

Ofcom Broadcast Bulletin

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Contents

Introduction	3
Standards cases	
<u>In Breach</u>	
Early Bird	4
<i>Turn On TV, 28 October 2007, 07:15 – 09:00</i>	
The American President	6
<i>UKTV Gold, 13 January 2008, 14:55</i>	
Blackpool Medics	7
<i>BBC1, 28 January 2008, 19:30</i>	
<u>Resolved</u>	
Weekend by Scooter	8
<i>Clubland TV, 13 March 2008, 19:05</i>	
Note to Broadcasters - revised guidance on Section Two of the Ofcom Broadcasting Code	9
Fairness & Privacy cases	
<u>Not Upheld</u>	
Complaint by Seun Benson	10
<i>London Tonight, ITV1 (London), 23 July 2007</i>	
Complaint by Ms Dawn Blake	17
<i>Big Brother, Big Brother's Big Mouth and Big Brother's Little Brother, Channel 4, 20-26 May 2006</i>	
Complaint by Mr Martin Cowley	39
<i>Dragons' Den, BBC2, 15 October 2007</i>	
Complaint by Mr George Sweeney on behalf of Michael Sweeney (a minor)	44
<i>The Teen Tamer and The Teen Tamer trailers, Five, 12 September 2006</i>	
Other programmes not in breach/outside remit	54

Introduction

Ofcom's Broadcasting Code ("the 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>

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

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

Standards cases

In Breach

Early Bird

Turn On TV, 28 October 2007, 07:15 – 09:00

Turn On TV (now broadcasting as Tease Me) is a free-to-air unencrypted channel shown in the “adult section” of the Sky Electronic Programme Guide (“EPG”). It broadcasts programmes based on interactive chat services: viewers are invited to contact on-screen female presenters via premium rate telephony services (“PRS”). A viewer complained that the presenter on the channel’s *Early Bird* programme broadcast in the early morning was shown rubbing her crotch over a pair of skimpy knickers and tweaking and blowing on her nipples to make them erect. The complainant objected that the presenter’s behaviour was unsuitable for the time of broadcast.

The broadcaster was asked to comment on how the material broadcast complied with the following Rules of the Code: 1.3 (children must be protected by appropriate scheduling); 1.17 (portrayal of sexual behaviour before the watershed); and 2.1 (generally accepted standards).

Response

The broadcaster responded that on receipt of the complaint it had instigated an internal investigation.

It found that at the time of broadcast the programme director noticed the presenter absent mindedly “scratching herself” on a couple of occasions. The presenter was warned about her behaviour and it was not repeated. The producer did not believe the presenter’s actions were sexual or inappropriate, rather that they were “not particularly attractive”. With reference to the presenter stimulating her nipples, the director considered the actions were “saucy” but not inappropriate, taking into account the target audience and the channel’s EPG position.

The broadcaster stated that it had reviewed the programme and considered the broadcast was generally below its expected standards. It had established that on the morning in question two members of staff had not arrived for work and the production team proceeded with the broadcast short-staffed. The quality of the programme clearly showed that they were unable to cope.

Regarding the presenter stimulating her nipples, the broadcaster told Ofcom that the caller talking to the presenter at the time was encouraging her to do so. The broadcaster said the presenter should have terminated the call and not carried out the request. Her behaviour was highly unprofessional and the broadcaster had terminated her contract with the company. On the matter of the overall tone of the programme, the broadcaster stated that while there was a certain amount of flirting or innuendo, this was appropriately limited by avoiding graphic nudity, sexual imagery and language.

The broadcaster said that it had made very clear to all staff that any recurrence of the incident will not be tolerated. It had taken steps to improve compliance on the channel, including:

- introducing a policy that broadcasts do not commence until adequate staff numbers are present;
- changes to the management of live output; and
- continued training and enhanced staff briefings.

The broadcaster stressed that it had taken great steps to instil a culture where compliance is at the forefront of everything it produced and was confident that the actions it had taken were robust and removed further risk of similar breaches.

Decision

Ofcom has repeatedly made clear its concerns about inappropriate, sexually explicit content being shown on “babe” channels whose programmes are based on interactive “adult” chat. Turn On TV has itself previously been found in breach of the Code for the inappropriate scheduling of sexual content (Ofcom Broadcast Bulletin issue number 85).

In this case, Ofcom considers that the actions of the presenter were not explicit. However, they were clearly sexual in nature and unsuitable for the time of broadcast. We note the broadcaster has taken certain remedial steps as a result of the complaint, but are concerned that at the time of these breaches it did not have sufficient procedures in place to satisfy itself that the material it transmitted was fully compliant with the Code.

Breach of Rules 1.3, 1.17 and 2.1

The American President *UKTV Gold, 13 January 2008, 14:55*

Introduction

The American President is a film about the difficulties of an emerging romance for a fictional president of the United States in the midst of a re-election campaign. It was transmitted in UKTV Gold's regular Sunday afternoon movie slot. Ofcom received complaints that this film contained highly offensive language ("fuck"), which was inappropriate for a pre-watershed transmission when children could be watching.

UKTV was asked to comment in this regard in relation to Rule 1.14 of the Code (the most offensive language before the watershed).

Response

UKTV admitted that the inclusion of the language complained of was unacceptable. It explained that the scheduler concerned relied on inaccurate information and did not follow usual procedures by checking the programme's transmission form, which stated the programme was suitable for post-watershed transmission only because of the language it contained. As soon as concerned viewers complained directly to the broadcaster, UKTV responded by broadcasting apologies on the 15 and 20 January 2008.

Decision

Rule 1.14 of the Code states that "the most offensive language must not be broadcast before the watershed or when children are particularly likely to be listening". The broadcast of the word "fuck" three times within this film in an afternoon slot when children were particularly likely to be viewing was clearly unacceptable. We welcome UKTV's broadcast apology as soon as it was alerted to the issue, and its review of scheduling processes. However, it is the licensee's clear responsibility to ensure that material originally intended for post watershed transmission is scheduled correctly and in accordance with the requirements of the Code, to ensure that viewers under eighteen are protected from broadcast of harmful or offensive material.

In this instance the most offensive language was broadcast before the watershed. UKTV have encountered similar problems before in that technical and human errors have resulted in inappropriate material being broadcast before the watershed. We treated the issues as resolved on those occasions, given UKTV's assurances that it had reviewed its compliance processes. However, as there have been repeated lapses in compliance procedures of this nature at UKTV, on this occasion we have recorded a breach of the Code.

Breach of Rule 1.14

Blackpool Medics

BBC1, 28 January 2008, 19:30

Introduction

Blackpool Medics is a fly-on-the-wall three-part documentary series about the difficulties faced by NHS staff in Blackpool. Ofcom received a complaint that this episode contained the words “*Oi, you fat cunt*”, which they found unacceptable for broadcast at this time of the evening when children could be watching.

Ofcom asked the BBC to respond with regard to Rule 1.14 of the Code (the most offensive language must not be broadcast before the watershed).

Response

The BBC agreed that the inclusion of this language was inappropriate in a programme broadcast at that time of the evening when there was a strong likelihood that a significant number of children may have been watching. It apologised unreservedly for its error.

The offending word was contained in a sequence illustrating night life in Blackpool and was in one of a series of shots edited to music and commentary. Unfortunately, the BBC said, this word had passed unnoticed by production staff at the various stages in the process of making the programme. This was, in part, due to attention being paid to the music edits in this particular sequence rather than the spoken words which were distant and muffled. In particular the expletive complained of was not spotted during the later stages of production, including the technical review stage which was the final viewing for both technical quality and editorial content. The BBC considered, however, that the particular combination of music, pictures and sound in this particular clip was a distraction for the viewer from what was actually said.

Decision

Rule 1.14 of the Code states that “the most offensive language must not be broadcast before the watershed or when children are particularly likely to be listening”. The inclusion of the words “*Oi you fat cunt*” within this programme, albeit slightly muffled but still audible, was clearly offensive and inappropriate before the watershed. Our research¹ indicates that “cunt” is one of the most offensive words.

We note the BBC’s apology. However, the BBC’s broadcast of this language before the 21:00 watershed was a breach of Rule 1.14 of the Code.

Breach of Rule 1.14

¹ Language and Sexual Imagery in Broadcasting: A Contextual Investigation
<http://www.ofcom.org.uk/research/radio/reports/bcr/language.pdf>

Resolved

Weekend by Scooter

Clubland TV, 13 March 2008, 19:05

Introduction

Clubland TV is a dedicated music channel featuring dance music videos, which launched at the end of January 2008. Two complaints were received about a video by the artist Scooter for the dance track, *Weekend*. Complainants were concerned that the video featured material appropriate for only after the watershed, for example, female topless dancers.

Response

Clubland TV fully accepted that this version of the video should not have been broadcast pre-watershed and apologised for any offence this may have caused.

The broadcaster explained that the channel had started broadcasting at the end of January 2008 and had a very short period of time to prepare for the launch due to the Christmas holidays and tight timescales. Consequently, a post-watershed version of the video had been placed on the video playlist in error. As soon as the broadcaster had been notified of the complaint it had removed the video from the playlist and categorised it as suitable for broadcast after 21:00 only.

Decision

Ofcom recently issued guidance (see Bulletin 89 http://www.ofcom.org.uk/tv/obb/prog_cb/obb89) reminding broadcasters that they are under a clear duty to ensure that robust procedures are in place, supported by a sufficient number of appropriately qualified and trained staff, to ensure full compliance with the Code. This was particularly in respect of material that is produced for a post-watershed slot but transmitted pre-watershed. The guidance advised that it was not acceptable for broadcasters to point to technical and human errors as excuses for breaches of the Code.

Broadcasters must have robust compliance procedures in place to ensure full compliance with the Code. Ofcom notes that Clubland TV is a relatively new licensee. We also acknowledge that the broadcaster took prompt action in this case. Given the particular circumstances of this case, Ofcom has accepted that, on this occasion, it was an isolated incident and considers the matter resolved.

Resolved

Note to Broadcasters

Revised guidance on Section Two of the Ofcom Broadcasting Code

Ofcom has published today on its website updated Guidance on Section Two of the Broadcasting Code concerning the use of premium rate services (PRS) in programming. The changes were originally published in February 2008 as part of the Ofcom Statement *Participation TV Part 1: protecting viewers and consumers*.

The updated document is available at

<http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/guidance2.pdf>

The Statement is available at

<http://www.ofcom.org.uk/consult/condocs/participationtv/statement/ptvstatement.pdf>.

The version published in the Statement sets out the additions and deletions; for that comparative version please use this link.

Also today, Ofcom is publishing separate guidance on new licence conditions that introduce requirements of verification on broadcasters who use premium rate services (PRS) for votes and competitions publicised in programmes. This guidance was also first published in the *Participation TV Part 1* Statement and can be found at <http://www.ofcom.org.uk/tv/ifi/guidance/>

Fairness and Privacy Cases

Not Upheld

Complaint by Seun Benson

London Tonight, ITV1 (London), 23 July 2007

Summary: Ofcom has not upheld this complaint of unfair treatment in the programme as broadcast by Mr Benson.

This special edition of the regional news programme *London Tonight* focused on London's street gangs. It included a report with an interview with two young men, one of whom was Mr Benson, who were described as members of the "Peckham Boys" gang.

Ofcom considered that there was a conflict between Mr Benson and the programme maker over whether Mr Benson was a member of the Peckham Boys, a claim which he denied. However, Mr Benson had admitted associating with gangs and having been caught carrying a weapon. Furthermore, Ofcom considered that the context of the report made it clear that Mr Benson had faced significant difficulties in his past and that he was now using music to turn his life around. Therefore, Ofcom found that no unfairness resulted to Mr Benson from the programme as broadcast.

Introduction

On 23 July 2007, ITV1 (London) broadcast a special edition of its regional news programme *London Tonight*. This edition focused on London's street gangs. It included an interview with two young men who were described as members of the "Peckham Boys" gang.

During the interview the young men were identified by on-screen wording as "Evans" and "3Face", respectively. The latter, "3Face", is the complainant Mr Benson.

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

The Complaint

Mr Benson's case

In summary, Mr Benson complained that he was treated unfairly in the programme as broadcast in that:

Despite having not told the reporter that he was either part of a gang or involved in gang he was shown on live television and branded as a notorious gang member. Mr Benson added that he had no gang related history or a violent criminal record.

By way of background, Mr Benson claimed that as a result of his appearance in the programme he was afraid to leave the house for fear somebody may either shoot or stab him and was uncertain whether or not he would be able to continue to study music technology at Southwark College.

ITV's case

In summary ITV responded to Mr Benson's fairness complaint as follows:

ITV denied that it had portrayed Mr Benson unfairly or misrepresented his contribution in its report on London's gangs.

The broadcaster said that having asked Youth Enlightenment Limited ("YEL"), a community-based charity for young black people, to put it in touch with members of gangs it had been introduced to two young men, one of whom was Mr Benson. ITV said that it had then recorded an interview with Mr Benson. The broadcaster argued that it had used extracts from this interview in the report in a fair and accurate manner. It said that the report had not focused solely upon Mr Benson's gang experiences but also looked at the positive steps he had taken to change his life through his music.

ITV countered Mr Benson's claim that he had not been involved in gangs and said that Mr Benson had talked extensively about his experiences as a gang member, including an incident when he was caught with a knife.

The broadcaster quoted from its untransmitted interview with Mr Benson to illustrate that he had talked about the structure and culture of gangs in Peckham as well as about his own experiences of gang culture.

Mr Benson's comments in response to ITV's statement

In summary the complainant responded to ITV's statement as follows:

Mr Benson commented that prior to the interview, and in the presence of witnesses, he had told the reporter that he was not a gang member. Mr Benson added that the reporter had promised that his face would not be shown, that his identity would be hidden and that he would be invited to view the interview so he could give his consent for it to be broadcast.

Mr Benson said that the reporter had misrepresented the nature of the programme he was making, by saying he was doing a report on "3 Face and his music", in order to get gang members to talk to him.

Mr Benson said that the "Peckham Boys" was no longer a recognised gang and that the reporter had been made aware of this. He argued that the reporter had not been threatened by people in Peckham as claimed by the report. Further, the reporter had not come across Mr Benson on the street by chance, as he claimed.

Mr Benson asserted that during the interview he had not said that he was a gang member but rather that he had given an accurate representation of the activities in his neighbourhood. Mr Benson added that not only he but other people like him (i.e. a teenager living in an estate in South London) would have understood the environment.

Mr Benson argued that the reporter had misunderstood his use of slang words. For example, Mr Benson indicated that during the interview when he had agreed with Mr Roger that he had "started as a tiny" he had meant that he had been a young person not that he had been a young gang member. Mr Benson also said that when he agreed that he felt responsible for potentially drawing kids (who thought he was cool) into gangs he was reflecting the fact that as a young black man he was a role model

and that therefore he should have done more to teach others growing up in a similar environment.

Mr Benson acknowledged that he had had a few “naughty encounters” when growing up, but argued that this was very different from having belonged to a criminal organisation.

