from the distance, was an “establishing shot” to show that the meeting was taking place.
- d) During the course of the year, the producer/director became aware of the dispute brewing between Mr Cochrane and Mr Lanny. It was apparent that the café was struggling to make money. In interviews not shown in the film, Mr Lanny spoke candidly on camera about the problems he was having. The first intimation that the producer/director had that Mr Lanny had changed his mind about being included in the film was an email from Mr Lanny’s solicitors some weeks after filming had been completed. No reason was given for the change of mind. The producer/director replied that, having taken legal advice, he proposed to include footage of Mr Lanny, as, with the exception of one meeting, he had always been happy to take part in the filming. An updating caption at the end of the programme telling viewers about Mr Lanny’s current business position was offered, but no reply was received.

There was therefore no infringement of Mr Lanny’s privacy in the making or the broadcast of the programme.

Decision

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

In carrying out its duties, Ofcom has regard to the need to secure that these standards are applied in a manner that best guarantees an appropriate level of

freedom of expression. Ofcom is also obliged to have regard in all cases, to principles that require regulatory activities to be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

In this case, Ofcom found the following:

- a) Although some of the wording used, such as the reference to him acting “hurriedly”, taken on its own, might have given the impression that Mr Lanny was taking property that did not belong to him, it was clear from the programme as a whole that this was not the case. The dispute between Mr Lanny and Mr Cochrane was explained in the programme. Mr Cochrane’s offer to accept property belonging to Mr Lanny, such as the café furniture, in lieu of unpaid rent was referred to, as was the fact that Mr Lanny declined the offer. In Ofcom’s view, the reference to Mr Cochrane having “lost” items related primarily to his friendship with Mr Lanny. Given the detailed background that was provided in the programme, it would have been clear to viewers that the items Mr Lanny was removing from the café belonged to him.
- b) In Ofcom’s view, the points of view of both Mr Cochrane and Mr Lanny regarding the dispute were included in the programme. The programme used a number of different methods, such as interviews, filmed discussions (between Mr Cochrane and Mr Lanny) and commentary. Mr Lanny’s position with regard to the dispute was therefore apparent from the programme. For instance, Mr Lanny was able to state that he had paid some bills and that he wanted to reach “some sort of agreement” with Mr Cochrane.
- c) Ofcom noted that, although there may have been occasions when he would have preferred not to be filmed, Mr Lanny agreed in principle to filming at the outset of the project. In relation to the meeting he asked not to have filmed, while Ofcom considers that the programme makers could have accepted his refusal more quickly, it noted they did not actually film the meeting. There was therefore no infringement of privacy in the making of the programme in this respect.
- d) Apart from the brief shot broadcast of discussions before the meeting with Mr Cochrane that Mr Lanny refused to allow to be filmed, all the footage of him that was broadcast was filmed with his consent. Mr Lanny agreed at the outset to filming of day-to-day life at the shop, including his café. While Mr Lanny’s situation at the shop may have taken an unexpected direction, the remit of the programme did not change. In these circumstances, the BBC was entitled to rely on Mr Lanny’s consent to participation in the programme. There was therefore no infringement of Mr Lanny’s privacy in the broadcast.

Accordingly, Ofcom did not uphold the complaint of unfair treatment and unwarranted infringement of privacy.

