

Ofcom Broadcast Bulletin

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Introduction

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

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

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

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

Standards cases

Notice of Sanction

Venus TV Ltd

Venus TV, ASA referral to Ofcom for TV Advertising Code Breaches, April to October 2007

On 4 December 2008, Ofcom published its decision to impose a statutory sanction on Venus TV Ltd (“the Licensee”), in respect of its service Venus TV (“the Channel”). This was for serious and repeated breaches of the Broadcast Committee of Advertising Practice Television Advertising Standards Code (“the TV Advertising Code”), and in light of Condition 8 (4) of the Channel’s licence which requires the Licensee to ensure that Venus TV complies with the TV Advertising Code.

The sanction was for breaches of the TV Advertising Code recorded by the Advertising Authority (“ASA”) relating to broadcasts of five different advertisements shown on Venus TV over the period November 2006 and August 2007:

- Golden Bull Kastoori Capsules (a herbal remedy), adjudication published in April 2007;
- Jorge Hane Weight Loss, published in May 2007;
- Pandith astrology, published in October 2007;
- Pundit Maharaj astrology, published in October 2007; and
- Roopamrit (a face cream), published in October 2007.

The regulation of broadcast advertising standards is a function of Ofcom that has been contracted out by Ofcom to the ASA. In accordance with this contracting out arrangement, the ASA referred Venus TV Ltd to Ofcom for consideration of a statutory sanction for these repeated and serious breaches of the TV Advertising Code.

In summary, Ofcom concluded that a statutory sanction was appropriate in this case because the breaches of the TV Advertising Code were serious in that:

- they raised significant issues of consumer protection, particularly in relation to the health of viewers. For example, three of the infomercials claimed to offer remedies to various medical conditions but none were supported by sufficient evidence, thereby materially misleading viewers;
- they demonstrated repeated and systemic poor compliance by Venus TV Ltd. There was clear evidence that the Licensee did not have robust compliance procedures in place before, and at the time of, the breaches; and
- the advertisements were in the form of teleshopping items lasting up to several minutes, thereby increasing the likely negative impact of the advertising.

The breaches were also repeated.

For the reasons set out in the adjudication, Ofcom imposed a financial penalty of **£35,000** on Venus TV Ltd (payable to HM Paymaster General) and directed it to broadcast a statement of Ofcom’s findings on Venus TV in a form to be determined by Ofcom on two specified occasions.

The full adjudication can be found:

http://www.ofcom.org.uk/tv/obb/ocsc_adjud/venustv.pdf

Talksport Ltd

The James Whale Show, Talksport, 20 March 2008, 22:00

On 8 December 2008, Ofcom published its decision to impose a statutory sanction on Talksport Ltd in respect of its service Talksport. The sanction was for breaches of Rule 6.1 of the Code (which states “The rules in Section Five, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums”).

The effect of Rule 6.1 is to ensure broadcasters must show due impartiality in their coverage of elections and referendums. This is to help ensure that elections are conducted fairly, and that no unfair advantage is given to candidates through promotion in the broadcast media.

The broadcaster was fined for an edition of *The James Whale Show* on the 20th March 2008. Ofcom found that the Licensee had seriously breached the due impartiality rules at the time of an election. The presenter directly encouraged listeners to vote for Boris Johnson in the upcoming London mayoral elections and criticised Ken Livingston.

For the reasons set out in the adjudication Ofcom imposed a financial penalty of **£20,000** on Talksport Ltd (payable to HM Paymaster General) and directed it to broadcast a statement of Ofcom’s findings in a form to be determined by Ofcom on one specified occasion.

In deciding on a level of financial penalty in this case, Ofcom was concerned not to impose a penalty which in its view would have an inappropriate and restricting effect on live discussion and phone in programmes on Talksport and similar channels, hosted by presenters with controversial and outspoken views. Ofcom considers that it is important to ensure that the plurality of viewpoints and broadening of debate on important issues that a channel like Talksport can provide are not discouraged.

The full adjudication is available at:
http://www.ofcom.org.uk/tv/obb/ocsc_adjud/talksport.pdf

In Breach

Greater Manchester transport plan – local poll advertisement *ITV1 (Granada), 6-13 November 2008, various times*

This finding was originally published on 28 November 2008.

Introduction

Ofcom received seven complaints about an advertisement broadcast on ITV1 (Granada) publicising a local poll being held in the Greater Manchester area. The poll seeks to gauge opinion on a proposed transport plan for the area, to be financed by funding from a central government Transport Innovation Fund (“TIF”). This transport plan includes the introduction of a congestion charging scheme.

The advertisement featured a presenter in a studio referring to the poll and summarising the consequences of ‘yes’ and ‘no’ outcomes. During the advertisement a call to action to vote, the name and logo: Greater Manchester Future Transport (“GMFT”), and GMFT’s website address were all prominently displayed.

GMFT is a brand set up to provide information on the transport proposals. It was established jointly by the Association of Greater Manchester Authorities (“AGMA”), a grouping of the area’s local authorities, and the Greater Manchester Passenger Transport Authority (“GMPTA”), the body responsible for the county’s public transport provision. The GMPTA has an executive arm, the Greater Manchester Passenger Transport Executive (“GMPTEx”). Small logos of AGMA and GMPTA were shown briefly in the advertisement’s closing sequence.

The advertisement had been cleared by Clearcast. This body examines and advises on advertising scripts and films before production and transmission, on behalf of broadcasters, with the aim of ensuring compliance.

The complainants alleged variously that the advertisement was biased towards the ‘yes’ choice in the poll (i.e. the outcome in favour of the imposition of a congestion charging scheme) and constituted propaganda.

Political broadcast advertising is prohibited under the terms of section 321 of the Communications Act 2003 (“the Act”) and, for television, by Section 4 of the Broadcast Committee of Advertising Practice (BCAP) Television Advertising Standards Code (“the TV Advertising Code”). *The relevant extracts from the Act and the TV Advertising Code are given in full at the end of this adjudication.*

The TV Advertising Code, formerly Ofcom’s Advertising Standards Code, is now administered by the Advertising Standards Authority (ASA) and BCAP. Ofcom, however, remains responsible under the terms of the Memorandum of Understanding, between Ofcom and the ASA, for enforcing the rules on Political Advertising, namely Section 4 of the TV Advertising Code.

Ofcom sought ITV’s comments on whether:

a) the advertisement, by prominently featuring the GMFT website, was “directed towards a political end”, as proscribed by section 321(2)(b) of the Act and Section 4(b) of the TV Advertising Code; and

b) the advertisement showed "...partiality as respects matters of political or industrial controversy or relating to current public policy", as proscribed by Section 4(d) of the TV Advertising Code, by the manner in which the choices in the poll, and their consequences, were presented.