Mr Benson then indicated that as a consequence of the way in which he was portrayed in the report he had experienced various problems. These included difficulty in finding work or getting into university, being chased by members of gangs from outside Peckham and having to leave his mother’s home.

ITV’s second statement in response to the complaint

In summary ITV responded to the complainant’s comments as follows:

It denied that the reporter had offered Mr Benson a chance to approve the item before broadcast. It added that such a ceding of editorial control was contrary to ITN policy and would not have been in the reporter’s gift. ITV indicated that the issue of anonymity had been raised during the interview but that neither Mr Benson nor the other interviewee had elected to have their faces obscured.

The broadcaster rebutted Mr Benson’s claim that the ITN film crew was not threatened. It said that that Mr Benson had introduced several individuals as his “crew” and that these people had threatened to “shank” (or stab) them if they tried to film.

ITV said that Mr Benson’s assertion that he had no gang related history should be compared with the video footage and transcript of his interview in which he talks about gangs, gang culture and his gang lifestyle. It argued that he spoke as a person with knowledge from the inside not as an observer or someone from the outside.

ITV also submitted an e-mail from YEL (the charity which had introduced ITN, the programme maker to Mr Benson). The broadcaster said that this e-mail included Mr Benson’s responses to questions about his personal profile. ITV noted that in this profile (which was given to the members of the ITN film crew) Mr Benson indicated that he belonged to the “Peckham Boys”, that he was an active gang member and that he had been in a gang for eight years. ITV also suggested that the “naughty encounters” in which Mr Benson acknowledged having been involved (within his second submission) might have included the incident when he was caught with a knife which was referred to in the programme.

ITV argued that it had presented a fair and accurate representation of what Mr Benson had said during the interview. It also said that the report had not been unsympathetic to his position in that it had made it clear that he was trying to improve his situation, and that of others, through his music.

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.

The complaint was considered by Ofcom's Executive Fairness Group. In reaching a decision about this complaint Ofcom considered a recording of the programme, the programme transcript, and each party's written submissions (including an e-mail from the Managing Director of the charity Youth Enlightenment Limited to the programme maker (ITN) with a profile of Mr Benson and a recording and transcript of the untransmitted footage of an interview between the reporter and Mr Benson).

Ofcom's found the following:

Ofcom considered the complaint that the programme had portrayed Mr Benson unfairly in that he had not told the reporter he was either part of a gang or involved in gang but nevertheless he was shown on television and branded as a notorious gang member.

In addition to the requirement on broadcasters in Rule 7.1 the Code to avoid unjust or unfair treatment of individuals or organisations in programmes, Ofcom also took particular account of Practices 7.6 and 7.9 of the Code. These state that "when a programme is edited, contributions should be represented fairly" and 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".

With regard to this head of complaint, Ofcom observed that the news presenter introduced the report on Mr Benson and the other young man by saying:

"We've managed to convince two members of one of London's most notorious gangs, the Peckham Boys, to open up to us. They share their life experiences, their hardships, and they try to answer the toughest question of all - why?"

Ofcom noted that the reporter who interviewed Mr Benson started his report by saying:

"They're branded the Peckham Boys, but there is no one gang. It's different crews of various ages. I approached them on the streets to be interviewed, some threatened to slice or beat me, others began to talk expressing a hatred of white people, accusing them of oppressing black communities, blaming them for their violent world."

It was also noted that after an extract taken from each of his interviews with Mr Benson and the other young man featured in the report, the reporter was shown saying:

"Eventually two members decided to give their take on camera in the hope that attitudes can change."

In light of the inclusion of these comments Ofcom considered that the report as broadcast did indicate that Mr Benson was a member of the Peckham Boys gang.

Ofcom's noted that its role was not to establish conclusively from the broadcast programme or the submissions and supporting material, whether or not Mr Benson was member of the Peckham Boys gang. But rather, Ofcom had to address itself to

whether the programme maker took reasonable care in relation to material facts and was thereby not unfair to Mr Benson.

Therefore, Ofcom considered whether the inclusion in the report of the statement that Mr Benson was a member of the Peckham Boys resulted in unfairness to him given the information about the complainant which was available to ITN, the programme maker (for instance, the profile it had secured from YEL and the responses Mr Benson made to the reporter's questions about his experiences during his interview).

Ofcom noted that (within its second statement in response to this complaint) ITV had submitted a copy of a profile of Mr Benson which stated that, at the time the report was being produced, Mr Benson was a member of the Peckham Boys, had been for a member of a gang for eight years and had been arrested several times. However, Ofcom also noted that the profile was sent to ITN by the Managing Director of YEL rather than by Mr Benson himself and that at least part of the profile appeared to have been completed by a third party.

In light of these factors Ofcom did not consider that this profile in itself could categorically support the broadcaster's position that Mr Benson belonged to the "Peckham Boys" and that he was an active gang member.

Ofcom then looked at the recording and transcript of the untransmitted footage of the reporter's interview with Mr Benson.

It noted that in response to the following question from Mr Roger during the interview: "*Well, will you always be a member of the Peckham Boys no matter how...?*" Mr Benson said:

"Who said Peckham Boys? I never said I was a member of the Peckham Boys. I live in Peckham. I have lived there for fourteen years. I know the manor, do you know what I mean? Peckham Boys, its like you have different gangs in Peckham it's not not just one gang, one main gang, you've got a couple of crews in Peckham, you know jus, just like any place, you know you cannot label the whole area and say these are the boys, it's not that organised, it's anarchy."

In light of this comment Ofcom considered that the Mr Benson had appeared to suggest to the reporter that he was not a member of the Peckham Boys specifically and that there were several gangs in Peckham.

However, Ofcom also observed that after making these comments Mr Benson went on to say:

"I mean I've been on the road, I tried to leave the road, I resorted to other things like going to church, I tried that, but when things got on top, when I couldn't take it no more I went back, I cannot explain, you just don't care anymore."

Ofcom noted that during the interview almost all of the reporter questions suggested that he believed that Mr Benson was or had been a member of a gang.

For example, during the interview he asked Mr Benson the following questions:

“Do you see your music as a way out of gang culture?”

and,

“Do you not feel slightly responsible for that [shootings and knifings by children who are pretending to be like older gang members] being in a gang, some of these kids look up to you, they think you are cool, they like your music, they like the way you dress?”

Ofcom observed that at no point during the interview did Mr Benson deny being a member of a gang. For example, in response to the first question Mr Benson said:

“I use it [his music], definitely to get out of joint, everyone’s to work get out of the ends, no one wants to be classified as a lower class of society for the rest of our lives, and it’s a different way to break through...”

In response to the second question Mr Benson acknowledged that he felt some responsibility [towards the younger kids] but added the following caveats: that he had never told a “younger” to “pick up a strap”, that he was not “consistently involved in crime” and that in terms of his music “anything negative I won’t glorify it, I just tell it how it is” but that his voice wasn’t strong enough to “say every man put down your straps and everyone is going to drop their straps”.

Ofcom also noted Mr Benson did not correct or challenge the reporter’s impression that he was a gang member but answered his questions by giving details about gang lifestyle and culture. Ofcom also observed that Mr Benson often answered the reporter’s questions in the first person thereby suggesting that the experiences and attitudes he described were personal to him rather than anecdotes of other people’s experiences or attitudes.

In addition, Ofcom recognised that during the interview Mr Benson told the reporter that “You know, I had a bit of serious issue at school at a young age and I got caught with a weapon, you know an older guy gave it to me”.

In Ofcom’s view, although Mr Benson did appear to suggest to the reporter that he was not a member of the Peckham Boys he did not make it clear to the reporter that he was not or had not been a member of any other gang. This was because he denied being a member of the Peckham Boys specifically but not any other gang, he did not correct the reporter’s impression that he was not a gang member but instead repeatedly gave detailed information about gang life (often using the first person). He also acknowledged to the reporter that he had been caught with a weapon when he was younger.

As noted above, Ofcom recognised that the report indicated that Mr Benson was a member of the Peckham Boys rather than any other gang. Nonetheless, Ofcom did not consider that the question of whether Mr Benson had belonged to this particular gang as opposed to another gang would have had a material impact on viewers’ impressions of Mr Benson.

Ofcom also recognised that the report had been broadcast in the context of a special edition of the *London Tonight* news programme which looked specifically at gang culture and the rise of gun and knife crime in London. Ofcom noted that the report which featured Mr Benson took a sympathetic tone towards him (as well to the other

young man featured). It included extracts from Mr Benson's interview in which he explained some of the difficulties he had faced (for example growing up in relatively deprived circumstances and the fact that his father had left the family home when he was young and died when he was fourteen). In addition, it showed Mr Benson saying that because he felt some responsibility towards the kids who were younger than him he did not glorify negative things in his music. Lastly, Ofcom also recognised that the report indicated that Mr Benson's pursuit of his music was a means for him to escape gang culture.

In light of the factors noted above, Ofcom considered that there was a conflict between Mr Benson and the programme maker over whether Mr Benson was a member of the Peckham Boys, a claim which he appeared to suggest was not the case. However, Mr Benson had admitted associating with gangs and having been caught carrying a weapon. Furthermore, Ofcom considered that the context of the report made it clear that Mr Benson had faced significant difficulties in his past and that he was now using music to turn his life around.

Therefore, Ofcom found that no unfairness resulted to Mr Benson from the programme as broadcast.

Complaint by Ms Dawn Blake

Big Brother, Big Brother's Big Mouth and Big Brother's Little Brother, Channel 4, 20-26 May 2006

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy.

In May 2006, Channel 4 began broadcasting its seventh series of the reality TV programme *Big Brother*. Ms Dawn Blake was one of the contestants. A number of housemates, including Ms Blake, were not given their suitcases containing their personal possessions and had to win them by gaining membership of "the Big Brotherhood". Membership was decided by some of the housemates or was gained by chance. Ms Blake did not become a member of the Big Brotherhood during the first week. Ms Blake stated near the beginning of her stay in the House that, as she did not have her suitcase and its contents, she was not showering. There were then suggestions by other housemates that Ms Blake had body odour. She was ejected by Big Brother after six days in the Big Brother House, having asked to leave and having then been accused of breaking Big Brother's rules regarding contact with the outside world. Footage of Ms Blake was included in editions of *Big Brother* broadcast during the week 20-26 May 2006. She was also referred to in some editions of *Big Brother's Big Mouth* and *Big Brother's Little Brother*.

Ms Blake complained to Ofcom that she was treated unfairly in Big Brother in that footage in relation to body odour and her medical conditions (including asthma, eczema, urticaria and skin allergies) were unfairly edited so as to humiliate and misrepresent her; a distorted picture of her was presented and she was singled out for negative treatment; her medical issues were exploited; an eviction story was invented and edited so as to portray her as cheating; and, she was not given an appropriate and timely opportunity to respond to the untrue story of her departure. Ms Blake also complained that her privacy was unwarrantably infringed in the making of the Big Brother programmes in that she was kept in the House and filmed against her will. Ms Blake complained that she was treated unfairly in editions of *Big Brother's Big Mouth* and *Big Brother's Little Brother* in that the suggestion that she was not washing was discussed and she was unfairly portrayed as having been ejected from the House for cheating.

Channel 4 responded in relation to *Big Brother* that: an issue about body odour was fairly represented and there was no reason for references to be made to Mrs Blake's medical condition; Ms Blake was fairly represented and she was not singled out for any negative treatment; her medical condition was not exploited; the story of her eviction was fairly portrayed; her response to Big Brother's decision to eject her was included in the programme. Ms Blake was not detained in the House against her will and continued filming of her was in accordance with her agreement to participate in the series. As regards *Big Brother's Big Mouth* and *Big Brother's Little Brother*, Channel 4 responded that it was legitimate to raise the issues of body odour and her departure and that there was no unfairness in the way in which these were discussed.

Ofcom considered in relation to *Big Brother* that the issue of body odour was fairly presented and that it was not incumbent on the programme makers to refer to Ms Blake's medical condition; Ms Blake was not singled out for negative treatment; Ms Blake's medical condition was not exploited; the story of Ms Blake's eviction and departure from the House was fairly portrayed; Ms Blake was given an opportunity give her side of the story of her departure; Ms Blake's privacy was not infringed, in

that she was kept in the House and filmed in accordance with the contract she had signed. As regards *Big Brother's Big Mouth* and *Big Brother's Little Brother*, Ofcom found that references to the body odour issue and to Ms Blake's departure reflected events in the House and were in the context of a light-hearted discussion in which positive as well as negative comments were included.

Introduction

Starting in May 2006, Channel 4 broadcast its seventh series of reality TV programme *Big Brother*. Ms Dawn Blake was one of the contestants. As part of the that year's show, a number of housemates, including Ms Blake, were not given their suitcases containing their personal possessions and had to win them by gaining membership of "the Big Brotherhood". Membership was decided by some of the housemates or was gained by chance. Ms Blake did not become a member of the Big Brotherhood during the first week. Ms Blake stated near the beginning of her stay in the House that, as she did not have her suitcase and its contents, she was not showering. There were then suggestions by other housemates that Ms Blake had body odour. Ms Blake was ejected by Big Brother after six days in the Big Brother House. She had asked to leave and Big Brother had then accused her of breaking Big Brother's rules regarding contact with the outside world. Footage of Ms Blake was included in editions of *Big Brother* broadcast during the week 20-26 May 2006. She was also referred to in some editions of *Big Brother's Big Mouth* and *Big Brother's Little Brother*.

Ms Blake complained that she was treated unfairly in the programmes and that her privacy was unwarrantably infringed in the making of the *Big Brother* programmes.

The Complaint

Ms Blake's case

Big Brother

In summary, Ms Blake complained that she was treated unfairly in the *Big Brother* programmes on 20 to 25 May in that:

- a) The programmes were unfairly edited so as to humiliate and misrepresent her. Specifically, it was suggested that she was not washing or taking a shower, despite the fact that she took a shower and washed every day. Information about her deteriorating medical condition (including asthma, eczema and hay fever) was also withheld from the audience.
- b) The programme makers presented a distorted picture of her, so as to make her an object of ridicule, by withholding from the audience the fact that her suitcase, containing her medication and clothes, was being withheld from her. As a result, she was humiliated and singled out for negative treatment.

In summary Ms Blake complained that she was treated unfairly in the *Big Brother* programme broadcast on 24 May in that:

- c) Her medical issues, namely the fact she suffered from conditions including asthma and eczema, were withheld from the audience and were exploited (for example her medication and clothes were withheld from her and the air conditioning was altered) in an attempt to cause her to have a psychological breakdown.

In summary Ms Blake complained that she was treated unfairly in the *Big Brother* programmes broadcast on 24 and 25 May in that:

- d) An eviction story was invented by the programme makers in relation to her departure from the Big Brother House, when in fact she had asked to leave. As a result of unfair editing of her in the diary room on 24 May 2006, she was portrayed as being ejected for cheating when she was accused of receiving a coded message from her sister advising her to leave the House.