Other programmes not in breach/out of remit 30 November – 13 December 2005

Programme	Trans Date	Channel	Category	No of Complaints
8 Out of 10 Cats	30/11/2005	E4	Offence	1
America's Next Top Model	30/08/2005	Living	Offence	1
Any Which Way You Can	23/10/2005	Five	Language	1
Balls of Steel	12/08/2005	Channel 4	Offence	2
Balls of Steel	26/08/2005	Channel 4	Offence	2
BBC GMR	28/11/2005	BBC GMR	Offence	1
BBC News	28/11/2005	BBC1	Offence	1
BBC News	30/11/2005	BBC1	Offence	1
BBC Radio WM	05/11/2005	BBC Radio WM	Offence	1
Bodger & Badger	01/12/2005	BBC1	Offence	1
Bodies	03/12/2005	BBC2	Sexual Portrayal	1
Bodies	09/12/2005	BBC2	Offence	1
Booze Britain	26/11/2005	Bravo	Offence	1
Broken News	05/12/2005	BBC2	Offence	2
Casualty	03/12/2005	BBC1	Offence	1
Channel 4 News	28/11/2005	Channel 4	Impartiality	1
Clement Doesn't Live Here Any More	16/11/2005	BBC Radio 4	Religious Offence	1
CNN News	19/10/2005	CNN	Impartiality	1
Colin and Justin's How Not to Decorate	08/12/2005	Five	Offence	1
Coronation Street	21/11/2005	ITV1	Language	1
Coronation Street	20/11/2005	ITV1	Accuracy	1
Coronation Street	25/11/2005	ITV1	Offence	2
Coronation Street	30/11/2005	ITV1	Misleading	2
dick and dom in da bungalow	03/12/2005	BBC1	Violence	1
EastEnders	28/11/2005	BBC1	Offence	1
EastEnders	29/11/2005	BBC1	Offence	1
Egypt	03/12/2005	BBC1	Religious Offence	1
Emmerdale	25/11/2005	ITV1	Sexual Portrayal	1
Emmerdale	28/11/2005	ITV2	Sexual Portrayal	1
Emmerdale	27/11/2005	ITV1	Offence	3
Emmerdale	02/11/2005	ITV1	Offence	1
Emmerdale	04/12/2005	ITV1	Offence	1
Essex FM	05/12/2005	Essex FM	Misleading	1
Family Affairs	30/11/2005	Five	Offence	1
Fox News	19/11/2005	Fox News	Impartiality	1
Frank Skinner Show	24/11/2005	ITV1	Language	1
Friday Night With Jonathan Ross	04/11/2005	BBC1	Offence	1
Frontline Scotland	30/11/2005	BBC1	Impartiality	1

Funland	23/10/2005	BBC3	Language	2
Futurama	03/12/2005	Channel 4	Offence	1
Galaxy 105	18/11/2005	Galaxy 105	Offence	1
Genius	24/11/2005	BBC Radio 4	Religious Offence	1
Ghost Squad	29/11/2005	Channel 4	Violence	2
GMTV	25/11/2005	ITV1	Offence	1
Have I Been Here Before?	16/05/2005	ITV1	Offence	1
Have I Got News For You	30/11/2005	BBC2	Offence	1
Hip Hop Nights: Porn with Attitude	26/09/2005	Channel 4	Offence	2
Holiday	05/12/2005	BBC1	Violence	1
I Killed John Lennon	30/11/2005	Channel 4	Offence	1
I Killed John Lennon	02/12/2005	Channel 4	Offence	1
I Killed John Lennon	08/12/2005	Channel 4	Offence	1
I Want to be a Hilton	17/11/2005	UKTV	Language	1
I'm Going to Tell You a Secret	01/12/2005	Channel 4	Offence	1
ITV at the Movies	03/12/2005	ITV1	Scheduling	1
ITV News	27/11/2005	ITV1	Offence	1
ITV News	29/11/2005	ITV1	Accuracy	1
ITV News	28/11/2005	ITV1	Accuracy	1
ITV News	05/12/2005	ITV1	Impartiality	1
ITV News	07/12/2005	ITV1	Violence	1
ITV News Channel	26/11/2005	ITV News Channel	Offence	2
Jaago	18/09/2005	Zee TV	Violence	1
Jenna Jameson's Porn Confessions	08/12/2005	TMF	Offence	1
Kill or Cure?	08/12/2005	Channel 4	Offence	1
Kiss Kis Ko	05/11/2005	Zee TV	Offence	1
LBC Programme	19/10/2005	LBC97.3	Offence	1
LBC Programme	20/11/2005	LBC97.3	Offence	1
LBC Programme	28/10/2005	LBC97.3	Accuracy	1
Little Britain	17/11/2005	BBC1	Offence	1
Little Britain	05/12/2005	BBC3	Offence	1
London Today	17/10/2005	ITV1	Offence	1
Loose Women	06/12/2005	ITV1	Offence	1
Make It Big	04/12/2005	Five	Offence	1
Man Stroke Woman	20/11/2005	BBC3	Offence	1
Murder Prevention	29/11/2005	Five	Offence	1
Murder Prevention	30/11/2005	Five	Violence	1
My Parents Are Aliens	04/10/2005	ITV1	Offence	1
Nathan Barley	09/12/2005	Channel 4	Offence	1
Nip/Tuck	15/11/2005	Sky One	Offence	1
Parkinson	19/11/2005	ITV1	Language	1
Parkinson	26/11/2005	ITV1	Offence	1
Peep Show	25/11/2005	Channel 4	Offence	1
Peugeot Film Sponsorship on five	20/11/2005	Five	Violence	1
Playboy Channel	04/11/2005	Playboy	Sexual Portrayal	1
Popworld	03/12/2005	Channel 4	Sexual Portrayal	1
Popworld	04/12/2005	Channel 4	Language	1
Q Music Channel	24/11/2005	Q Music	Sexual	1