Response

Having been notified of Ofcom's investigation and having considered the advertisement in light of the complaints, ITV removed the advertisement from transmission.

a) Was the advertisement "directed towards a political end"? (Section 4(b) of the TV Advertising Code and Section 321(2) (a), (f) and (g) of the Act);

The broadcaster said that GMPTA had asserted that statute prevents both it and AGMA from displaying political bias, and that ITV did not consider their compliance with these statutes to be in question.

ITV submitted that the primary purpose of the advertising was to educate the population of Manchester on the repercussions of voting 'yes' or 'no' in the forthcoming referendum. ITV questioned whether the advertisement fell under the auspices of "issue campaigning for the purpose of influencing legislation..." [see notes to Section 4 of the TV Advertising Code at the end of this Finding], rather than the signposting and promotion of debate of an issue of local importance.

b) Did the advertisement "show partiality as respects matters of political or industrial controversy or relating to current public policy"? (Section 4(d) of the TV Advertising Code, with particular reference to Section 321(3) (f) and (g) of the Act);

As to whether the advertisement showed partiality, ITV said that although the creative treatment considered alternative outcomes, it accepted it was arguable that there was a possibility that a partiality issue had arisen.

ITV pointed out that this issue was originally addressed by Clearcast with regard to a perceived imbalance in respect of partiality. Upon submission, Clearcast had considered the script for the advertisement in relation to Section 4 of the TV Advertising Code. Clearcast had recognised that the script related to a matter of political controversy as outlined in Section 4(d). It therefore sought to ensure that the advertisement was not partial. For that reason, it asked for the consequences of voting either 'yes' or 'no' to be referred to in the advertisement. On the basis that the script was amended to address this point and the finished commercial, when submitted, matched the approved script, Clearcast considered the advertisement to be acceptable under the provisions of Section 4 of the TV Advertising Code.

After having being made aware that the advertising was subject to an investigation by Ofcom, and having been informed that ITV had removed the advertising from broadcast, Clearcast made the commercial unacceptable on its clearance database system and informed broadcasters of this.

ITV accepted that, on balance, it understood the advertisement to be potentially in breach of Section 4(d) of the TV Advertising Code. Further, ITV stressed that as a responsible broadcaster and having undertaken due process, it removed the advertising as soon as practical on being made aware of the serious concerns of Ofcom.

ITV said that it appreciated the importance of working in conjunction with Clearcast as both a shareholder and industry stakeholder in that organisation, to clarify and resolve issues with regard to submission of advertising potentially subject to Section 4 of the TV Advertising Code.

Ofcom was also informed by GMPTA that it had used the established procedure “designed prior to transmission to ensure that...Clearcast was content that the transmission would comply with the Code”. GMPTA stated that it willingly made changes suggested by Clearcast.

Decision

It is Ofcom’s statutory duty to regulate broadcast advertising to ensure that the regulatory regime set out in the Act is enforced and to set standards in accordance with the objectives specifically set out in the Act.

Since commercial broadcasting began in the UK in the 1950s, Parliament has made clear through successive Acts of Parliament concerning broadcast regulation, that ‘political’ advertising should not be permitted on television or radio.

Section 321 of the Act makes clear that an advertisement breaches the prohibition on political advertising if it is:

- an advertisement that is directed towards a political end; and/or
- an advertisement that shows partiality as respects matters of political or industrial controversy or relating to current public policy.

The Act has made the statutory definition of “political advertising”, for the purposes of the prohibition, more explicit than in any previous legislation. The definition is reflected in Section 4 of the TV Advertising Code which is given in full at the end of this decision.

The Act gives examples of political objects and political ends, including:

- “influencing the outcome of elections or referendums, whether in the United Kingdom or elsewhere”;
- “influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy”; and
- “promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends”.

(Section 321(3)(a), (f) and (g), respectively).

Ofcom noted that in line with normal process for placing an advertisement on ITV, the advertiser had sought, and obtained, clearance from Clearcast. Further, Clearcast had recognised in this case the particular need for the advertisement to meet the requirements of Section 4 of the TV Advertising Code.

Ofcom takes this opportunity to remind licensees and advertisers that discharging the licence obligation for pre-transmission scrutiny of advertising (whether through

Clearcast or by other means) does not guarantee the compliance of advertising to the advertising codes. The broadcaster itself is obliged under its licence to ensure that any advertising it broadcasts is so compliant.

With these observations in mind, Ofcom concluded under the two heads above as follows:

a) Was the advertisement “directed towards a political end”? (Section 4(b) of the TV Advertising Code and Section 321(2) (a), (f) and (g) of the Act);

We carefully considered the advertisement against these sections of the TV Advertising Code and the Act. We noted that:

- the name, logo and website of GMFT were all highly prominent;
- the advertisement contained and prominently displayed a call to action: “Vote by 11th December 2008”, directly underneath which appeared the website address of GMFT. The website was therefore given significant prominence in association with a call to action to vote.

As observed previously in this Finding GMFT is the name given to a brand set up by AGMA and GMPTA. During the period of the advertisement’s broadcast the GMFT website provided information on a matter of political controversy (whether to introduce a congestion charge in the Greater Manchester area). This information was, however, partial in respect of the transport funding bid and the prospective congestion charge (see further below). In our view this advertisement therefore directed viewers to a website which contained information about a matter of political controversy which was partial in support of a ‘yes’ vote.

In Ofcom’s view the GMFT website contained material that was almost exclusively in support of the congestion charge and a ‘yes’ vote.

For example, the website included a banner display on multiple pages as follows:

- *“The congestion charge – the facts. The congestion charge would help fund major investment in public transport and congestion reduction measures. Vote no = the public transport investment plan and Congestion Charge will not happen. Vote yes = the public transport investment plan and Congestion Charge will go ahead.”*

The following statements were also included on the website:

- *“Up to one in seven new jobs could be at risk if the transport system is not expanded to cope with this pressure.”*
[from webpage headed “Background to the TIF”]
- *“We therefore believe that the Greater Manchester Future Transport proposals are vital to keep the Greater Manchester economy growing and to keep spreading prosperity to all. Without this massive, once-in-a-generation investment package, we believe that business costs will rise, local investment will fall and the chance to achieve our full economic potential will be lost. The Future Transport package would allow us to make several decades’ worth of investment over the next 5 years, radically improving public transport*

provision and giving people more choice about their travel plans before the congestion charge could be introduced in the summer of 2013.”