In summary Ms Blake complained that she was treated unfairly in the *Big Brother* programme broadcast on 25 May in that:

- e) Her visit to the diary room to ask to leave the Big Brother House was not included in the programmes and she was therefore not given an opportunity to respond to the untrue story of her departure.

In summary Ms Blake complained that her privacy was unwarrantably infringed in the making of *Big Brother* in that:

- f) The programme makers kept her in the Big Brother House against her will and continued to film her after she had asked to leave.

Big Brother's Big Mouth

In summary Ms Blake complained that she was treated unfairly in *Big Brother's Big Mouth* on 23, 24 and 25 May in that:

- g) As a result of the unfair editing of *Big Brother* and the information provided, the presenter was led to believe she was not washing and this was discussed on the programmes, during which she was unfairly referred to as "stinky Dawn."

In summary Ms Blake complained that she was treated unfairly in *Big Brother's Big Mouth* on 24 and 25 May in that:

- h) An eviction story was invented by the programme makers in relation to her departure from the Big Brother House, when in fact she had asked to leave. As a result of unfair editing and manipulation, she was portrayed on *Big Brother's Big Mouth* as having been ejected for cheating when she was accused of receiving a coded message from her sister advising her to leave the House.

Big Brother's Little Brother

In summary Ms Blake complained that she was treated unfairly in *Big Brother's Little Brother* on 25 May in that:

- i) As a result of the unfair editing of *Big Brother* and the information provided, the presenter and viewers were led to believe she was not washing and this was discussed on the programmes.

In summary Ms Blake complained that she was treated unfairly in *Big Brother's Little Brother* on 25 and 26 May in that:

- j) An eviction story was invented by the programme makers in relation to her departure from the Big Brother House, when in fact she had asked to leave. As a result of unfair editing and manipulation, she was portrayed on *Big Brother's*

Little Brother as having been ejected for cheating when she was accused of receiving a coded message from her sister advising her to leave the house.

Channel 4's case

Big Brother

In response to the complaint of unfair treatment, Channel 4 said in summary:

Please note that where references were made to quotations from the programmes or the untransmitted footage, these are included in full Ofcom's Decision below.

- a) In response to the complaint that the programmes were unfairly edited so as to humiliate and misrepresent Ms Blake, Channel 4 said that the footage recorded was not edited, deliberately or otherwise, so as to humiliate or misrepresent Ms Blake and there was no evidence that this was done. None of the programmes complained of stated or suggested that Ms Blake was not washing and only two of the programmes complained of (22 and 23 May) contained references to the body odour issue.

Channel 4 argued that Ms Blake raised the issue of body odour herself in the programme broadcast on 22 May. Prior to this there had been no mention of body odour or any significant discussion about whether or not housemates were washing or showering. Therefore if viewers gained the impression that Ms Blake was not showering, it was because she had said explicitly that she was not. Ms Blake then decided to shower with clothes on and later on that day, it was stated in a discussion between housemates Nikki, Richard and Grace that the reason why Richard's vest smelled of body odour was that Ms Blake had worn it while showering and then placed it on the radiator in the bathroom to dry. Therefore, Channel 4 said, by the time viewers knew that body odour had become an issue, they also knew that she had started showering. However, despite the fact that Ms Blake was showering, there was still an issue amongst housemates relating to her body odour.

On 23 May there was a further discussion of Ms Blake's body odour amongst some of the housemates. Channel 4 said this was not unfairly edited in the programme. In the two programmes in which the body odour issue was raised, the sequences broadcast accurately reflected the discussions that were taking place in the House and were not in any way unfairly edited.

Channel 4 said that the programmes were not unfair as a result of viewers not being told about Ms Blake's medical condition. Ms Blake suffers from asthma, hay fever and eczema. She was permitted to take her asthma inhaler into the House. Whilst in the House she stated that she felt her asthma was being exacerbated by the air conditioning, but she did not exhibit any signs of being seriously unwell nor did she say she was. Her hay fever medication was held by Big Brother and given to her as and when requested. As untransmitted footage showed, she entered the diary room on numerous occasions to ask for medication, which was duly supplied to her. Requests for throat lozenges were also complied with. Whilst towards the end of her stay in the House, Ms Blake may not have been feeling particularly well physically, her symptoms were mild and at no point did she complain seriously about her medical condition or ask to see a doctor. Nor did she complain to Big Brother about her eczema or ask for her eczema medication. Had she done so, it would have been supplied. It was only on 24 May when Ms Blake spoke to Big Brother about leaving that she

mentioned her treatment cream (which was not a medication) in connection with eczema. Big Brother responded immediately that it was happy to provide the cream, as was demonstrated by untransmitted footage.

Channel 4 stated that in untransmitted footage of Ms Blake recorded in the diary room on 24 May, she gave a whole host of reasons why she wanted to leave the Big Brother House, but argued that a careful reading of a transcript of this footage showed that the main reason was that she was unwilling to contemplate eviction or staying in the House without her clothes. The real issue for her was not having her own clothes, not her medical condition. Therefore not informing viewers about her health issues did not give rise to any unfairness.

- b) In response to the complaint that Ms Blake was singled out for negative treatment and that viewers were not informed that her suitcase was being withheld from her, Channel 4 said that viewers were told on numerous occasions about the "Big Brotherhood" and what membership of that (privileged) group of housemates meant, in particular it was clear to viewers that only members of the Big Brotherhood would receive their suitcases. It was therefore wrong to say that viewers would not have appreciated that Ms Blake had not received her suitcase containing her clothes etc. This element of the show was not aimed at her and she was not singled out: it was clear to viewers that all the housemates were in a similar position. Membership of the Big Brotherhood was not decided by the programme makers but either by the housemates or by chance. This element of the show was deliberately introduced to test the housemates and others showed just as much frustration as Ms Blake about not having their things. Virtually all the housemates were in the same or a similar position at some point and it was mainly chance that Ms Blake did not become a member of the Big Brotherhood and receive her suitcase.
- c) In response to the complaint that Ms Blake's medical issues were withheld from viewers and exploited, Channel 4 said that, as set out under a) above, the fact that Ms Blake suffered from asthma and eczema was a medical matter that would normally remain private and, in any event, there was no good reason to tell viewers. Furthermore, no medication was withheld from Ms Blake. In Channel 4's view, Ms Blake did not complain about her eczema or refer to her treatment cream until 24 May because it was not causing her any significant problem. There was no evidence to support her allegation that the decision by Big Brother to withhold suitcases was aimed at her or was intended to cause her to have a psychological breakdown. All the housemates were in the same or a similar position and it was largely by chance that Ms Blake did not receive her suitcase. She accepted during the programme and on untransmitted footage that the suitcases were received by housemates by chance.

The allegation that the air conditioning was altered to make Ms Blake's asthma condition worse was entirely without foundation. Housemates were free to ask Big Brother to alter the air conditioning and Ms Blake was advised of this during her stay. The air conditioning and temperature in the House was always set or altered to make housemates most comfortable.

- d) In response to the complaint that an eviction story was invented about Ms Blake and that her visit to the diary room on 24 May was unfairly edited, Channel 4 said that an eviction story was not invented. Ms Blake was evicted because, after carefully studying her words and actions and given the fact she was

unable to give a satisfactory answer to Big Brother's questions, it was concluded that she had broken a fundamental rule of the Big Brother game, namely communication with the outside world.

Channel 4 argued that Ms Blake had said, prior to her eviction, that she wanted to leave the House and by the time she was evicted, she was herself eager to go. However, the programme makers were entirely justified in deciding to evict her for rule breaking and to show that to viewers in the way they did. The fact that Ms Blake had already expressed a desire to leave was not withheld from viewers: her wish to leave was clearly included in the relevant broadcast programme on 25 May.

Channel 4 noted that Ms Blake told Big Brother she wanted to leave on 24 May when she came to the diary room at 17:46 hours. Untransmitted footage showed that Ms Blake gave a number of different reasons for wanting to leave: because she didn't have her suitcase and, therefore, her clothes; because of her sore throat and deteriorating asthma; because of the actions of other housemates; and, because she considered the show to be turning into a farce. However in Channel 4's view, it was clear the real, overriding reason she wanted to leave at this point was because she thought she might not ever receive her suitcase and, therefore, her clothes. This was clear from the fact that Ms. Blake started seriously talking about leaving when she knew she was up for eviction and, therefore, that she was unlikely ever to receive her suitcase and from what she said to Big Brother in the rushes referred to above.

At the end of this conversation in the diary room, Ms Blake acknowledged it was likely she would have to spend the night in the House before leaving.

At this point, the programme-makers were in little doubt about how Ms Blake felt, but they also had to consider the option that she might change her mind and decide to stay. Many previous housemates had asked to leave, only to change their minds after speaking with other housemates, or sleeping on the matter. As far as the programme makers were concerned, it was not an entirely settled matter at this point.

Later on 24 May, Big Brother relayed a confidential message to Ms Blake from her sister. Normally, all contact with the outside world was prohibited for housemates. However, the game's rules allowed for some limited contact in certain prescribed circumstances. In accordance with the Big Brother rules about emergencies, a message was passed on to Ms Blake from her sister about her sister's health.

After receiving this message Ms Blake left the diary room and joined the other housemates. A conversation then took place between Ms Blake and some of her housemates. Channel 4 said that it was clear from what Ms Blake said in this conversation that she had previously arranged for her sister to contact her, through Big Brother, with a coded, confidential message that her sister was unwell, to indicate to Ms Blake that she was not coming over well in the House or that she was attracting negative publicity and that she should, therefore, leave the House.

Later that day, Big Brother asked Ms Blake to go to the diary room. Big Brother questioned her about what she had told housemates about the message from her sister. Part of this exchange was included in the programme broadcast on 25 May. However, Ms Blake's explanations did not make sense. On the one

hand she appeared to be admitting that it was a prearranged message (or code) from her sister to leave the House, whilst at the same time maintaining that this was not communication with the outside world. Ms Blake admitted to Big Brother that the message was telling her to leave the House. Since her understanding of the message was completely different, in fact the opposite, from what was actually said, it was clear the message was in code. From what Ms Blake told other housemates, by far the most credible explanation was that the coded message related to her not coming across well. Ms Blake's words and actions indicated that she knew this was a serious breach of the rules and amounted to cheating. Cheating was taken extremely seriously by Big Brother and the programme-makers decided Ms Blake must be removed from the House and viewers made aware of what had gone on.

Ms Blake also complained of unfair editing of footage of her in the diary room. There were two relevant diary room sequences on 24 May. The fact that Ms Blake wanted to leave, her main reason for wanting to leave, namely not having her clothes, and the fact that she considered the game was "turning into a farce" were included in the broadcast programme, which fairly and accurately represented what was said in the diary room. Other comments made during this diary room sequence were not included either because they were not relevant or because the comments were repetitive. Footage that made it clear that Ms Blake denied rule breaking was included in the programme, which fairly and accurately represented her explanations about what she had said to other housemates about her sister's message.

- e) In response to the complaint that Ms Blake was not given an opportunity to respond to the story of her departure, Channel 4 said that, as set out under d) above, footage of Ms Blake's visit to the diary room to ask to leave was included in the programme on 25 May and there were references in the programme to her wanting to leave the House.

In response to Ms Blake's complaint of unwarranted infringement of privacy in the making of the programme, Channel 4 said in summary:

- f) As regards the complaint that Ms Blake was kept in the House against her will and that she was filmed after her request to leave, Channel 4 said that the contributor agreement and the rules of the game to which Ms Blake signed up were quite clear and stated that a housemate who wished to leave may not be able to go on the same day as they made their request. It was clear from untransmitted footage that Ms Blake knew and appeared to accept this fact. She did indeed leave the following day, less than 24 hours after first expressing a desire to leave.

In relation to the complaint that Ms Blake was "held against her will", Channel 4 argued that the House had a number of fire escape routes that she could have used to exit the building at any time, had she really wanted to. Housemates could leave the House through these emergency exits, in the living room, bedroom and garden, simply by pushing the handle. These exits had been pointed out to all housemates in a fire drill in the first few days.

In view of this, Channel 4 said it assumed that this part of the complaint related specifically to the minutes before Ms Blake actually did leave, following her removal by Big Brother. This diary room interview with Big Brother lasted approximately 24 minutes. Ms Blake appeared to be complaining that by not opening the door immediately and by Big Brother trying to have a conversation

with her and filming her, this amounted to an unwarranted infringement of her privacy. However, when individuals accepted the invitation to become a contestant on Big Brother, in return for the potential benefits that accompanied participation in the show, they agreed to follow the game's rules and Big Brother's directions. It was clear from the agreement that *everything* may be filmed and *everything* may be broadcast (except counselling sessions). It was also clear that even if a contestant decided to walk out, or was removed, for whatever reason, they still must honour their contractual obligations, which include being interviewed and filmed for the programme. Channel 4 said that the agreement also stated that participants may be removed from the House at the discretion of Big Brother and that Big Brother may alter the rules of the game and decide how to deal with unforeseen circumstances.

The rules were appended to the agreement signed by contestants, page 2 of which was headed "NO CONTACT WITH THE OUTSIDE WORLD". Whilst the exact circumstances of Ms Blake's case, namely a family member sending a prearranged, coded message, in the guise of a confidential, personal message, were not explicitly anticipated, Channel 4 said it was clear that such a form of communication with the outside world was prohibited.

Channel 4 stated that the rules also dealt with "Voluntary departure" and "Non Voluntary departure". Whilst the rules did not expressly anticipate the exact circumstances of Ms Blake's case, in Channel 4's view it was clear that housemates could not decide they had had enough and then expect to leave immediately. As set out above, it was also clear from the rules that even after housemates had decided to leave, or had been removed, they continued to have obligations to the programme and the programme-makers.

Channel 4 argued that all those provisions, taken together, which Ms Blake voluntarily agreed and signed up to, meant that the programme-makers were entirely within their rights to film a final conversation with her in the diary room about her departure and to broadcast parts of that exchange. As soon as Ms Blake entered the diary room, Big Brother attempted to explain the reason why she was being evicted, both to make it clear to viewers and to give her the opportunity to respond. However, when Big Brother attempted to speak, she repeatedly interrupted. She spoke at length and most of the time she actually spent in the diary room on this occasion was taken up by her speaking, rather than Big Brother. In the end, Big Brother explained to Ms Blake why she was being removed from the House, before she left through a side door.

Big Brother's Big Mouth

Please note that where references were made to quotations from the programmes or the untransmitted footage, these are included in full Ofcom's Decision below.

- g) In response to the complaint that the programmes contained unfair discussions about her, Channel 4 said that the *Big Brother's Big Mouth* programmes complained of fairly and accurately reflected events in the House. It was Ms Blake herself who referred on 22 May to the issue of body odour. This then became a source of conversation and debate in the House which was fairly included within the broadcast *Big Brother* shows. Channel 4 argued that as this was one of the main events over those few days, it was entirely reasonable and to be expected that it would be included and discussed in shows like *Big Brother's Big Mouth*. Russell Brand, the presenter, was not led to believe she

was “not washing”, as complained of, nor was this idea conveyed to viewers of *Big Brother’s Big Mouth*.