			Portrayal	
Radio City	15/11/2005	Radio City 96.7	Offence	1
Red Hot Films	19/10/2005	Red Hot Films	Scheduling	1
Richard and Judy	10/11/2005	Channel 4	Language	1
Richard and Judy	28/11/2005	Channel 4	Offence	1
Richard and Judy	29/11/2005	Channel 4	Offence	1
Richard and Judy	08/12/2005	Channel 4	Offence	1
Scott Mills	28/11/2005	BBC Radio 1	Offence	1
Sky News	18/11/2005	Sky News	Accuracy	1
Sky Sports	06/11/2005	Sky Sports	Language	1
Taggart	11/11/2005	ITV1	Offence	1
Talk Sport	23/07/2005	Talk Sport	Religious Offence	1
Talk Sport	23/10/2005	Talk Sport	Offence	1
Talk Sport	21/11/2005	Talk Sport	Offence	1
Talk Sport	23/11/2005	Talk Sport	Offence	1
The Bill	13/10/2005	ITV1	Offence	3
The Bill	27/10/2005	ITV1	Violence	3
The Bill	30/11/2005	ITV1	Scheduling	1
The Bill	29/11/2005	ITV1	Scheduling	1
The Bill	07/12/2005	ITV1	Violence	1
The Chris Moyles Show	14/11/2005	BBC Radio 1	Offence	1
The Comedians' Comedian	03/12/2005	Channel 4	Offence	1
The Comic Side of 7 Days	25/11/2005	BBC3	Offence	1
The Gadget Show	09/12/2005	Five	Accuracy	1
The Jeremy Kyle Show	21/11/2005	ITV2	Offence	1
The Quay	25/11/2005	107.4 The Quay	Offence	1
The Queen's Sister	14/11/2005	Channel 4	Offence	1
The Queen's Sister	27/11/2005	Channel 4	Offence	4
The X Factor	03/12/2005	ITV1	Sexual Portrayal	2
The X Factor	22/11/2005	ITV1	Sexual Portrayal	1
This Week	10/11/2005	BBC1	Offence	1
Three Wishes	04/12/2005	BBC2	Language	1
Today with Des & Mel	28/11/2005	ITV1	Offence	1
Tonight with Trevor McDonald	11/11/2005	ITV1	Language	1
Tonight with Trevor McDonald	14/11/2005	ITV1	Impartiality	1
Tonight with Trevor McDonald	07/11/2005	ITV1	Impartiality	1
Totally Frank	20/11/2005	Channel 4	Sexual Portrayal	1
Trial & Retribution	07/11/2005	ITV1	Language	1
Unreported World	26/11/2005	Channel 4	Offence	1
Vernon Kay	27/11/2005	BBC Radio 1	Offence	1
Weakest Link	26/11/2005	BBC1	Language	1
What you need to know about Bird flu	17/11/2005	Five	Misleading	1
Wild World of Records	19/11/2005	Five	Offence	1