[from a downloadable letter addressed to businesses on the website]

- *“Fewer than 20% of Greater Manchester’s weekday peak-time drivers would pay a charge. The average daily charge is estimated to be less than £3 (at 2007 prices).”*

[from webpage headed “Congestion charge – our plans”]

- **“Success in Stockholm - The congestion charging trial in Stockholm found:**

Estimates show that the emissions of particles and nitrogen oxide from road traffic fell by 8%-12% in Stockholm’s inner city. For all road traffic in the City of Stockholm this corresponds to 3-5%.

These small differences are estimated to have a considerable effect on health. For the entire Greater Stockholm area (1.44 million inhabitants, 35 x 35 km), it is estimated that 25 - 30 fewer premature deaths would occur per year as a result of a reduction in long-term exposure to particles.”

[from webpage “Environment and Health – success in Stockholm”]

A page of the site listed press releases. Some press release titles and the brief copy used on the website to describe the downloadable releases are listed below.

- *“Letter of response to Graham Stringer MP proving that 9 out of 10 would not need to pay the charge”*

- *“Unions Welcome TIF Job Injection*

New research has revealed almost 10,000 new jobs could be created in Greater Manchester as a result of the Transport Innovation Fund (TIF) package”

- *“Proposed bus boost for Bury - details released*

New details have been released about how Bury bus services would improve if the Transport Innovation Fund (TIF) proposals go ahead”

[There were similar press releases for Oldham, Rochdale, Salford, South Manchester, Stockport, Trafford and Wigan Borough]

- *“Further Evidence That Businesses Will Benefit From TIF*

Research co-ordinated by KPMG, the leading financial services firm, shows Greater Manchester’s Transport Innovation Fund (TIF) package is good news for jobs, supports business and provides excellent value for money for Greater Manchester”

- *“Transport Innovation Fund - The only option for transport funding*

Conventional Government funding for transport could take up to 50 years to provide the scale of investment in public transport proposed under Greater Manchester’s bid to the Transport Innovation Fund it is revealed today”

Ofcom was specifically referred by GMPTA and AGMA to a link on the website to a document opposing the congestion charge. This document was a submission made by Greater Manchester Momentum Group (“GMMG”) to the North West Regional Development Agency. However, Ofcom noted that this was immediately followed by a link described as “our response” to the submission. This response set out arguments against the views put forward by GMMG, clearly reflecting the positioning of GMFT and its website.

In view of the foregoing, and taking into account the terms of Sections 321(3)(a), (f) and (g) of the Act, we have concluded that the advertisement was directed towards a political end.

The advertisement was therefore in breach of Section 4(b) of the TV Advertising Code.

b) Did the advertisement “show partiality as respects matters of political or industrial controversy or relating to current public policy”? (Section 4(d) of the TV Advertising Code, with particular reference to Section 321(3) (f) and (g) of the Act);

The advertisement was filmed in a studio and presented by a man in front of large video screens. For much of the advertisement the screens prominently displayed a call to action (“Vote by 11th December 2008”) in conjunction with the website address of GMFT. GMFT’s name and logo were also highly prominent within the advertisement.

The presenter’s script ran, in full, as follows:

“If you’re registered on the electoral register for Greater Manchester, you’ll shortly be asked to vote on the proposed investment plan for Greater Manchester’s transport system and the congestion charge... Vote ‘No’ and this public transport investment plan and the congestion charge won’t happen... Vote ‘Yes’ and there would be investment in public transport in many parts of Greater Manchester, part funded by the congestion charge. A congestion charge will apply on weekdays only if you drive across either of these two rings between 7 and 9:30 in the morning and out between 4 and 6:30 in the evening. Make sure you have your say before 10pm on December the 11th.”

During the comment on the ‘no’ consequences, the following text appeared prominently on one of the background video screens:

- “FACT: VOTE NO =*
- No Transport Investment Funding*
 - No Congestion Charge”*

When the ‘yes’ consequences were introduced, the following text appeared prominently on one of the background video screens:

- “FACT: VOTE YES =*
- Transport Investment Funding*
 - Congestion Charge”*

In addition, video sequences were shown of public transport expansion on a map and of an animated graphic of the congestion zone with arrows indicating the charging applied to the direction of travel.

We carefully considered the advertisement against the relevant sections of the TV Advertising Code and the Act. We noted that:

- the time allocated in the advertisement to the consequences of the ‘yes’ and ‘no’ outcomes of the poll was weighted significantly towards the ‘yes’ result;
- the presentation and tone of the consequences of the two outcomes was uneven. The audio and graphics described the positive consequences of a ‘yes’ outcome in the poll but did not offer any opposing viewpoints. The ‘no’ option was presented negatively, with a short message stating that a ‘no’ vote would mean *“No Transport Investment Funding”* and *“No Congestion Charge”*;
- the language used in the advertisement favoured the ‘yes’ point of view. For example, the use of *“only”* in the spoken statement *“A congestion charge will apply on weekdays only”* tended to minimise the effect of the charge. Further, the use of *“will”* in that statement had the effect of pre-judging the poll’s result.

In view of these points, and taking into account the terms of Sections 321(3) (f) and (g) of the Act, we have concluded that the advertisement showed partiality as respects matters of political or industrial controversy or relating to current public policy.

The advertisement was therefore in breach of Section 4(d) of the TV Advertising Code.

Breaches of Sections 4(b) and (d) of the BCAP Television Advertising Code

Extracts from the relevant legislation and code

Communications Act 2003, Section 319(1) & (2)(g)

(1) It shall be the duty of OFCOM to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives.

(2) The standards objectives are—

...

(g) that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services;

Communications Act 2003, Sections 321(2) and (3)

(2) For the purposes of section 319(2)(g) an advertisement contravenes the prohibition on political advertising if it is—

(a) an advertisement which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature;

(b) an advertisement which is directed towards a political end; or

(c) an advertisement which has a connection with an industrial dispute.

(3) For the purposes of this section objects of a political nature and political ends include each of the following—

(a) influencing the outcome of elections or referendums, whether in the United Kingdom or elsewhere;

(b) bringing about changes of the law in the whole or a part of the United Kingdom or elsewhere, or otherwise influencing the legislative process in any country or territory;

(c) influencing the policies or decisions of local, regional or national governments, whether in the United Kingdom or elsewhere;

(d) influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the United Kingdom or of a country or territory outside the United Kingdom;

(e) influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;

(f) influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy;

(g) promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends.

BCAP Television Advertising Standards Code, Section 4

No advertisement:

(a) may be inserted by or on behalf of any body whose objects are wholly or mainly of a political nature.