Channel 4 argued that there was nothing unfair about the comments made about the body odour issue in the programmes. These were clearly opinion, based on what Ms Blake herself had said about not showering and what other housemates were saying about body odour. They were entirely the sort of comments that one would expect in a Big Brother discussion programme. Viewers would not have understood the comments to mean that Ms Blake was not washing at all, rather that she needed to do more to eradicate the problem. Furthermore, Russell Brand tried to rein things back slightly with humour, and his comments were well within the bounds of acceptability.

- h) In response to the complaint that she was portrayed in the programmes as having been evicted for cheating, Channel 4 said that an eviction story was not invented: Ms Blake *was* evicted for rule breaking. The comments made about Ms Blake during the *Big Brother’s Big Mouth* programmes broadcast on 24 and 25 May 2006 were all fair, based on the events that had taken place.

On 24 May the only reference to Ms Blake leaving was in relation to a clip showing her threatening to leave the House, after learning she was up for eviction. When the programme returned to the studio, Russell Brand said: “*Ok ... Dawn wants to go then but do you reckon it’s one of them ones where they go I’m going I’m going, not really...*” and an audience member went on to say “*...everybody wants the attention ...*”. This raised no issues of unfairness.

On 25 May *Big Brother’s Big Mouth* broadcast one main sequence from an earlier *Big Brother* programme relating to Ms Blake, the “code” and her leaving. Russell Brand said “*Dawn has gone...*”. This was then followed by a clip from the House recapping recent events regarding Ms Blake. This clip included Ms Blake saying she was leaving and saying she had a code; an excerpt of the conversation she had with Nikki explaining the message; and, finally, other housemates, including Lea, reacting to what Ms Blake had told them. There then followed a discussion in the *Big Brother’s Big Mouth* studio about Ms Blake and the issue of the code. Channel 4 argued that all the comments made, by the presenter, celebrity guests and the studio audience, were entirely fair comment based on the events that had happened. Some members of the audience were critical of Ms Blake, others even handed, although surprised by her actions, whilst others, including a caller to the show, were strongly supportive of her.

Big Brother’s Little Brother

Please note that where references were made to quotations from the programmes or the untransmitted footage, these are included in full Ofcom’s Decision below.

- i) In response to the complaint that the programmes contained unfair discussions about her, Channel 4 said that, as set out above, Ms Blake herself said on 22 May that she needed a shower. Her body odour then became a source of conversation and debate in the House and was included within the broadcast *Big Brother* shows. As this was one of the main ‘events’ that day, Channel 4 argued that it was understandable that it would be discussed in shows like *Big Brother’s Little Brother*. Dermot O’Leary, the presenter, was not led to believe she was “not washing”, as complained of, nor was this idea conveyed to viewers of *Big Brother’s Little Brother*.

The only reference to the body odour issue was on 25 May, when studio guest comedienne Gina Yashere made a perfectly reasonable comment on the fact that the housemates were complaining, some of them bitterly, about Ms Blake's body odour. The presenter did not comment himself and moved the conversation on.

- j) In response to the complaint that she was portrayed on the programmes as having been evicted for cheating, Channel 4 said that an eviction story was not "invented": Ms Blake *was* evicted for rule breaking. The fact that Ms Blake had asked to leave was not in doubt and viewers knew that she had, because it was included in the relevant *Big Brother* programmes.

Channel 4 stated that on 25 May Dermot O'Leary said that Dawn had been "given the boot" and that she had left the House. These comments were factual. Footage was then shown of Ms Blake's departure, all of which was factually accurate. A line was included from Ms Blake saying that she was leaving, not being evicted. The comments by the presenter were either factual or were jokes that were clearly within acceptable limits. He then invited viewers to call to say what effect they think Dawn's departure would have on the House.

The comments included were fair, based on events in the House, and some were supportive of Ms Blake.

On 26 May there were only two references to the complainant and her leaving. Dermot O'Leary said: "*Yesterday Dawn was sent packing by Big Brother*". He asked *Big Brother* presenter Davina McCall: "*Who will be missed more, Shahbaz, Dawn or neither*". She replied: "*Dawn I'm just angry with*". Dermot O'Leary said: "*Are you not a bit annoyed you couldn't get your teeth into both of them?*" to which Davina McCall replied: "*I don't want to interview Dawn because she's a cheat*".

Channel 4 argued that these comments were reasonable and fair and represented the presenters' feelings and opinions based on what had transpired.

Ms Blake's comments

In response to Channel's statement in relation to *Big Brother*, Ms Blake said in summary:

- a)/c) The programme makers told her that her medication would be kept by them and given to her as required while she was in the House. However, she was assured that, as the bulk of her day-to-day care would be managed mainly by her toiletries and clothing, which would be in her suitcase, this would not cause her any problems. She was then also assured that she did not have any prohibited items in her suitcase. However, Ms Blake stated that she did not receive her suitcase and therefore could not manage her day to care through her use of clothes and toiletries. She could not have anticipated that this would happen.
- f) The fire doors referred to by Channel 4 in their statement were in fact locked and so she could not simply have left the House.

Channel 4's comments

Channel 4 said in summary in response to Ms Blake's comments:

- a)/c) The withholding of the suitcases was entirely in keeping with the sort of games introduced into the House by Big Brother. Ms Blake was not assured that she would have her toiletries with her at all times, although she may have assumed that. Had she been given the assurance she mentioned in her letters to Ofcom regarding her toiletries and clothing, Channel 4 would have expected her to raise the matter with Big Brother as soon as she realised her suitcase was being withheld. She did not do so. Furthermore it was clear from untransmitted footage filmed in the diary room that the main reason she wanted to leave the House was that she sick of not having her own things and having to borrow clothes from other housemates. When Big Brother offered to supply her eczema treatment cream, she refused it. She did this knowing that even if she did leave the House, she would have to spend another night there. It was therefore unlikely that her eczema was seriously troubling her.
- f) Channel 4 stated that it was not the case that the fire doors were locked: this would have been a serious breach of health and safety rules. With the exception of the very final diary room session, Ms Blake did have access to an open fire exit at all times.

Decision

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

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

Ms Blake's complaint was considered by Ofcom's Executive Fairness Group. Ofcom considered the complaint, the broadcaster's response, comments from each party, together with recordings and transcripts of the programmes as broadcast and recordings of untransmitted material.

As a preliminary point, Ofcom noted that Ms Blake took part in the seventh series of *Big Brother*. It considered, therefore, that potential participants would be likely to be aware that any of their actions could be filmed, that the House rules were subject to change at any time and that their actions in the House were likely to be widely scrutinised and discussed. While considering all the issues raised by Ms Blake in reaching a decision as to whether she was treated unfairly and whether her privacy was unwarrantably infringed, Ofcom considered her complaint against this background.

Ofcom found as follows:

Big Brother

- a) Ofcom first considered Ms Blake's complaint that the programmes were unfairly edited so as to humiliate and misrepresent her regarding the issues of body odour and her medical condition.

In considering this head of complaint, Ofcom took into account Practices 7.6 and 7.9 of the Code. Practice 7.6 states that when a programme is edited, contributions should be edited fairly. Practice 7.9 states that broadcasters must 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 noted that body odour had become an issue in the House and it was discussed amongst the housemates. It was therefore reasonable for the programme to include discussions on this subject. Furthermore, Ofcom noted that Ms Blake was the first person in the House to mention the issue, when she said in the programme broadcast on 22 May:

“I need something on my bottom so I can go in the shower ‘cos I haven’t showered and I’m the smelliest person here...no I’m not showering ‘cos I need my swimming costume...I work with kids...I can’t be seen naked or semi-nude...that’s not going to happen...I need to be very careful I could jeopardise my whole career...”

In Ofcom’s view it would also have been clear to viewers that from that day onwards Ms Blake was washing, as footage of a discussion between some of the other housemates about her taking a shower, and wearing Richard’s vest while she did so, was included in the programme. Having viewed recordings of the full untransmitted material that the footage included in the programmes broadcast on 22 and 23 May relating to the issue of body odour Ofcom considered that the broadcaster fairly represented the issues. Ofcom therefore found that the material was not unfairly edited and indeed the relevant conversations between the housemates were included in the programme at length.

As regards Ms Blake’s complaint that information about her deteriorating medical condition was not included in the programme, Ofcom noted from the untransmitted material that Ms Blake had her inhaler with her in the House and that there was no evidence that she complained to the programme makers about eczema, asked for eczema medication or to see a doctor. It was also clear from the untransmitted footage that Ms Blake’s health issues, for example her sore throat, were dealt with by the programme makers as they arose.

Ofcom noted that Ms Blake gave her reasons for wishing to leave in the diary room on 24 May. Ofcom viewed untransmitted footage of this visit to the diary room and considered that it was clear that she had a number of concerns, for example she said she felt that the programme had become a farce, she was unhappy that she was being denied her suitcase; she did not have enough clothes, she had throat problem and was unhappy with the air conditioning. During her conversation with Big Brother, Ms Blake returned repeatedly to the issue of her clothes and her suitcase. She said, for example:

“I just want my own suitcase. I want to be out of these paper pants and be given my own pants, given my own clothes...”

This visit to the diary room was lengthy and an edited version was included in the programme on 25 May:

“All I want is my clothes...All I give a shit about is my clothes...”

Having viewed the full footage, Ofcom was satisfied that the fact that she did not have her suitcase and her clothes was an issue of greater concern to Ms Blake than medical issues and no unfairness resulted from the editing of this material. Furthermore Ofcom was unable to find any evidence in the rushes that Ms Blake had articulated any link between her clothes and her medical conditions. In Ofcom's view it was a matter for the programme makers' editorial judgement which footage to include in the programme as long as no unfair treatment resulted. Participants who enter the Big Brother House are now fully aware that events in the House are heavily edited for the main show. Lengthy conversations, either between the housemates or with Big Brother are frequently omitted or edited. So long as the broadcaster complies with the requirements of the Code (such as fairness), broadcasters are free to edit material appropriately. In these circumstances, it was not incumbent on the programme makers to include footage about Ms Blake's medical requirements.

Ofcom found no unfairness to Ms Blake in this respect.

- b) Ofcom considered the complaint that Ms Blake was made an object of ridicule and single out for negative treatment by the programme makers withholding from the audience the fact that her suitcase was being withheld from her.

In considering this head of complaint, Ofcom took into account Practice 7.9 of the Code, as set out under decision head a) above.

Ofcom considered that the programme makers' decision to withhold of suitcases from some housemates was within the wide-ranging rules that Ms Blake signed up to and was an acceptable part of the games introduced in the programme. Ofcom noted that Rule 12 provided to contestants stated:

"Big Brother reserves the right to change the rules at any time."

Ofcom took the view that it would have been entirely clear to viewers that Ms Blake's suitcase was being withheld from her, since this was a key element of the early part of the series that was referred to extensively by the housemates.

Furthermore, in Ofcom's view it would have been clear to viewers that a number of housemates were in the same position as Ms Blake and that chance played a large part in them receiving their suitcases back. It was clear from footage of her broadcast on 25 May that she was aware that membership of the privileged Big Brotherhood group of housemates, and therefore receipt of suitcases, was to a large extent a matter of chance:

Ms Blake: *"The first two members were in here by chance. Sezer got his hat also by chance, and Mikey ran to the door and got his hat by chance so there's only four people who have actual have been chosen."*

Ofcom therefore found no evidence that Ms Blake was in any way singled out or ridiculed in relation to this element of the game.

Ofcom found no unfairness to Ms Blake in this respect.

- c) Ofcom next considered Ms Blake's complaint that her medical issues, namely the fact she suffered from a number of conditions, including asthma, eczema,

urticaria and skin allergies, were unfairly withheld from the audience and exploited, (for example her medication and clothes were withheld from her and the air conditioning was altered) in an attempt to cause her to have a psychological breakdown.

In considering this head of complaint, Ofcom took into account Practice 7.9 of the Code, as set out under decision head a) above.

Ofcom noted from the untransmitted material that Ms Blake had her inhaler with her in the House and was given medication when she requested it. As set out under decision head a) above, Ofcom took the view that Ms Blake's medical condition was not an issue that the programme makers were required to include in the programme and the exclusion of footage in relation to it did not therefore result in unfairness to her.

As set out under decision head b) above, Ofcom was satisfied that, in withholding her suitcase, the programme makers were not singling Ms Blake out. Ofcom was therefore not satisfied that her clothes were withheld from her in order to exploit her medical issues.

As regards the air conditioning, it was clear from untransmitted footage recorded on 24 May in the diary room that Ms Blake was aware that she could ask for the air conditioning in the House to be altered.

Big Brother: *"Housemates are always free to come and see Big Brother if temperatures need altering".*

Ms Blake: *"That's fair enough but when I am out I can actually set the temperature the way I want it, I can't do that here".*

In summary Ofcom therefore found that that Ms Blake was not singled out by Big Brother, and no unfairness resulted from the programme's portrayal of her in relation either to her medical issues or her related concerns about the air conditioning.

Ofcom found no unfairness to Ms Blake in this respect.

- d) Ofcom considered Ms Blake's complaint that an eviction story was invented and footage of her departure from the House unfairly edited.

In considering this head of complaint, Ofcom took into account Practices 7.6 and 7.9 of the Code, as set out under decision head a) above.

Ofcom noted that one of the rules of the House was entitled "No contact with the outside world". This stated:

"While you are in the House you will have no contact with the outside world... Housemates are not permitted to make any attempts to communicate personal messages to anyone in the outside world by any means".

Ofcom noted footage included in the programme broadcast on 25 May showing that when Big Brother announced that Ms Blake was one of the people nominated for eviction (unrelated to the later allegation of cheating), she said *"I'm going to leave now"*. She then had a conversation with a number of her

fellow housemates in which she made it clear that she wished to leave the House. She went into the diary room and told Big Brother that she wished to leave and some of this footage was included in the programme:

“...actually I just want to go now and I’m not going to change my mind, cos I slept on it yesterday...”

Ofcom considered that it would therefore have been clear to viewers that Ms Blake had already said that she wanted to leave, prior to her eviction for the alleged cheating.

Ms Blake then received a message via Big Brother from her sister, saying that her sister had to go into hospital but that Ms Blake should not worry. Ms Blake told some of her fellow housemates about this and that she had a code. This was shown during the broadcast on 25 May:

“I’ve got to go, I’ve got a message from my family...I have a code...’cos you know I plan things, I planned it all, so that’s me, that’s my get out...”

It appeared to Ofcom therefore that Ms Blake was breaking the rule about contact with the outside world.

This sequence of events was clearly shown in the programme on 25 May. Ms Blake was shown being called to the dairy room and asked about the message and her reference to a “code”. She was told Big Brother would get back to her and the narrator said at the end of the programme that viewers would find out the next day how she had left the House. On 26 May, the presenter Davina McCall said:

“...recalcitrant Dawn, who drove Big Brother to despair, who kicked her out of the House – cheat!”

Footage was then shown of Ms Blake in the diary room, when Big Brother referred to the message, the code, the rules and then said:

“Dawn, you are clearly in breach of the Big Brother rules... Big Brother is removing you from the House with immediate effect”.

In Ofcom’s view therefore, it would have been clear to viewers that Ms Blake had asked to leave prior to her eviction. Ofcom found that the reasons for her eviction, namely the allegation of cheating by making contact with the outside world, were properly portrayed in the programme and there was no evidence to suggest that the allegation was invented.

Ofcom therefore found no unfairness to Ms Blake in this respect.

- e) Ofcom considered Ms Blake’s complaint that her visit to the diary room to ask to leave was not included in the programmes and that she was not given an opportunity to respond to the story of her departure.

In considering this head of complaint, Ofcom took into account Practice 7.11 of the Code. Practice 7.11 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.

Ofcom took into account the nature of the programme, namely a reality game programme. In this context, Ofcom did not consider that the suggestion that Ms Blake broke the rules of *Big Brother* before her departure, amounted to a significant allegation, to which she was entitled to an appropriate and timely opportunity to respond.

In any event, as set out under decision head d) above, footage of Ms Blake's visits to the diary room on 24 May were included in the programme on 25 May. As set out under decision head d) above, it was made clear in the programme on 25 May that Ms Blake had asked to leave before she was evicted for cheating and this issue was not presented unfairly.

In relation to the complaint regarding an opportunity to respond to the allegation of cheating, Ofcom noted that the programme on 25 May also included footage of Ms Blake being asked by Big Brother about the allegation of breaking the rules and her denial that this had happened. She said that the message from her sister was simply a message and was "not cryptic" nor was it part of "a system of communication".

Overall, although there was not a significant allegation made about Ms Blake, she did have a number of opportunities to explain her side of the story of her departure from the House.

Ofcom found no unfairness to Ms Blake in this respect.

- f) Ofcom next considered Ms Blake's complaint that her privacy was infringed in the making of the programme, as she was held in the House against her will and the programme makers continued to film her after she had asked to leave.

In considering this head of complaint, Ofcom took into account Practice 8.5 of the Code. Practice 8.5 states that any infringement in the making of a programme should be with the person's consent or be otherwise warranted.

The line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted?

Ofcom first noted that there were a number of exits through which Ms Blake could have left at any time had she wished to do so: there was no material provided to Ofcom to support the complaint that fire doors were locked. It was not satisfied, therefore, that she was held in the House against her will.

In reaching a decision about whether Ms Blake's privacy was infringed in the making of the programme, as a result of the programme makers keeping her in the House after she had asked to leave and continuing to film her, Ofcom first sought to establish whether she had a reasonable expectation of privacy. In Ofcom's view, legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye.

In considering whether Ms Blake had a legitimate expectation of privacy, Ofcom noted that she appeared to accept that she would not be able to leave the

House immediately following her request to do so. She said at the end of her conversation in the diary room on 24 May:

“...so I know that I have to spend the night here, that’s fair enough but I’d like to leave in the morning”.

This was also clear from the contract signed by Ms Blake at the outset of her participation in the series, which stated, under the heading “Voluntary Departure”:

“If you wish to leave you must go to the Diary Room and discuss your full and frank reasons for leaving. You will also need to give Big Brother some time to prepare for your sudden departure. It may not, for example, be possible to leave the House on the same day that the request is made to leave.”

It was also clear from the contract (paragraph 1.2) that housemates could be filmed at any time:

“You hereby consent to the photography, filming, recording and/or live relay of any part of your appearance/participation (if any) in the Programme...”

Furthermore, Ms Blake was aware that she was being filmed in the diary room on 24 May and she continued to remain there discussing at length with Big Brother her reasons for wishing to leave. Ofcom viewed untransmitted footage of this visit to the diary room and noted that Ms Blake did not appear at that time to be distressed or to wish filming to stop.

In the circumstances, in which she was aware that she would not be able to leave immediately after her request to do so and she was aware that she was being filmed, Ofcom did not consider that Ms Blake had a legitimate expectation of privacy and so her privacy was not infringed in the making of the programme.

Ofcom therefore found no infringement of Ms Blake’s privacy in the making of the programme.

Big Brother’s Big Mouth

- g) Ofcom considered the complaint that, as a result of unfair editing of *Big Brother*, the presenter and viewers of *Big Brother’s Big Mouth* were led to believe that Ms Blake was not washing.

In considering this head of complaint, Ofcom took into account Practices 7.6 and 7.9 of the Code, as set out under decision head a) above.

As set out under decision head a) above, Ofcom did not consider that footage in relation to the issue of washing was unfairly edited. It also considered that it was not unfair to include the issue of body odour and washing, which was being discussed by a number of housemates, in the *Big Brother* programmes.

Since this issue had arisen in *Big Brother*, it was legitimate for it also to be discussed on *Big Brother’s Big Mouth*, a studio discussion programme about the events in the House. Ofcom noted that both negative and positive

comments about Ms Blake were included in the light-hearted discussions about events in the House.

On 23 May, there were two references to Ms Blake and body odour in *Big Brother's Big Mouth*. The first was when the presenter, Russell Brand said, in the introduction to the programme:

"...apparently Dawn whiffs a bit. Personal hygiene has become a bit of an issue in that House ..."

The second was when a clip from the House of Nikki talking about how she might approach Ms Blake about the issue:

"I'm just gonna say 'Ugh, someone's got B.O'"

Ofcom noted that Russell Brand's comments about Nikki's planned approach to Ms Blake to discuss it poked fun at Nikki, suggesting she was insensitive, rather than at Ms Blake.

The issue of Ms Blake and body odour was one of the subjects discussed on 24 May: a clip from the House showing Ms Blake referring to not having showered was followed by a comment by "Judge Jude", a contributor to the series, who provided humorous comments on events in the House. Judge Jude said:

"I do like Dawn but she should have a bath".

There was then a clip from the House of Nikki smelling Grace's top (with no reference to the complainant), followed by Judge Jude saying:

"[Nikki] needs a good slap. She's getting right on my nerves".

Russell Brand then reacted to a caller saying Nikki was "kicking up a stink" by saying:

"Dawn's kicking up a stink as well, it's a popular policy".

Ofcom also noted that Ms Blake and her code was one of the subjects of discussion during the programme on 25 May. Some comments were also made about the body odour issue, when the show's guest Vanessa Feltz said:

"I think she should have had a wash...she smelt...she stank..."

A member of the audience said:

"We don't like smelly people. She could have used deodorant".

Russell Brand said:

"We can't smell her on the telly, she might be all right".

Vanessa Feltz said:

"She could have had a bath ..."

Russell Brand then said:

“Who knows what else she had up her sleeve. Well B.O. from the stink of things. I’m muckin’ about ...”.

Ofcom noted the context of *Big Brother’s Big Mouth*, which is a light hearted review of events in the House and includes jokes and banter, and considered that all the references to Ms Blake during the programmes fairly reflected events in the House as portrayed in *Big Brother* and the untransmitted material of these events viewed by Ofcom. The comments made were fair, based on what Ms Blake had said herself about the body odour issue (as discussed at head a) and on footage from the House. Ofcom also noted that a number of the comments made were in fact supportive of her, for example Judge Jude said she liked Ms Blake and did not agree with Nikki’s attitude to her. Ofcom considered that the general tone of the discussions was light-hearted and humorous. Ofcom also noted that Ms Blake was one of a number of housemates discussed during the programme as a whole. There was no unfairness to Ms Blake during these humorous discussions.

In these circumstances Ofcom found no unfairness to Ms Blake in the coverage of this issue in *Big Brother’s Big Mouth*.

- h) Ofcom went on to consider the complaint that Ms Blake was portrayed as having been evicted from the House for cheating.

In considering this head of complaint, Ofcom took into account Practices 7.6 and 7.9 of the Code, as set out under decision head a) above.

As set out under decision head d), although Ms Blake had already asked to leave the House, she was also accused of cheating and was ejected by *Big Brother* as a result. In Ofcom’s view it was entirely appropriate for these events to be discussed on *Big Brother’s Big Mouth*.

During the programme on 24 May there was a clip from the House showing Ms Blake threatening to leave the House after learning that she was up for eviction. Russell Brand then said:

“OK... Dawn wants to go then but do you reckon it’s one of them ones where they go I’m going I’m going, not really...”

In response to this, a member of the audience said *“...everyone wants the attention...”*.

On 25 May, Russell Brand said *“Dawn has gone... Good-bye England’s rose... you swine...”* This was followed by *Big Brother* footage from the House recapping recent events involving Ms Blake, showing her saying she was leaving and that she had a code. This was then followed by a discussion in the studio about Ms Blake and the code, in which comments were made in support of Ms Blake as well as against her. For example, a member of the audience said:

“I think she had a lot of guts and unfortunately it sort of went all wrong. I think the intentions were really good. I think if she could have played Big Brother that would have been really good”.

A text message or email from a viewer was also shown on screen, saying:

“Dawn was the only genuine one in there. Why are the rest of the gang so suspicious?”

The programme’s portrayal and discussion of these events fairly represented what had happened in the House. The comments made in the programmes of 24 and 25 May were a light-hearted and humorous look at events in the House.

There was no unfairness to Ms Blake in this respect.

Big Brother’s Little Brother

- i) Ofcom considered the complaint that, as a result of unfair editing of *Big Brother*, the presenter and viewers of *Big Brother’s Little Brother* were led to believe that Ms Blake was not washing.

In considering this head of complaint, Ofcom took into account Practices 7.6 and 7.9 of the Code, as set out under decision head a) above.

As set out under decision head a) above, Ofcom did not consider that footage in relation to the issue of washing was unfairly edited. Nor did it consider that it was unfair to include the issue of body odour and washing in the *Big Brother* programmes.

Since this issue had arisen in *Big Brother*, it was legitimate for it also to arise in the discussions in *Big Brother’s Little Brother*, which, like *Big Brother’s Big Mouth*, is a light hearted studio discussion programme about the events in the House. Ofcom noted that both negative and positive comments about Ms Blake were included in the light hearted discussions about events in the House.

The only reference to the issue of washing was on 25 May, when comedienne Gina Yashere, the studio guest, stated:

“I think she will be missed she was the mother of the House but she should have taken off the doorag [headscarf] and cleaned herself up a bit. The whole BO thing was not good, letting us down”.

In Ofcom’s view this was a passing reference to an issue that had arisen in the House and the guest was entitled to express her opinion in keeping with the nature and tone of the programme previously discussed. Ofcom also noted that Gina Yashere appeared generally to be supportive of Ms Blake, saying that she would be missed. In any event, *Big Brother* participants are aware that it is in the nature of the game that events in the House will be discussed and their behaviour scrutinised on various programmes and that negative views about them may well be aired extensively.

In these circumstances Ofcom did not consider that there was any unfairness to Ms Blake in the coverage of this issue in *Big Brother’s Little Brother*.

- j) Ofcom went on to consider the complaint that Ms Blake was portrayed as having been evicted from the House for cheating.

In considering this head of complaint, Ofcom took into account Practices 7.6 and 7.9 of the Code, as set out under decision head a) above.

As set out under decision head d), although Ms Blake had already asked to leave the House, she was also accused of cheating and was ejected by Big Brother as a result. It was legitimate for these events to be discussed on *Big Brother's Little Brother*.

On 25 May the presenter Dermot O'Leary said:

"... Dawn was removed from the Big Brother House. She had talked about going but it transpired she had been communicating with the outside world by way of a code. Ingenious yes, but against the rules, the fundamental rules of Big Brother Dawn. With that in mind ... she's out".

The studio guest, Gina Yashere, commented:

"I think she will be missed, she was the mum of the House she was the peacemaker but she should have taken off the doorag and cleaned herself up a bit, the whole BO thing was not good, letting us down".

A caller said:

"I don't personally think she's going to be missed that much because I don't personally think that she had a big impact in the House ..."

Dermot O'Leary later read out a viewer's email which said:

"I think it is good Dawn has gone, her departure teaches housemates a valuable lesson. You cannot break Big Brother rules. Big Brother always wins".

A further caller said:

"I think Dawn will be missed but not much. I think she was a peacemaker to an extent. I think if the group has another argument then it might get a bit serious because Dawn is not here to calm it down ... you saw Lea kick off with Shahbaz and Richard kick off with Shahbaz and it was Dawn calming them down, so who's going to be there now?"

There were only two references to Ms Blake on 26 May. Dermot O'Leary said: *"Yesterday Dawn was sent packing by Big Brother"*. He later asked *Big Brother* presenter Davina McCall: *"Who will be missed more, Shahbaz, Dawn or neither"*. She replied: *"Dawn I'm just angry with"*. Dermot O'Leary said: *"Are you not a bit annoyed you couldn't get your teeth into both of them?"* to which Davina McCall replied: *"I don't want to interview Dawn because she's a cheat"*.

Ofcom concluded that the programme's portrayal and discussion of Ms Blake fairly reflected what had happened in the House and was in keeping with the light hearted nature of the programme. Ofcom was satisfied that the programmes clearly included positive as well as negative comments about Ms Blake, who was one of a number of housemates discussed in the programmes, in an appropriately light hearted tone.

There was therefore no unfairness to Ms Blake in this respect.

Accordingly Ofcom has not upheld Ms Blake's complaints of unfair treatment in *Big Brother*, *Big Brother's Big Mouth* and *Big Brother's Little Brother* and unwarranted infringement of privacy in the making of *Big Brother*.

Complaint by Mr Martin Cowley

Dragons' Den: BBC2, 15 October 2007

Summary: Ofcom has not upheld this complaint of unfair treatment by Mr Martin Cowley.

On 15 October 2007, BBC2 broadcast an episode of *Dragons' Den*, a programme in which entrepreneurs pitch their ideas to attempt to secure investment finance from a panel of business experts ("the Dragons"). Mr Martin Cowley and his business partner participated in the programme.

Mr Cowley complained that his contribution was unfairly edited in that the programme as broadcast focused on his image rather than his business and that he was shown reacting politely to a dismissive comment which was not made in his presence.

Ofcom found as follows:

- Mr Cowley's contribution was not edited unfairly. The programme as broadcast fairly represented the unedited footage and the discussion of his image was related to his business as it caused doubts in the Dragons who were being asked to invest in his business.
- Also, Mr Cowley's contribution was not edited unfairly in that the footage of his reaction to a comment made by one of the Dragons that was broadcast fairly reflected the untransmitted material.

Introduction

On 15 October 2007, BBC2 broadcast an episode of *Dragons' Den*, a programme in which entrepreneurs pitch their ideas to attempt to secure investment finance from a panel of business experts, known as the "Dragons" (Duncan Bannatyne, Deborah Meaden, Peter Jones, James Caan and Theo Paphitis).

Mr Martin Cowley and his business partner (his wife, Mrs Susan Cowley) were two of the participants in the programme. The programme featured Mr and Mrs Cowley presenting their business idea, "Cowley Fine Foods", to the Dragons, each of whom then questioned Mr and Mrs Cowley regarding their business proposal.