(b) may be directed towards any political end.

(c) may have any relation to any industrial dispute (with limited exceptions).

Note to 4(c):

The Broadcasting Act 1990 specifically exempts public service advertisements by or on behalf of a government department from the prohibition of advertisements having 'any relation to any industrial dispute'.

(d) may show partiality as respects matters of political or industrial controversy or relating to current public policy

Notes to Section 4:

(1) The purpose of this prohibition is to prevent well-funded organisations from using the power of television advertising to distort the balance of political debate. The rule reflects the statutory ban on 'political' advertising on television in the Broadcasting Act 1990.

(2) The term 'political' here is used in a wider sense than 'party political'. The rule prevents, for example, issue campaigning for the purpose of influencing legislation or executive action by legislatures either at home or abroad. Where there is a risk that advertising could breach this rule, prospective advertisers should seek guidance from licensees before developing specific proposals.

Club Classics

Heart 106.2 (Greater London); 11 July 2008, 16:00-22:00;

Heart Breakfast

Heart 106.2 (Greater London); 14 July 2008, 06:00-09:00

Introduction

During routine monitoring of Heart 106.2's output, Ofcom noted numerous references to 'Mamma Mia! The Movie' – the film version of the stage show, 'Mamma Mia!', which is based on the songs of ABBA. The station also referred to itself as "*The official radio station of 'Mamma Mia! The Movie'.*"

Club Classics – 11 July 2008, 16:00-22:00

In this programme, on the evening after the general release of 'Mamma Mia! The Movie' in the UK, references included promotional trailers for the following Monday's *Heart Breakfast*. These trailers stated that this upcoming edition of the programme was to be "*with the stars of 'Mamma Mia! The Movie'.*"

After one such trailer, the presenter said: "*...that's gonna be perfect – see the film over the weekend, hear those fantastic interviews on Heart Breakfast next week – perfect.*"

Other references to the film during *Club Classics* included:

- (in a brief item concerning films on television and at the cinema that evening): "*...If you're heading out, don't want to be staying in - i.e. the cinema - 'Mamma Mia! The Movie' finally out and gonna absolutely do the business this weekend. Enjoy that if you're going tonight...* ";
- (between songs, a recorded link): "*Think 'Mamma Mia! The Movie', think London's Heart*", followed by an audio clip from the film and: "*The official radio station of 'Mamma Mia! The Movie': London's Heart*";
- (leading into a traffic update): "*...If you're getting ready to go out – maybe to see 'Mamma Mia! The Movie', maybe heading out for dinner somewhere, hookin' up with some friends – keep the radio tuned in for some great tunes*";
- (final item in the 19:00 news bulletin): "*...and it's believed that 'Mamma Mia! The Movie' will go straight to the top of the London box office this weekend ... And you can hear exclusive interviews with the cast of the film right now on our website - Heart.co.uk*"; and
- (immediately after a repeat of the *Heart Breakfast* "Mamma Mia! The Movie" trailer, which followed the commercial break after the news): "*Just after seven, I hope you had a good day and a really good week as well. It's gonna be a good weekend, definitely. 'Mamma Mia! The Movie' finally in cinemas. Loads of stuff goin' on. Hope you've got some good plans...*"

Heart Breakfast – 14 July 2008, 06:00-09:00

On the following Monday, the Breakfast programme featured exclusive interviews with three of the film's leading actors. Outside these interviews, further references were also made to 'Mamma Mia! The Movie'. Examples included:

- *"Hoping you've had the chance to go and see 'Mamma Mia! The Movie' now – seems like a lot of London has. It's number 1 in the box office. It is a wonderful film";*

"So don't forget of course that Heart is the exclusive 'Mamma Mia! The Movie' station";

"Don't forget of course you're listening to the 'Mamma Mia! The Movie' official station";

"Don't know if you've managed to see Abba The Movie yet ... Relax into it because it's just one of the best films ever...";

"...so 'Mamma Mia! The Movie' is out, finally. Hopefully, you've had chance to see it"; and

"I loved it. I loved the film. It's just fun and great – you don't have to be a massive Abba fan to go and see it either."

- (in news bulletins):
"... 'Mamma Mia! The Movie' has gone straight to the top of the UK box office";

We asked Heart for its comments with regard to the following Code Rules:

- 10.3 – "Products and services must not be promoted in programmes..."; and
- 10.4 – "No undue prominence may be given in any programme to a product or service."

We also asked the broadcaster for details of any commercial agreement between Heart and any organisation associated with the production and/or distribution of 'Mamma Mia! The Movie'.

Response

Heart said that it is a music and entertainment station primarily targeted at women in their thirties and that it aims to provide them with interesting and relevant lifestyle features. The broadcaster believed that the launch of 'Mamma Mia! The Movie' was "a massive showbiz event which presented an outstanding opportunity to engage with the lives and lifestyles of [Heart's] target audience." It added that not only was it editorially justified for Heart to have provided extensive coverage of the event, but its audience would have expected it.

The broadcaster believed the film's plot and cast "could not have been more on brand for a station like Heart" and said that, "rather than promote the movie through any association with Heart, [its] intention was to promote Heart through association with the movie...and so make Heart the station of choice for people who were excited about the movie".

Heart said that its on-air references to 'Mamma Mia! The Movie' formed part of normal programming strands – programme trails, presenter links, comment that Heart believed would reflect its listeners' enthusiasm for the film.

The broadcaster claimed that its on-air references to Heart being "*the exclusive 'Mamma Mia! The Movie' station*", "*the 'Mamma Mia! The Movie' official station*", "*the official radio station of 'Mamma Mia! The Movie'*" and similar were "intended to be 'puffery' to promote Heart in accessible language, rather than reflect any formal relationship between the station and 'Mamma Mia'." It justified its "on air positioning as the station that 'owned' the film" by adding that:

- Heart was the only UK radio station to travel to Greece and conduct cast interviews;
- Heart hosted the world premiere of 'Mamma Mia! The Movie', "with [its] presenters on the 'blue' carpet (the producer's version of a red carpet) interviewing the stars of the movie" for the public; and
- Heart presenters introduced exclusive screenings of the movie in the week prior to the film's release.

With regard to Rule 10.3 of the Code, the broadcaster believed the references to 'Mamma Mia! The Movie' "were tapping into the pre-existing excitement around the movie's release amongst its audience", rather than promoting the film. With regard to Rule 10.4 of the Code, the broadcaster was confident that its self-initiated association with 'Mamma Mia! The Movie' and the on-air references it made were editorially justified, in the light of the film's appeal to Heart's audience, the pre-existing prominence of ABBA on its playlist and its wish to provide compelling content to its target audience.