The panel of investors were also shown commenting on Mr and Mrs Cowley's personal appearance. Duncan Bannatyne stated:

"I don't think that when they [Walker's crisps] went around trying to sell the product to supermarkets, health clubs or anywhere else, they dressed in the ridiculous fashion that you're dressed. That's going to put off the customers straight away, as soon as you walk in the door."

Deborah Meaden was also shown stating:

"Do you see, the point is we are now discussing your image, we're not discussing your product. This is an absolute prime example of getting the image wrong".

At another point, Peter Jones was shown deciding not to invest in Mr Cowley's business, stating:

“This business, it is completely, it’s not even investor worthy, it’s not even worth thinking about, you are a typical very small - and it’s not even an enterprise - it’s a clear one woman, one man outfit and I’m going to say I’m out.”

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

The Complaint

Mr Cowley’s case

In summary, Mr Cowley complained he was treated unfairly in the programme as broadcast in that his contribution had been edited unfairly:

- i) Mr Cowley said he spent over an hour discussing his business product and plans. However, when the programme was broadcast the main focus was on Mr Cowley and his business partner’s appearance and attire, not on their business or products.
- ii) Mr Cowley said he was shown politely accepting Peter Jones’ refusal to invest, which was delivered in a rude, mocking and dismissive manner, when Mr Cowley was not present when the comments were made. Mr Cowley stated that his polite reaction was in relation to Mr Jones’ non-transmitted comments - that Mr Cowley’s business was “a great family life style business” with a “good product but unfortunately not a big enough investment” for him to want to invest in.

BBC’s case

In summary the BBC responded to the complaint as follows:

In response to Mr Cowley’s complaint that his contribution had been edited unfairly, the BBC addressed each of Mr Cowley’s complaints.

- i) The BBC said that it was not the case that a disproportionate amount of the programme had been spent discussing the appearance and attire of Mr and Mrs Cowley. It said the whole segment lasted almost exactly ten minutes. Of that, one and a half minutes was used discussing this particular issue. The BBC said that the rest of the segment focused on the history of the business, the products, and the business plan.

The BBC stated that it was apparent from the discussion that the interest paid by the Dragons to Mr and Mrs Cowley’s appearance had not been gratuitous. Rather it was a key factor in their deliberations about whether to invest in the business. The BBC said that one of the Dragons had pointed out that Mr and Mrs Cowley’s appearance might alienate potential customers as ‘it flew in the face’ of the image many people would have about food production (*“a very sharp, clean clinical view”*).

The BBC said the Dragon had expressed a perfectly legitimate view as to the viability of a food production company whose image, rightly or wrongly, might not give confidence that food was being prepared to required standards of cleanliness and hygiene. The fact that a number of the Dragons made clear that this was a factor weighing in their deliberations made this a significant issue, which, if the reasons for not investing were to be accurately conveyed to the audience, had to be adequately covered in the edited discussion.

The BBC directed Ofcom's attention to Mr Cowley's business website. The BBC said that the complainant's website carried a link to the *Dragons' Den* website and invited visitors to the website to view their appearance on *Dragons' Den*. The BBC said it believed this was "in the manner of an endorsement" of the programme was seriously at odds with the complaint by Mr Cowley of unfair treatment.

- ii) In response to the complaint that the programme had unfairly portrayed Mr Cowley's reactions to comments made by one of the dragons, the BBC said Mr Cowley's recollection of the remarks by the dragon, Peter Jones, was inaccurate. The BBC said it was clear from the unedited recording of the complainant's contribution that the Dragon's comments had been made in the presence of Mr Cowley.

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

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

The complaint was considered by Ofcom's Executive Fairness Group. In reaching a decision about this complaint Ofcom considered the written submissions of both parties, a recording and transcript of the programme as broadcast and an untransmitted programme recording and transcript.

Ofcom's findings in relation to Mr Cowley's specific heads of complaint are outlined below:

- i) Ofcom first considered the complaint that the programme makers unfairly edited Mr Cowley's contribution in that the programme as broadcast focused more on his image than his business.

In considering this aspect of the complaint, Ofcom referred to the requirement on broadcasters in Rule 7.1 to avoid unjust or unfair treatment of individuals in programmes. Ofcom also took account of Practice 7.6 which states that:

"When a programme is edited, contributions should be represented fairly".

It is important to note that the editing of a programme is an editorial matter for a broadcaster. However, broadcasters must ensure that the programme as broadcast does not result in unfairness to an individual or organisation.

Ofcom examined the full unedited material and noted that it included discussion of Mr Cowley's image, finances, business proposition and the Dragons' reasons for not investing, all of which featured in the programme as broadcast.

Ofcom then considered whether the edited discussion of Mr Cowley's appearance resulted in any unfairness.

Ofcom considered that the discussion of Mr Cowley's image was related to his business in that it stirred doubts in the Dragons who were being asked to invest in his business. Therefore, the discussion of Mr Cowley's appearance was relevant to both his particular pitch and the subject of the programme, which is about contestants attempting to persuade the Dragons to invest.

Ofcom considered that Mr Cowley contributed to the fifth series of *Dragon's Den* which was therefore an established programme. It is Ofcom's view that part of the programme's intention is to provide insight into the Dragons' opinions of a participant, in this case Mr Cowley, the product and pitch. Ofcom noted that the viewers would have understood by the Dragons' discussion of Mr Cowley's appearance that presentation is a significant factor of success in business alongside the other factors that were also discussed, such as business plans and finances. Ofcom considered that the editing was fair in that it gave the viewers the information to understand all the reasons Mr Cowley failed to gain investment from the Dragons and was a fair representation of the full untransmitted material.

Taking into account the above Ofcom found that the editing of the footage of the discussion in relation to Mr Cowley's image in the programme as broadcast was not unfair.

- ii) Ofcom then considered the complaint that Mr Cowley was shown reacting politely to comments made in a rude manner when he said he had not been present when those comments were made.

In considering this complaint Ofcom again took account of Practice 7.6 (set out above)

The untransmitted footage stated:

Peter Jones: *"This is bit of a joke [further discussion]. **Guys I am going to tell you exactly where I am... this business ... it is completely, it's not even investible, it's not even worth thinking about...** I actually think the quality... I haven't tasted the product... **but you are a typical very small and its not even an enterprise... it's a clear one man one woman outfit...**and I think actually you should carry on doing what you do... from your home... you clearly get a kick out of it... you're clearly good at what you do you create a good product.. I'd carry on doing that... you're not going to get somebody to put investment in ... you should go and talk to friends and family because they might be the ones that might give you the money.. I wouldn't say give up on it because you love it... I can see you do but it's a tiny lifestyle business for you its not something that you are ever going to get investment to take it forward **so I'm going to say I'm out.**"*

Mr Cowley: *"I think every snack business starts slowly but yeah... thank you very much for listening."*

[Emphasis added by Ofcom]

Parts of the comments which were included in the programme as broadcast are highlighted in bold.

It is Ofcom's view that the untransmitted footage showed that Mr Cowley was present when Peter Jones made the comments which were shown in the programme as broadcast.

Ofcom noted that Mr Cowley's complaint about the editing of this sequence was in relation to his polite reaction which was he said was in response to the comments that were omitted. However, Ofcom noted that in the untransmitted footage he did not appear to react to the specific comment included in the programme as broadcast. Ofcom is satisfied that Mr Cowley's reaction as shown in the programme as broadcast was a fair reflection of his reaction in the untransmitted material which could reasonably have been interpreted as a reaction to the whole of the comment, including both the negative and positive aspects. Furthermore, it is Ofcom's view that to show Mr Cowley reacting politely to Peter Jones' comment could not have reflected badly on Mr Cowley but instead represented him as calm and professional in the face of rejection.

Taking the above factors into consideration, Ofcom found that Mr Cowley's contribution had not been edited in a way which resulted in unfairness to him.

Accordingly, Ofcom found the programme as broadcast did not result in unfairness to Mr Cowley and has not upheld the complaint.

Complaint by Mr George Sweeney on behalf of Michael Sweeney (a minor)

The Teen Tamer and The Teen Tamer trailers, Five, 12 September 2006

Summary: Ofcom has not upheld this complaint of unfair treatment.

On 13 September 2006, Five broadcast an edition of its series about troubled or difficult teenagers, *The Teen Tamer*. This episode featured the Sweeney family and focused on the behavioural problems of 13 year old Michael Sweeney. The programme included footage of his parents, Mr George Sweeney and Mrs Pauline Sweeney, his two sisters and Michael. Behaviour expert, Lorraine Marer, visited the family on a number of occasions to help them try to address Michael's behavioural problems. A trailer for the programme also featured the family.

Mr Sweeney complained on behalf of Michael that: the reasons for Michael's behaviour were misrepresented, namely that he is a child with special needs, who is on the autism spectrum; the commentary married things together inaccurately; the programme failed to mention positive work done and successful strategies used by the family to handle Michael's behaviour; concerns Mr Sweeney raised at a pre-transmission viewing were ignored; Michael was portrayed negatively in trailers for the programme.

Five responded that: it was explained to the family that the programme would look at teenage behaviour issues and agreed with Mr Sweeney that no mention would be made of previous diagnoses of Michael; the commentary was not unfair to Michael; the programme showed Mr and Mrs Sweeney as loving parents who had worked hard to manage Michael's behaviour; the programme makers felt after a pre-transmission viewing that any concerns the Sweeneys had had been addressed; Michael was shown in a positive light for at least half of the trailer.

Ofcom found that: it was made clear to the Sweeney family that the programme would not look at the causes of Michael's behaviour, but would seek methods for handling that behaviour and the programme did not suggest any causes for his behaviour; there was no evidence that the commentary unfairly linked or portrayed footage of the family; the focus of the programme was Ms Marer's suggestions for changing Michael's challenging behaviour, but the programme did make it clear that the family had tried strategies previously; there was a pre-transmission viewing at which the family was able to comment on the programme, but it was made clear that the programme makers would retain editorial control and members of the family appeared to have contributed freely and spontaneously throughout the programme ; the trailer for the programme gave an accurate overview of the programme and did not include footage that was unfair to Michael.

Introduction

On 13 September 2006, Five broadcast an edition of its series about troubled or difficult teenagers, *The Teen Tamer*. This episode featured the Sweeney family and focused on the behavioural problems of 13 year old Michael Sweeney. The programme included footage of his parents, Mr George Sweeney and Mrs Pauline Sweeney, his two sisters and Michael. Behaviour expert, Lorraine Marer, visited the family on a number of occasions to help them try to address Michael behavioural problems. A trailer for the programme also featured the family.

Mr Sweeney complained on behalf of Michael that he was treated unfairly in the programme and the trailer. This complaint was therefore considered only insofar as it related to potential unfair treatment of Michael and not of other family members.

The Complaint

Mr Sweeney's case

In summary, Mr Sweeney complained that Michael was treated unfairly in that:

- a) The reasons for Michael's behavioural issues were misrepresented. Mr Sweeney stated that in the family's attempts to help Michael, who has special needs and is on the autism spectrum, they responded to an advertisement in a newspaper looking for families to participate in a television programme. At that time the programme was called "Families". After extensive discussions regarding the programme, the family agreed to take part, in the hope that Michael's recognised difficulties and special needs would be highlighted and helped. The family was told by the programme makers not to mention Michael's diagnosis. This resulted in the reasons for his behaviour problems being misrepresented in the programme and the impression being given that his behaviour was due to inconsistent parenting rather than as a result of his condition. This was unfair to Michael. Furthermore, the programme makers were aware of successful strategies that had been used by the family and recorded by Mr Sweeney. Mr Sweeney would not have allowed the omission of any mention of Michael's diagnosis if he had understood that the theme of the programme was "extreme behaviour". The family was aware that Michael's challenging behaviour, such as spitting and swearing, would be shown, but not to the extent that it was. Other aspects of Michael's behaviour, for example his anxieties and obsessions, which would have highlighted the true nature of his disability, were not given sufficient attention.
- b) The voiceover unfairly married elements of the filmed footage together - whether it was accurate to do so or not.
- c) As a result of unfair editing, the programme failed to mention the positive work done and successful strategies used by the family to address Michael's behaviour. Mr Sweeney stated that the family was not portrayed as a family unit despite being filmed, prior to Ms Marer's arrival, going to church, going out for meals, taking Michael to school, watching television and doing other family activities. None of this was shown, thus creating the impression that the family did not go out much due to Michael's behaviour. This resulted in an unfair impression being given of Michael.
- d) A meeting was held prior to broadcast in which Mr Sweeney expressed his concerns about interview responses given by the family and coaching by the programme makers, but his views were ignored and the family was allowed no input into the editing. Mr Sweeney said he felt that the family members had been coached and asked leading questions when being interviewed by the programme makers so as to give responses that made for good television rather than providing positive input to their situation. Mr Sweeney said that most, if not all, of what he suggested at the meeting was left out of the final take leaving only the negatives to the fore. Members of the family made a number of important and valid points during filming but these were not included, as they did not fit with the illusion being created by the programme

makers. This resulted in an unfair impression of Michael being given in the programme.

- e) Mr Sweeney was not informed that Michael would be highlighted in a negative way through television trailers.

Five's case

In response to the complaint of unfair treatment, Five said in summary:

- d) In response to the complaint that the reasons for Michael's behavioural problems were misrepresented in the programme and that the programme suggested that his behaviour was due to inconsistent parenting, Five said that Mr Sweeney and his family responded to an advertisement about the programme in the *Daily Mail*, which said:

"FAMILIES NEEDED FOR NEW TV SHOW. Was Christmas made unbearable because of your teen's behaviour? Have you reached the end of your tether? Would you like harmony to be restored to your home this year? If you are experiencing parenting problems with your teenager, however large or small, our behaviour specialist may be able to help".

Having contacted the programme makers, Mr Sweeney and his family completed contributor questionnaires and they were visited by a consultant psychologist who assessed them for their suitability to appear on the programme. Throughout the application, selection and assessment process it was made clear to the family that the programme would focus on the extreme behaviour of the teenage member of the family identified by their parents, the family's experience of that behaviour and the strategies suggested to the family for dealing with it by Ms Marer. Ms Marer is a behavioural specialist and attention deficit hyperactivity disorder ("ADHD") coach who has been working with troubled or difficult teenagers for over seven years. She has trained in all aspects of learning difficulties and in recent years has become a specialist in conduct behaviour disorder in teenagers. Ms Marer's background was explained to the family, who were told that she would not be assessing Michael as a psychologist or a doctor but would be aiming to provide the family with techniques that they could use to help them with Michael's behaviour. The Sweeney family appeared to welcome what they thought would be a new approach to Michael's problems, especially as he would be assessed at home rather than in a medical professional's office.

Five said the family read and signed contributor release forms which indicated their consent to appear in the programme. These forms made it clear that the programme title, "Families", was provisional and described the programme as being "on the subject of teenage behaviour, relationships and activities within the family".