The broadcaster added that none of the output under investigation by Ofcom formed part of a commercial agreement. However, it stated that between 23 June 2008 and 10 July 2008, it broadcast content relating to 'Mamma Mia! The Movie' that had resulted from a commercial agreement with "Universal – Mamma Mia" ("Universal") – the distributors of the film. This agreement entailed:

- trailing and running two competitions on air, sponsored by 'Mamma Mia! The Movie' – one held on 1 July 2008, for tickets to the world premiere of 'Mamma Mia! The Movie', and one held over the weekend 5-6 July 2008, for a holiday in Greece; and
- co-promoting¹ 'Mamma Mia! The Movie' and Heart in advertising, online and through street activity.

The broadcaster was confident that the references to 'Mamma Mia! The Movie' that it broadcast in *Club Classics* on 11 July 2008 and *Heart Breakfast* on 14 July 2008 were separate from the content relating to the commercial agreement, and were also both non-promotional and editorially justified.

Decision

¹ A co-promotion is a promotional arrangement between a broadcaster and a sponsor/advertiser that involves the promotion of both parties' brands and/or products and/or services. It generally comprises more than broadcast material - e.g. promotional website material, non-broadcast promotional events etc.

Undue prominence may result from the presence of, or reference to, a product or service in a programme where there is no editorial justification, or as a result of the manner in which a product or service appears or is referred to. When deciding whether such references in programmes give undue prominence to products or services (prohibited under Rule 10.4 of the Code), Ofcom considers, among other things, what was said, the way in which it was said, its context in relation to other output and the likely perception of listeners. Further, in certain circumstances and depending on the context, it is possible that undue prominence can itself lead to products or services being promoted in programmes resulting in a breach of Rule 10.3 of the Code.

There may be editorial justification for on-air references to products or services (including films) that are particularly relevant to broadcasters' audiences. In this case, Ofcom acknowledges that the release of 'Mamma Mia! The Movie' was an event of interest to Heart's target audience and notes the enthusiasm with which the broadcaster sought to engage its audience with the film in both *Club Classics* and *Heart Breakfast*.

While Heart sought to provide an "on air positioning as the station that 'owned' the film" in this content, Ofcom does not consider this legitimised the frequency and manner of the references made to 'Mamma Mia! The Movie' in these broadcasts. This was compounded by the fact that by the time listeners heard *Club Classics* on 11 July 2008, and *Heart Breakfast* on 14 July 2008, they were likely to have already been aware of the broadcaster's interest in and association with 'Mamma Mia! The Movie' through previous broadcast advertising and the film's sponsorship of competitions on Heart, resulting from the commercial arrangement with Universal.

Club Classics – 11 July 2008, 16:00-22:00

Club Classics was broadcast the day after Heart had ended broadcasting output sponsored by 'Mamma Mia! The Movie'. In the programme Heart trailed the following Monday's breakfast show (*Heart Breakfast*), promoting its interviews with some of the film's leading actors. It also predicted box office success for 'Mamma Mia! The Movie' in news and the programme's presenter referred to the film in a 'what's on' feature. Ofcom accepts that some of these references to 'Mamma Mia! The Movie' appeared to be appropriately topical, of likely appeal and relevant to Heart's target audience and therefore editorially justified.

Ofcom also accepts that the broadcaster was "tapping into the pre-existing excitement around the movie's release amongst its audience." However, the extent to which such excitement was reflected or created by Heart on air (and over time) is uncertain. Regular listeners were most likely to have known since 23 June 2008 (when material in which 'Mamma Mia! The Movie' was first co-promoted on air under the commercial agreement with Universal) that Heart and the film were commercially linked.

In this instance, Ofcom therefore considers that references such as "*The official radio station of 'Mamma Mia! The Movie': London's Heart*", were unlikely to have been understood by listeners of *Club Classics* as simply "puffery" to promote Heart, as the broadcaster had intended. We consider that listeners were most likely to have viewed such references as indicating some form of ongoing commercial arrangement between Heart and 'Mamma Mia! The Movie'.

In addition, the presenter made a number of what Ofcom considered to be contrived references to the film in otherwise normal comment, which appeared only to support this (see Introduction, e.g. “...*If you’re getting ready to go out – maybe to see ‘Mamma Mia! The Movie’ ...*” and “*It’s gonna be a good weekend, definitely. ‘Mamma Mia! The Movie’ finally in cinemas...*”). These also went beyond informing listeners about the recent release of a film that was likely to interest them.

Heart Breakfast – 14 July 2008, 06:00-09:00

As in *Club Classics*, *Heart Breakfast* contained some similar editorially justified references to ‘Mamma Mia! The Movie’ – in this case, in news, interviews with the film’s leading actors and some of the presenters’ conversation.

However, one of the presenters said to listeners, “*Don’t forget of course, you’re listening to the ‘Mamma Mia! The Movie’ official station*” and referred to Heart being “*the exclusive ‘Mamma Mia! The Movie’ station*”. Other references of concern included such statements as “*Think ‘Mamma Mia! The Movie’, think London’s Heart*”. Ofcom considered that, as in *Club Classics*, listeners were most likely to have viewed these references to the film as indicating some form of ongoing commercial arrangement between Heart and ‘Mamma Mia! The Movie’.

In conclusion, Ofcom accepts that there was some editorial justification for references to ‘Mama Mia! The Movie’ in Heart’s programming during this period. However, in this case, the sheer volume, nature and tone of references resulted in the references appearing to be contrived and in some places, gratuitous. This resulted in the station giving undue prominence to the film and also promoting it as a product. Ofcom considered that the station output went beyond informing listeners about the recent release of a film that was likely to interest them. This resulted in breaches of the Code.

Club Classics – 11 July 2008, 16:00-22:00: Breach of Rules 10.3 and 10.4
Heart Breakfast – 14 July 2008, 06:00-09:00: Breach of Rules 10.3 and 10.4

Note to Radio Broadcasters

Radio broadcasters should take care at all times to avoid promoting and/or giving undue prominence to products or services in programmes. Where a commercial agreement is in place with a third party, particular care is needed not only at the time a client is sponsoring output or running an advertising campaign on air, but also when such output has ended. This is particularly important if the broadcaster has also chosen to promote itself or its goods or services by forming a close association with the sponsor/advertiser (for example, through a co-promotional agreement that involves additional off-air activity). A broadcaster may wish to embrace this association by reflecting its enthusiasm for it, and/or that of its audience, on air. While there may be editorial justification for doing so, the broadcaster should always take care to define the parameters of the association and the extent to which broadcast activity forms part of it.

The Five Thirty Show

STV, 20 March 2008, 17:00

Introduction

The Five Thirty Show is a half-hour weekday topical magazine programme. A report featured the Rugby Union player, Kenny Logan, who spoke about how he had overcome dyslexia by following the Dore support programme. During this pre-recorded report, which was filmed at The Dore Clinic in Edinburgh, Kenny Logan was interviewed about his dyslexia and how the programme had helped him.

When introducing the report, one of the studio presenters referred to how Mr Logan had struggled with dyslexia *“until he discovered a revolutionary support programme.”* Near the beginning of the feature, the narrator added: *“...new help is at hand. The Dore’s Clinic in Edinburgh offers revolutionary treatment for those battling learning difficulties.”*

Throughout the interview, Mr Logan stood in front of a poster that promoted *“The Dore programme.”* The interviewer asked him, *“What difference has Dore made?”* Mr Logan replied: *“I feel like a sponge now. I take in so much more information ... I’m learning so much more now. I’m really enjoying, you know, life, because everyday you’re learning something new.”* A little later, the narrator asked Mr Logan, *“How does it work?”* He replied: *“There are so many things out there; I can only tell you my experience: Dore has changed my life.”*

After the report, one of the studio presenters told viewers there was *“more information on that treatment on our website.”*

A viewer was concerned that the feature was an inaccurate *“blatant advert for Dore in Edinburgh.”*

Ofcom noted an ITC Finding from 2002¹, which stated that the ‘cerebellar theory’ of dyslexia (espoused by Dore) had originated over thirty years previously. Ofcom also established that Mr Logan was a director of Dore’s holding company, Camden Holdings.

We therefore asked STV for its comments on the complainant’s concern, with regard to the following Code Rules:

- 2.2 – “Factual programmes or features or portrayals of factual matters must not materially mislead the audience.”
- 10.1 – “Broadcasters must maintain the independence of editorial control over programme content.”
- 10.3 – “Products and services must not be promoted in programmes.”
- 10.4 – “No undue prominence may be given in any programme to a product or service.”
- 10.5 – “Product placement is prohibited.”

¹ From ITC Programme Complaints & Interventions Report, 1 September 2002:
http://www.ofcom.org.uk/static/archive/itc/itc_publications/complaints_reports/programme_complaints/show_complaint.asp-prog_complaint_id=546.html

Response

STV said it had “set out to highlight how a leading celebrity overcame a learning difficulty”, adding that the feature “was not an examination of treatments of dyslexia ... not an endorsement of the Dore Programme” and “not a documentary about Dore.” Nevertheless, the broadcaster regarded the Dore Programme poster as a typically suitable backdrop for the feature and believed it contextualised the interview with relevant branding. It also noted that the poster was partly obscured by Mr Logan.

STV said that it was “unaware of any business relationship between Mr Logan and Dore, or any of its associated companies”, prior to the interview. Dore had sent STV a news release claiming that its programme could help people with the condition and offered the broadcaster an opportunity to interview Mr Logan, as “a well-known individual who could talk with knowledge about the condition.”

STV said that Mr Logan formerly played Rugby Union for Scotland and currently played for London Scottish, adding that the news interest in this feature was not the Dore Programme itself, but that Kenny Logan was willing to talk candidly about his own experience of dyslexia, which it believed would be of interest to its viewers.

STV described the broadcast as a “feather-weight magazine style programme which presented Kenny Logan’s personal journey and battle with dyslexia.” However, the broadcaster confirmed that, in accordance with STV’s standard practice for news interviews, it had not paid Mr Logan for his appearance and no pre-conditions concerning either editorial content or production style were imposed on it; neither had it received any payment or other valuable consideration from Dore for broadcasting the feature.

The broadcaster admitted that “Mr Logan’s impression of the Dore Programme was certainly part of the story” but it did not believe the feature gave the impression that STV accepted it as a successful option for dyslexics, quoting one of the programme’s presenters, who it claimed had stated, “*This doesn’t sound like the answer to people who don’t know about it.*” STV acknowledged that the Dore Programme was described as “*a revolutionary support programme*” and a “*revolutionary treatment.*” The broadcaster said that these references intended to convey that the Dore Programme was more “a fundamental change to established procedures” than an evaluation of that change. Subsequently, however, STV claimed that, “at no time did STV lead viewers to believe that the Dore Programme represented a fundamental change to established procedure around treating dyslexia”, adding that, “in relation to reference to the Dore Programme as “new”, STV submits that in relative terms, by any standards of medical treatment, less than 10 years is indeed current or recent.”

STV summarised its position by saying: “...the story of Mr Logan was presented in a manner in which [*The*] *Five Thirty Show* viewers are used to. STV does not believe that the audience was at any time misled into believing that the story was a documentary about dyslexia involving any endorsement of a named medical treatment.”

Decision

Ofcom accepts that STV was editorially justified in covering Mr Logan’s personal experience of dyslexia and notes that the broadcaster says it had been unaware of any business relationship between Mr Logan and Dore. Ofcom also acknowledges that viewers may not expect the same degree of journalistic rigour from “a feather-weight magazine style programme” than an established news and current affairs

output. Nevertheless, Ofcom was surprised that prior to broadcast no background checks were carried out into the Dore Programme itself or Mr Logan's association with Dore. This is especially the case since the feature had been instigated after receipt of a news release from Dore, offering the broadcaster an opportunity to interview him.

This resulted in the personal endorsement of the Dore Programme, a commercial product or service, ("*Dore has changed my life*") by a director of Dore's holding company (Camden Holdings), in a report that was filmed in Dore's Edinburgh clinic. The report also screened a Dore poster promotion to the side of Mr Logan throughout his interview. In the context of a feature covering how Mr Logan had struggled with dyslexia "*until he discovered a revolutionary support programme*", Ofcom considered that this material promoted Dore, in breach of Rule 10.3 of the Code, which prohibits the promotion of products and services in programmes.

Furthermore, the report not only featured constant references to Dore, but mentioned no specific alternative approaches to tackling dyslexia, referred viewers to STV's website for further details about the Dore Programme and failed to question its efficacy. The broadcast therefore gave undue prominence to Dore, in breach of Rule 10.4 of the Code.