During the selection and assessment process, Five stated that the production team explained to Mr Sweeney several times that the programme was about extreme teenage behaviour and it was also explained to the family that the purpose of the series was to give them strategies on how to deal with Michael's behaviour. The series was not attempting to prove or disprove previous diagnoses, but instead to start afresh dealing purely with the behaviour issues affecting the family at the time. Following these discussions

between the programme makers and the family, it was agreed with the family that Michael's previous diagnoses would not be mentioned.

Furthermore Five said that Mr and Mrs Sweeney told the production team that Michael had previously been seen by a number of experts but that the family had been unhappy with the various diagnoses as they did not feel they fitted Michael exactly. The producers felt that this attitude would make the family likely to respond to and benefit from the behaviour-led approach to Michael's problems that Ms Marer would offer.

It was agreed with Mr Sweeney that there would be no mention of one or more of the diagnoses and at no stage during filming did either Mr or Mrs Sweeney express any concern that their son's condition was being misrepresented, nor did they query the agreement not to mention Michael's previous diagnoses. At no point in the programme was there any discussion of the reasons for Michael's behaviour and therefore Five did not accept that the programme misrepresented the reasons.

In the first part of the programme, the commentary noted that Mr and Mrs Sweeney had tried various strategies but had not always stuck to them. This was confirmed during the meeting when Ms Marer set out her strategy for managing Michael's behaviour. Mr Sweeney stated in the programme that the family had already tried some of the strategies suggested by Ms Marer and she responded that they had not stuck to them. Mr Sweeney was shown explaining that some worked and others did not. Ms Marer replied that the strategies she proposed came as a package and Mr Sweeney agreed to try her methods. None of this related to the issue of what was causing Michael's behaviour, rather they were methods used in dealing with it.

- e) In response to the complaint that the voice over was unfair, Five said that Mr Sweeney had not identified in his complaint any specific scenes in the programme where he believed things were unfairly married together by the voiceover. However, the production team filmed with the family for around six weeks. It was obviously not possible to include all this footage in the finished programme, but nothing that was recorded but not included in the programme would have materially affected viewers' opinion of Michael. Furthermore, it was explained to the family that the purpose of the pre-transmission viewing (see d) below) was to enable the family to correct any factual inaccuracies. No factual inaccuracies were raised following that viewing and Five therefore argued that it was reasonable for the programme makers to proceed on the basis that the family did not believe that the programme had been edited, or commentary added in a way that was unfair to Michael.
- f) In response to the complaint that the programme was edited unfairly, Five said that the family was fully aware from the start of production that the programme would focus on how they could cope with and manage Michael's behaviour in a way that would improve each of their lives. It was never proposed that the programme would be a documentary portrait of a family attempting to live with a difficult teenager, rather it would be interventionist and "explore ways of improving your family life both through setting tasks and providing advice", as set out on the information sheet attached to the contributor's release form. The programme's failure to mention previous strategies was not contrary to the family's expectations or unfair to Michael. Mr and Mrs Sweeney were portrayed as loving parents who had worked incredibly hard to manage their son's behaviour. The programme showed

them using positive parenting strategies on several occasions and they were described in the commentary as having “managed to keep a lid on Michael’s behaviour”. The programme did not suggest that any of Mr and Mrs Sweeney’s previous parenting strategies, successful or otherwise, had caused Michael’s behaviour nor were Mr and Mrs Sweeney under the impression that the programme would examine these.

Five said that following a pre-transmission viewing of the programme, Mrs Sweeney had expressed her concern that the programme did not include a scene of Michael doing some painting in the kitchen, which she felt portrayed the family in a better light. It was explained to Mrs Sweeney that it was not possible to put everything from a month and a half’s worth of filming into the programme, but that the programme makers had tried to include scenes of happy family life wherever possible. Mrs Sweeney had seemed happy with this explanation at the time.

- g) In response to the complaint that the views expressed by the family at a pre-transmission viewing were not taken into account, Five said that Mr and Mrs Sweeney asked to see a copy of the programme prior to broadcast. It said that in affording them this opportunity, the programme makers made it clear in advance that the family would not have any editorial control over the programme but that any concerns expressed about factual accuracy or the impact the programme may have on the family’s welfare would be considered. The series producer watched the programme with the family. Mr and Mrs Sweeney expressed relief and said that they felt that it presented an accurate portrait of family life in their home during filming. Mr Sweeney was concerned about a line in the commentary about the family’s ability to cope with Michael’s behaviour:

“With Michael’s behaviour threatening to destroy their family life, the Sweeney’s have tried a number of strategies – but have never managed to stick to any of them.”

After discussion it was agreed that this could remain in the programme as it was balanced by interviews with the family elsewhere in the programme. For example, Mr Sweeney said:

“We are always willing to listen and try anything once to see if it works. And if it does, we use it again. If it doesn’t work then we evaluate it and say look this isn’t working – let’s forget about that idea, let’s try something else”.

Mr and Mrs Sweeney made no suggestion at the time of the pre-transmission viewing that any of the responses in the programme had been “coached” out of members of the family or that they were in any other way unhappy with the programme or felt it to be unfair to Michael. Following the pre-transmission viewing, Mr Sweeney contacted the programme’s executive producer and raised concerns about the same line of commentary as he had discussed at the pre-transmission viewing. The executive producer explained to Mr Sweeney on the telephone and in a letter that he felt that the subsequent comment from Mr Sweeney was a fair and appropriate balance to this. Following this, the programme makers were under the impression that Mr Sweeney accepted that the comment could remain in the programme.

Furthermore, the comment was not unfair to Michael: his parents accepted in the programme that they were not always consistent in adhering to parenting strategies and his sister, Susan, also acknowledged this.

In addition, Five said that each member of the family was given the opportunity to comment in the programme on how they felt the strategies suggested by Ms Marer had affected the family's situation. Each did so, and none was coached into giving a certain response to any of the programme makers' questions.

- e) In response to the complaint that the trailer for the programme was unfair to Michael, Five said that, as this was the third programme in the series, the trailer was not used to explain the programme's proposition, with which many viewers would at this stage be familiar. The idea was to draw viewers who may have seen earlier episodes of the series back to it and new viewers who might have missed previous episodes. The first 11 seconds of the trailer consisted of pictures of the family playing merrily together in the snow. Michael was shown happily throwing snowballs in a playful manner and laughing with his father and sister. The next 14 seconds were in sharp contrast, with footage of Michael's extreme behaviour accompanied by heavy metal-style music, to show viewers that the behaviour Ms Marer, "the Teen Tamer", would be tackling was particularly extreme. The final four seconds showed Michael happy again and giving Ms Marer a cuddle. The trailer conveyed well the idea that the programme was about conflict resolution and tackling extreme behaviour. Since the family was aware of the extreme behaviour that would be included in the programme, the programme makers felt it unnecessary to inform the family of the nature of the trailers prior to their broadcast. They were not unfair to Michael, who was shown in a positive light for at least half of the trailer.

Decision

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

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

Mr Sweeney's complaint on behalf of Michael was considered by Ofcom's Executive Fairness Group. Ofcom considered the complaint and the broadcaster's response, together with a recording and transcript of the programme as broadcast.

Ofcom found as follows:

- a) Ofcom first considered Mr Sweeney's complaint that Michael's diagnosis was not referred to in the programme and that his behaviour was misrepresented and blamed on inconsistent parenting.

In considering this head of complaint, Ofcom took into account Practices 7.3 and 7.9 of the Code. Practice 7.3 states that where a person is invited to make a contribution to a programme, they should normally be told about the

nature and purpose of the programme and what kind of contribution they are expected to make. Practice 7.9 states that broadcasters must 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 noted the wording of the newspaper advertisement that first drew the attention of the Sweeney family to the programme:

“FAMILIES NEEDED FOR NEW TV SHOW. Was Christmas made unbearable because of your teen’s behaviour? Have you reached the end of your tether? Would you like harmony to be restored to your home this year? If you are experiencing parenting problems with your teenager, however large or small, our behaviour specialist may be able to help”.

In Ofcom’s view the advertisement made it clear that the programme would be looking at behavioural issues and made no mention of the examination of diagnoses or causes of behaviour. Ofcom also considered the contributor release forms, signed by the family, which described the programme as being “on the subject of teenage behaviour, relationships and activities within the family”. It also noted that Mr and Mrs Sweeney were not happy with the previous diagnoses they had received for Michael: Mrs Sweeney said in the broadcast programme:

“We have tried to get help from experts and professional medical people and we just feel that – you never really get anywhere”.

In these circumstances, it appears to Ofcom that, while Mr Sweeney may have preferred Michael’s diagnoses to be mentioned on the programme, the decision by the programme makers not to do so was in keeping with the information provided to the family about the programme’s nature and purpose and was also in keeping with the family’s stated opinion of the diagnoses they had received, i.e. that none was completely satisfactory.

As regards the complaint that the programme suggested that Michael’s behaviour was due to inconsistent parenting, Ofcom noted that this complaint was on behalf of Michael only and not on behalf of other family members. Ofcom therefore considered whether in this respect the programme unfairly portrayed Michael’s behaviour. Ofcom took the view that the programme clearly suggested that Michael’s behaviour could be managed through consistency in parenting, for example when Ms Marer said:

“You have to stick to the package...”

However, Ofcom did not consider that any of the discussions about the consistency required in relation to Ms Marer’s proposals resulted in a suggestion that inconsistent parenting was the cause of Michael’s behaviour, indeed the programme made clear the efforts the family had already made in relation to Michael’s behaviour. Ofcom considered that, in trying to address Michael’s behavioural problems and help the family, the programme did not set out to diagnose any causes of Michael’s behaviour, whether medical or parenting, but to portray his behaviour as it was filmed. In doing so, the programme did not misrepresent Michael’s behaviour.

Ofcom found that the programme was not unfair to Michael in this respect.

- b) Ofcom next considered the complaint that the voiceover was unfair.

In considering this head of complaint, Ofcom took into account Practice 7.9 of the Code, as set out under decision head a) above.

Ofcom noted that Mr Sweeney had not identified specific parts of the commentary where he considered things had been married up inaccurately. It was, therefore, not possible for Ofcom to consider any particular instances of alleged inaccuracy in the voiceover to the programme. Ofcom therefore looked at the broad scope of the complaint, namely that parts of the commentary were juxtaposed unfairly with filmed footage. On that basis, Ofcom took the view that the role of the voiceover was to link the filming that took place with the Sweeney family, over a period of around six weeks. In doing this, it clearly demonstrated the journey undertaken by Michael and his family with Ms Marer. It showed the methods tried by the family in dealing with Michael's behaviour and showed a significant improvement in his behaviour during that period. The programme also included extensive footage of family members giving their views. Ofcom found no evidence that the voiceover unfairly portrayed or linked the events recorded during those six weeks. Furthermore, the commentary made it clear that significant progress was made over the course of the filming in Michael's behaviour through the work of the family, in conjunction with Ms Marer.

Ofcom found no unfairness to Michael in this respect.

- c) Ofcom next considered Mr Sweeney's complaint that unfair editing resulted in positive work and successful strategies tried by the family in dealing with Michael's behaviour not being mentioned.

In considering this head of complaint, Ofcom took into account Practice 7.6 of the Code, which states that when a programme is edited, contributions should be represented fairly. Ofcom also took into account Practice 7.9 of the Code, as set out under decision head a) above.

In considering this head of complaint, Ofcom considered whether the programme resulted in an unfair impression of Michael's behaviour being given. In view of the aims of the programme, which - in Ofcom's view - were clearly explained to the family from the outset, as discussed above at head a), it was inevitable that the focus of the programme would be primarily Michael's challenging behaviour and Ms Marer's suggestions for addressing it. Filming took place over a period of around six weeks: it would not have been possible for all the filming to form part of the programme and the material filmed had therefore to be edited. In Ofcom's view, there was no evidence that the omission of any specific positive material resulted in unfairness to Michael. Furthermore, it was clear throughout the programme that the family wanted to do well for Michael, both before Ms Marer's arrival and when working with her. Before Ms Marer arrived with the family, Mr Sweeney was shown saying:

"We are always willing to listen and try anything once to see if it works. And if it does, we use it again. If it doesn't work then we evaluate it and say look this isn't working – let's forget about that idea, let's try something else."

Later, in conversation with Ms Marer, Mr Sweeney said:

“We’ve tried a lot of strategies, even things you’ve said tonight”.

Ofcom considered that it was clear from the programme that the family had tried different strategies for dealing with Michael’s behaviour and that some elements of those strategies had proved positive but none had adequately addressed Michael’s difficulties. It was also clear that, with Ms Marer’s input, the family made significant progress in dealing with Michael’s behaviour and persuading him to change, using some methods they had not tried before. In these circumstances, there was no unfairness in the programme’s portrayal of Michael’s behaviour.

Ofcom therefore found that there was no unfairness to Michael in this respect.

- d) Ofcom next considered the complaint that concerns raised by the family prior to the broadcast were ignored and that family members were “coached” in interview.

In considering this head of complaint, Ofcom took into account Practice 7.3 of the Code, which states that, where a person is invited to make a contribution to a programme, they should normally be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it.

Ofcom noted from the submissions of both parties that, unusually, at the request of the family, a viewing of the programme was arranged for them prior to broadcast, with one of the production team. Mr Sweeney raised concerns at the viewing about a line in the commentary which referred to the Sweeneys not having “managed to stick to” any of the strategies they had tried. According to Five the family then discussed with the member of the production team present at the viewing another balancing response from Mr Sweeney that was also included in the programme, in which he said:

“We are always willing to listen and try anything once to see if it works. And if it does, we use it again. If it doesn’t work then we evaluate it and say look this isn’t working – let’s forget about that idea, let’s try something else.”

No change was therefore made to the commentary at that stage. Mr Sweeney then raised his concerns in correspondence with the programme’s executive producer before the programme was broadcast. He was not satisfied with the response he received and issued a press release setting out his concerns about the programme. Ofcom noted that it was made clear to the family that, at the pre-transmission viewing, the programme makers would consider their views as to whether there were factual inaccuracies in the programme but that the programme makers would retain editorial control over the programme. Ofcom concluded therefore that; the family was aware from the outset (as set out under decision head a) above) what the programme would be about; the programme makers sought comments from family prior to transmission and listened to their views; and the programme makers retained editorial control. In Ofcom’s view this was in keeping with the appropriate editorial control of the programme makers who properly provided the family with information on whether they would be able to effect changes to the programme as discussed in the Code. Ofcom therefore found that this resulted in no unfairness to Michael.

As regards the complaint that members of the family were “coached” in interview, Ofcom noted that each family member gave a variety of responses to the developing situation throughout the course of the programme, both during filming of them interacting as a family and in individual interviews. In Ofcom’s view, the footage of the family, whether in individual interviews or when the family was being filmed together, appeared to have been given equally spontaneously and freely by each family member. At the end of the programme footage was included of each member of the family, including Michael, commenting positively on the changes that had come about within the family, for example, Mrs Sweeney said:

“There’s actually been a couple of times where Michael has stopped himself swearing...”

Ofcom took the view that it is usual for participants to be asked to give responses on more than one occasion, for example for technical reasons, in order to obtain relevant footage. Ofcom was not able to determine whether or not Mr Sweeney’s concern about coaching was raised with the programme makers, but considered that there was no evidence from the material available to Ofcom that the responses given by the family were obtained by coaching them or by asking leading questions. In these circumstances, given the number and variety of contributions from members of the family, there was no unfairness to Michael in his portrayal in the broadcast programme. Ofcom therefore found that there was no unfairness to Michael in this respect.

- e) Finally Ofcom considered the complaint that Michael was unfairly represented in the trailer for the programme.

In considering this head of complaint, the Group took into account Practice 7.9 of the Code, as set out under decision head a) above.

Ofcom considered that the trailer was a balanced look at what the programme would include. It introduced the family in a positive light, then included brief footage of Michael’s challenging behaviour and finished by showing the progress he made by the end of the programme to be broadcast. In showing these clips, the trailer gave viewers a brief insight into the material that the programme itself would cover. Bearing in mind the content of the programme, Ofcom considered that the trailer gave a representative overview of the programme and did not include any footage that was unfair to Michael nor was the footage edited in a way that was unfair to him.

Ofcom therefore found that there was no unfairness to Michael in the trailer.

Accordingly the Executive Fairness Group has not upheld the complaint of unfair treatment in the broadcast of either the programme or the trailer.

Other Cases Not in Breach/Resolved

7 May – 20 May

Programme	Trans Date	Channel	Category	No of Complaints
Afternoon Play: Landscape	08/05/2008	BBC Radio 4	Offensive Language	1
Alan Brazil's Sports Breakfast	29/04/2008	talkSport	Due Impartiality/Bias	1
All About Thunderbirds	15/05/2008	BBC4	Dangerous Behaviour	1
All Star Mr & Mrs	03/05/2008	ITV1	Other	1
Alone in the Ocean	27/04/2008	Channel 4	Offensive Language	1
Am I Normal?	05/05/2008	BBC2	Generally Accepted Standards	1
BBC News	09/05/2008	BBC1	Generally Accepted Standards	1
BBC News	30/04/2008	BBC1	Elections/Referendums	1
BBC News	09/05/2008	BBC1	Generally Accepted Standards	3
BBC News 24	14/05/2008	BBC 24	Due Impartiality/Bias	1
Balls of Steel	02/05/2008	Channel 4	Generally Accepted Standards	3
Benidorm	25/04/2008	ITV1	Generally Accepted Standards	1
Benidorm	29/04/2008	ITV1	Generally Accepted Standards	1
Beverly Hills Cop	05/05/2008	ITV2	Scheduling	3
Bill Buckley	22/04/2008	LBC 97.3 FM	Generally Accepted Standards	1
Blood, Sweat and T-Shirts	29/04/2008	BBC3	Generally Accepted Standards	1
Bremner, Bird and Fortune	20/04/2008	Channel 4	Generally Accepted Standards	1
Britain's Got Talent	26/04/2008	ITV1	Other	1
Britain's Got Talent	03/05/2008	ITV1	Offensive Language	1
Britain's Got Talent	10/05/2008	ITV1	Other	1
Britain's Got Talent	10/05/2008	ITV1	Offensive Language	1
Channel 4 News	13/02/2008	Channel 4	Inaccuracy/Misleading	1
Channel 4 News	03/05/2008	Channel 4	Due Impartiality/Bias	1
Chappers and Dave	05/05/2008	BBC Radio 1	Generally Accepted Standards	1
Chris Moyles Show	07/05/2008	BBC Radio 1	Generally Accepted Standards	1
Coronation Street	30/04/2008	ITV1	Generally Accepted Standards	9
Countryfile	20/04/2008	BBC1	Animal Welfare	1
Cutting Edge: Strictly Baby Fight Club	24/04/2008	Channel 4	Inaccuracy/Misleading	2
Dave Barretts Phone In	24/01/2008	BBC Radio Bristol	Generally Accepted Standards	1
Dave Connor	21/04/2008	Forth One	Generally Accepted Standards	1

Deal or No Deal	26/04/2008	Channel 4	Generally Accepted Standards	1
Derren Brown: Trick or Treat	03/05/2008	Channel 4	Animal Welfare	13
Dispatches: The Mobile Phone Rip-off	28/04/2008	Channel 4	Due Impartiality/Bias	1
Dispatches: The Truth about Beauty Creams	12/05/2008	Channel 4	Inaccuracy/Misleading	1
Distraction	03/05/2008	Challenge TV	Generally Accepted Standards	1
Dog Borstal	29/03/2008	BBC3	Offensive Language	1
Dom Joly's Complainers	12/05/2008	Five	Generally Accepted Standards	1
EastEnders	16/05/2008	BBC3	Substance Abuse	1
EastEnders	18/04/2008	BBC1	Generally Accepted Standards	1
EastEnders	28/04/2008	BBC1	Generally Accepted Standards	1
EastEnders	13/05/2008	BBC1	Generally Accepted Standards	1
EastEnders	01/05/2008	BBC1	Generally Accepted Standards	1
EastEnders	28/04/2008	BBC1	Generally Accepted Standards	1
Embarrassing Bodies	30/04/2008	Channel 4	Sex/Nudity	3
Embarrassing Bodies	30/04/2008	Channel 4	Other	1
Embarrassing Bodies	01/05/2008	Channel 4	Sex/Nudity	4
Embarrassing Bodies	01/05/2008	Channel 4	Generally Accepted Standards	1
Embarrassing Bodies	28/04/2008	Channel 4	Inaccuracy/Misleading	1
Embarrassing Bodies (trailer)	30/04/2008	Channel 4	Sex/Nudity	3
Emmerdale	05/05/2008	ITV1	U18's in Programmes	1
Emmerdale	06/05/2008	ITV1	Offensive Language	1
Extreme Tension: Tonight	25/04/2008	ITV1	Inaccuracy/Misleading	1
Fight Masters	23/04/2008	Nat Geographic	Crime (incite/encourage)	1
Five News	01/04/2008	Five	Inaccuracy/Misleading	1
Flood	04/05/2008	ITV1	Generally Accepted Standards	1
Fox and Friends	18/04/2008	Fox News	Generally Accepted Standards	1
Friday Night with Jonathan Ross	02/05/2008	BBC1	Offensive Language	13
Friday Night with Jonathan Ross	09/05/2008	BBC1	Generally Accepted Standards	2
Friday Night with Jonathan Ross	09/05/2008	BBC1	Offensive Language	2
Full Pott	13/05/2008	Kanal 5	Generally Accepted Standards	1
GMTV	06/05/2008	ITV1	Due Impartiality/Bias	1
GMTV	28/04/2008	ITV1	Due Impartiality/Bias	2

GMTV	30/04/2008	ITV1	Sex/Nudity	1
Glamour Girls	21/04/2008	BBC3	Sex/Nudity	3
Graham Norton Uncut	11/05/2008	BBC2	Generally Accepted Standards	1
Grand Designs Live	06/05/2008	Channel 4	Advertising	1
Have I Got a Bit More News for You	03/05/2008	BBC2	Offensive Language	5
Hannity and Colmes - Hannity's America	19/04/2008	Fox News	Due Impartiality/Bias	1
Hawksbee and Jacobs	30/04/2008	talkSport	Generally Accepted Standards	1
Headcases	04/05/2008	ITV1	Generally Accepted Standards	1
Headcases (trailer)	11/05/2008	ITV1	Generally Accepted Standards	1
Highland Spring sponsorship	07/05/2008	ITV1	Generally Accepted Standards	1
Hollyoaks	14/05/2008	E4	Generally Accepted Standards	1
Hollyoaks	15/05/2008	Channel 4	Sex/Nudity	1
How to Look Good Naked	13/05/2008	Channel 4	Sex/Nudity	1
How to Look Good Naked	22/04/2008	Channel 4	Sex/Nudity	1
ITV News	22/02/2008	ITV1	Commercial References	3
Ian Collins	07/05/2008	TalkSport	Inaccuracy/Misleading	1
Jeremy Kyle	09/05/2008	ITV2	Generally Accepted Standards	1
Johnny & Denise	07/05/2008	Capital Radio	Generally Accepted Standards	1
Jon Gaunt	28/04/2008	talkSport	Due Impartiality/Bias	3
Jon Gaunt	29/04/2008	talkSport	Generally Accepted Standards	1
Katie & Peter: the Next Chapter	01/05/2008	ITV2	Generally Accepted Standards	1
Life Style	05/05/2008	BEN	Due Impartiality/Bias	1
Living Golf	29/04/2008	CNN International	Commercial References	1
Living with the Dead (trailer)	24/04/2008	Living	Generally Accepted Standards	1
London Tonight	02/05/2008	ITV1	Due Impartiality/Bias	1
London Tonight	06/05/2008	ITV1	Violence	1
Look North	06/05/2008	BBC1	Due Impartiality/Bias	1
Madeleine, One Year On:	30/04/2008	ITV1	Generally Accepted Standards	3
Campaign for Change	-	-	-	-
Matt Spokes	05/05/2008	Galaxy North East	Sex/Nudity	1
Michael Jackson: What Really Happened	14/05/2008	Channel 4	Inaccuracy/Misleading	1
Midsomer Murders	05/05/2008	ITV1	Violence	1

Morning Show with Rossy	21/04/2008	Radio City 96.7	Generally Accepted Standards	1
My Name is Earl	01/05/2008	E4	Animal Welfare	1
News at Ten	29/04/2008	ITV1	Undue Prominence	1
News at Ten	30/04/2008	ITV1	Inaccuracy/Misleading	1
Nick Ferrari	07/05/2008	LBC 97.3	Due Impartiality/Bias	1
Nightwatch	17/05/2008	ITV1	Generally Accepted Standards	1
Non-Stop Nevis	12/04/2008	Nevis Radio	Generally Accepted Standards	1
On the Ropes	13/05/2008	BBC Radio 4	Generally Accepted Standards	1
Outtake TV	10/05/2008	BBC1	Generally Accepted Standards	1
Peep Show	09/05/2008	Channel 4	Generally Accepted Standards	4
Pushing Daisies	20/04/2008	ITV1	Generally Accepted Standards	1
Qatar Airways Sponsorship/Sky Weather	n/a	Sky News	Inaccuracy/Misleading	1
Quiz Call	02/05/2008	Five	Competitions	1
Quizcall	11/04/2008	Five	Competitions	1
Radio Scilly Local News	02/05/2008	Radio Scilly 107.9	Inaccuracy/Misleading	1
Reaper (trailer)	14/04/2008	E4	Generally Accepted Standards	1
Reporting Scotland	14/01/2008	BBC1 Scotland	Violence	1
Rick Wakeman	19/04/2008	Planet Rock	Generally Accepted Standards	1
Scott Mills	06/05/2008	BBC Radio 1	Generally Accepted Standards	1
Shipwrecked	20/04/2008	Channel 4	Generally Accepted Standards	1
Shipwrecked 2008: Battle of the Islands	27/04/2008	Channel 4	Generally Accepted Standards	1
Shipwrecked 2008: Battle of the Islands	27/04/2008	Channel 4	Sex/Nudity	1
Skins	17/04/2008	E4	Substance Abuse	1
Sky News	11/04/2008	Sky News	Generally Accepted Standards	1
South East Today	01/05/2008	BBC1	Offensive Language	1
Sports Personality of the Year 2006	10/12/2006	BBC1	Inaccuracy/Misleading	1
Street Wars	20/04/2008	Sky 3	Generally Accepted Standards	1
Switch	27/04/2008	BBC Radio 1	Crime (incite/encourage)	1
The Apprentice	30/04/2008	BBC1	Generally Accepted Standards	23
The Archive Hour: A Rage in Dalston	19/04/2008	BBC Radio 4	Violence	1
The Baron	01/05/2008	ITV1	Religious Offence	1

The Gadget Show	05/05/2008	Five	Inaccuracy/Misleading	1
The George Lamb Show	n/a	BBC Radio 6	Elections/Referendums	1
The Graham Norton Show	17/04/2008	BBC2	Generally Accepted Standards	1
The Jeremy Kyle Show	n/a	ITV1	Generally Accepted Standards	1
The Jeremy Kyle Show	07/05/2008	ITV1	Generally Accepted Standards	1
The Jeremy Kyle Show	19/05/2008	ITV2	U18 - Coverage of Sexual/other	1
The Killer in Me	08/11/2007	ITV1	Due Impartiality/Bias	2
The Now Show	19/04/2008	BBC Radio 4	Generally Accepted Standards	1
The Reunion	09/05/2008	BBC Radio 4	Offensive Language	1
The Search for Cool	09/05/2008	Channel 4	Offensive Language	1
The Simpsons	08/05/2008	Channel 4	Offensive Language	1
The Tom and Emma Showgram	24/03/2008	Q 103	Generally Accepted Standards	1
The Unit	30/04/2008	Virgin1	Due Impartiality/Bias	2
The Virgin Diaries	22/04/2008	TMF	Offensive Language	1
The Wall	15/04/2008	BBC3	Generally Accepted Standards	2
The Wright Stuff	02/05/2008	Five	Due Impartiality/Bias	1
The £5,000 Minute Competition	27/03/2008	Red Dragon	Competitions	1
This Morning	09/05/2008	ITV1	Commercial References	1
This Morning	08/05/2008	ITV1	Due Impartiality/Bias	1
This Morning	28/04/2008	ITV1	Sex/Nudity	1
This Morning	08/05/2008	ITV1	Sex/Nudity	1
This Morning	28/04/2008	ITV1	Generally Accepted Standards	1
Today	23/04/2008	BBC Radio 4	Generally Accepted Standards	1
Tony Horne in the Morning	21/04/2008	Metro Radio	Generally Accepted Standards	1
Trail for Bank Holiday programmes	01/05/2008	Nick Toons	Generally Accepted Standards	1
Trailer for Half Ton Dad	13/05/2008	Channel 4	Generally Accepted Standards	1
True Stories: Dave Gorman in America Unchained	16/04/2008	More4	Animal Welfare	1
True Stories: Our Daily Bread (trailer)	23/04/2008	More4	Violence	7
UTV Live	21/02/2008	UTV	Inaccuracy/Misleading	1
VW Passat sponsorship	n/a	Channel 4	Inaccuracy/Misleading	1
Waking the Dead	06/05/2008	BBC1	Violence	1
Watts	17/05/2008	British Eurosport	Offensive Language	1
Watts	17/05/2008	British Eurosport	Other	1

Who Wants To Be a Millionaire	n/a	ITV1	Advertising	1
Yell sponsorship of C4 Films	03/05/2008	Channel 4	Generally Accepted Standards	1
Yell sponsorship of ITV Films	04/05/2008	ITV1	Generally Accepted Standards	1
Young Black Farmers	06/05/2008	Channel 4	Generally Accepted Standards	1
talkSport News	27/04/2008	talkSport	Due Impartiality/Bias	1