STV claimed not to have given the impression that it accepted the Dore Programme as a successful option for dyslexics, as the interviewer had questioned its validity when he said, "*This doesn't sound like the answer to people who don't know about it.*" However, in Ofcom's view, far from challenging the Dore Programme, the interviewer simply appeared to be seeking further detail about how it worked, when he actually said, "*Exercise and balance – it doesn't sound like the answer to people who don't know about it – how does it work?*"

Ofcom considers that STV presented the Dore Programme as a brand new breakthrough, when it said that Mr Logan had struggled with dyslexia "*until he discovered a revolutionary support programme*" and then added, "*...new help is at hand. The Dore's Clinic in Edinburgh offers revolutionary treatment for those battling learning difficulties.*" While STV believes it reflected "new" as meaning "current or recent", the ITC found in its Complaints & Interventions Report of 1 September 2002 that the 'cerebellar theory' of dyslexia, upon which the Dore Programme is based, had originated over thirty years previously.

Furthermore, the broadcaster not only achieved its aim to portray the Dore Programme as "a fundamental change to established procedures", but also failed to question its efficacy. Ofcom also notes that a simple internet search concerning Dore and/or Kenny Logan provides links to websites that question the efficacy of the Dore Programme.

The ITC finding stated that:

"Having consulted with leading dyslexia organisations and other practitioners in the field, the ITC is satisfied that these claims by the programme that the DDAT treatment was both revolutionary and a breakthrough were not sustainable. The 'cerebellar theory' of dyslexia originated at least thirty years ago and exercise-based regimens, without the use of drugs or supplements, have been available in this country and the USA prior to the establishment of DDAT".

However, this item presented the Dore Programme as both new, which it was not, and effective, as it was unchallenged. Further, it presented the Dore programme in a

promotional and unduly prominent manner, as described above. In Ofcom's view, STV therefore presented a misleading impression of the Dore Programme to its viewers. In portraying matters relating to health and, in particular, treatment options, Ofcom considers that there is clear potential for harm in terms of viewers making choices relating to their own health. We consider that broadcasters should take particular care to ensure that viewers are not misled as to the nature and efficacy of any particular treatment and take a balanced approach so as not to mislead. We therefore found that the broadcast portrayed factual matters that materially misled viewers, in breach of Rule 2.2 of the Code.

Breach of Rules 2.2, 10.3 and 10.4

Nemone

BBC 6 Music, 12 September 2008, 13:00

Introduction

Nemone is a daily magazine programme hosted by the DJ Nemone Metaxas. Its focus is contemporary music, however, occasionally the programme features guests from other genres of entertainment.

This edition featured an interview with American comedian Doug Stanhope. During the interview, Mr Stanhope commented that the Republican vice-presidential candidate, Sarah Palin, was a suitable target for his satirical style of humour. The interview included the following:

- Doug Stanhope: *[Ms Palin] is a 44 year-old mother of five, two of which are retarded.*
- Nemone Metaxas: *These are your, [laughs] obviously, your views...*
- Doug Stanhope: *One's got Down's Syndrome and the other volunteered for Iraq. So that's two retards out of five.... Oh nothing. They give me nothing, nothing but blank looks.*
- Nemone Metaxas: *Doug this is your opinion, your opinion of what's happening back home, so obviously, if something kicks off in America...*
- Doug Stanhope: *For Pete's sake, don't stare at me like that. The woman has a baby with Down's Syndrome; how can America get behind her when even God obviously hates her. [laughs]*
- Nemone Metaxas: *I think we'll leave that to you. That's obviously what you think about I'm sure there are some....*
- Doug Stanhope: *So that's some of the stuff we've been dealing with.*

Ofcom received a complaint from a listener who was offended by Mr Stanhope's use of the word "retarded" to describe someone with Down's Syndrome. The complainant was also concerned that the presenter did not seriously challenge these remarks or apologise to listeners.

Ofcom asked the BBC for its comments under Rule 2.3 of the Code which requires material that may cause offence to be justified by the context.

Response

The broadcaster pointed out that BBC 6 Music is aimed at an adult audience and that Friday's edition of *Nemone* in particular, regularly features guests with edgier, more adult orientated material. It also noted that the presenter warned listeners to prepare themselves "for a vitriolic assault on the senses" adding that her guest is "often described as the standard bearer for extreme American comedy." With this in mind, the BBC argued that listeners should have been expecting some outspoken and controversial humour to follow.

Nevertheless, the BBC recognised that these particular comments were potentially offensive and said it regrets that the presenter did not issue a clear apology at the first available opportunity. As a consequence, it has reviewed its procedure for briefing guests on tailoring their material to ensure it is suitable for broadcast. Additionally, the BBC said it will consider pre-recording interviews with certain guests to reduce the likelihood of a reoccurrence.

Decision

Ofcom notes that the comedian made references to individuals as “*retarded*”. Research indicates that views on this term are split. It is considered by some to be highly offensive, while others are less concerned by its use.

Ofcom acknowledges that BBC 6 Music attracts a predominantly adult audience and that regular listeners who are familiar with the irreverent style of its presenters and guests may not necessarily find the use of words such as “retard” offensive.

When dealing with generally accepted standards, the Code refers specifically to offence that may be caused by discriminatory treatment and language based on disability. In this case, the word “retarded” was used in a particularly derogatory manner. Further, references to Down’s Syndrome were also made in a clearly offensive way. First, a child with Down’s Syndrome was described as retarded. Second, there was a highly offensive comment which described Down’s Syndrome as a form of punishment by God. Both of these, in Ofcom’s opinion, went well beyond generally accepted standards and the audience’s expectations for this programme. In this case it was clear that the context did not justify these offensive comments.

Ofcom was also concerned that during the broadcast the presenter did not give what it considered to be a sufficient reprimand or apology, which could have served to reduce the offence.

While we welcome the BBC’s procedural review for briefing guests and its acceptance that such material was inappropriate, Ofcom concludes that this programme was in breach of Rule 2.3 of the Code.

Breach of Rule 2.3

Donald Macleod

96.3 Rock Radio, 26 September 2008, 19:40

Introduction

96.3 Rock Radio is a classic rock commercial radio station, operated by GMG Radio. It is broadcast in Glasgow, Renfrewshire and on DAB Digital Radio in Edinburgh. Donald Macleod, a Scottish music industry entrepreneur and newspaper columnist, presents a show on weekdays from 18:00 to 22:00.

During the broadcast in question, the presenter said the following when introducing the song 'Black Hole Sun' by Soundgarden:

"Barack Obama's favourite song. Your Mum's got a big black hole, son".

A listener contacted Ofcom to complain, stating that this comment was racist.

Ofcom asked GMG Radio to comment with reference to Rule 2.3 ("in applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context").

Response

GMG Radio stated that 96.3 Rock Radio has a "free thinking and often controversial attitude, going beyond what is normally heard from commercial radio services in the area". It said that the station is aimed at a male audience, 35 years and over, generally featuring male oriented events and interests.

With regard to the comment in question, GMG Radio acknowledged that the comment was "completely ill advised and regrettable", though it stated that it was not intended to cause unwarranted offence. The presenter said his comment had been made "without any racial intent and was uttered whilst under some pressure within the studio". Further, it stated that the presenter was "genuinely appalled and extremely concerned at making the remark", which was an attempt at adult humour.

GMG said that in response to the complaint, the presenter has apologised to the station management, the complainant and Ofcom for the unintentional offence caused. GMG Radio also stated that the presenter has pledged to comply fully with all aspects of the Code in making any future broadcasts.

Decision

Ofcom noted the broadcaster's response that, although completely ill advised and regrettable, the comment was not intended by the presenter to cause offence. Ofcom also noted the apologies made by the presenter.

Ofcom does not assess whether behaviour or language is racist; this is a matter for relevant authorities. However, Ofcom does require that generally accepted standards are applied in radio programmes. It is concerned that this comment, which clearly is potentially offensive on the grounds of race, had been included in a broadcast without due consideration for the way it may have been interpreted by listeners and without any apology within the programme itself.

Ofcom concluded that the comment was not justified by the context and breached generally accepted standards. It was therefore in breach of Rule 2.3.

Breach of Rule 2.3

The Live Hour

Xfm Scotland, 12 October 2008, 20:00

Introduction

Xfm Scotland broadcast a recording of a live performance by the band Oasis. One listener complained that during the programme several examples of offensive language were broadcast when children might be listening. On reviewing a recording of the material provided by GCap Media Ltd. (“GCap”), which controls and provides compliance for the station, Ofcom noted that the programme contained the word “*cunt*”, as well as several instances of the word “*fucking*”.

Ofcom wrote to GCap, asking it to respond under Rule 2.3 (material that may cause offence must be justified by the context).

Response

GCap apologised for the broadcast. It said that immediately following transmission, it had realised that offensive material, which it deemed to be completely unacceptable, had been broadcast. Following an internal investigation, it discovered that a producer had used the unedited version of this particular concert, despite the fact that GCap’s standard procedures are that all such material must be double-checked for inappropriate content before broadcast.

GCap contacted the person who had complained to Ofcom (the same person had complained directly to the station) to apologise. It also broadcast an on-air apology on Xfm Scotland at approximately the same time the following day. GCap said that since the broadcast, it has taken formal disciplinary action against the producer responsible and has strengthened its compliance procedures at Xfm Scotland.

GCap asked Ofcom to note, however, that listeners to Xfm Scotland expected edgier content and that very few children would be listening to the station at that time.

Decision

Ofcom’s research¹ confirms that many listeners find “fuck” and its derivatives, and “cunt”, some of the most offensive language. Ofcom welcomes the admission by GCap of the compliance error in this case, its apologies both to the complainant and on-air, and the fact that the broadcaster has tightened up compliance procedures.

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

Breach of Rule 2.3

¹ “Language and Sexual Imagery in Broadcasting: A Contextual Investigation”, September 2005

Resolved

All-Ireland Final Competition

UTV, 13/14 September 2008, various times

Introduction

Between 11 and 16 September 2008 UTV ran a viewers' competition to win two tickets to the Gaelic Athletic Association All-Ireland Final. Entry was by premium rate service ("PRS") telephone line (though not SMS, which UTV does not use for competitions) and free online entry.

The competition posed a question about the All-Ireland Final and required entrants to choose one of three answers. The winner would later be chosen randomly from all the entries received that gave the correct answer.

On 16 September 2008 UTV notified Ofcom of problems with the processing of PRS entries over the weekend of 13 and 14 September. On 23 September, when UTV had fuller details of the background to the problem, the broadcaster wrote to Ofcom with a more detailed explanation both of what went wrong and the steps taken to ensure that viewers were not disadvantaged.

In light of the letter of 23 September Ofcom sought further comments from the broadcaster under Rule 2.11 of the Code (fair conduct of competitions).

Response

UTV supplied extensive documentation detailing the extent of the problem, the efforts made to unearth the reasons for it, and the remedial action taken.

The broadcaster said that over the weekend of 13 and 14 September some 296 calls (made by 241 callers) had incurred a premium charge but had not been properly logged. As a result these entries had been excluded from the competition. UTV said the reason for the logging problem lay in the system operated by the service provider¹.

On Monday 15 September, when the technical troubles were first known to the broadcaster, it had cancelled any further on-air publicity for the competition as this promoted PRS entry. The telephone lines themselves were closed on 16 September; any calls made up to closure were eligible and were entered. Online entries were not affected and were allowed to continue.

UTV's submission further set out that it had sought urgently to understand the full details of the problem and to ensure that swift action was taken to reimburse callers. It said that all possible steps were taken to contact the 241 callers affected so that they could be entered into the competition and offered refunds.

¹ PRS service providers are companies that contract directly with network operators for premium rate numbers and provide the technical means by which calls are received and processed. When acting for other parties, such as broadcasters, service providers are essentially providing a necessary technical link in the chain between caller and broadcaster.

230 callers were contacted and offered refunds; for those that said they did not require a refund, a donation was made to a cancer charity. The remaining callers had either withheld their numbers (and therefore could not be contacted), did not wish to speak to UTV or did not respond to messages left. In all, 272 entries were reinstated to the competition draw, £182 given in refunds and £114 donated to charity.

The broadcaster also said that it had immediately terminated its business relationship with the service provider. UTV said that it would suspend all competitions until a new service provider had been appointed.

Decision

Ofcom welcomed the broadcaster's effective and speedy action in cancelling further promotions for the PRS route of entry, establishing the cause of the problem, putting right excluded entries and effecting refunds or charitable donations.

We also acknowledge UTV's immediate notification of the matter to Ofcom and the openness and efficiency with which the broadcaster dealt with Ofcom's further enquiries. It is clear that the technical deficiencies and their consequences were deeply regretted by the broadcaster.

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

Ofcom wishes to remind television licensees that under their Ofcom licences they are required to notify Ofcom of any "significant irregularities or other problems" in the operation of PRS competitions and votes.

Ofcom expects all licensees to take particular care when inviting listeners and viewers to take part in competitions. Code breaches can arise from errors, however inadvertent. These remain the responsibility of the licensee even where they arise from systems or actions in the control only of contractors or agents. Broadcasters must make sure they are fully familiar with the Guidance² to Section 2 of the Code that deals extensively with competitions.

Resolved

² This is available at: <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/guidance2.pdf>

Not in Breach

Top Gear

BBC Two, 2 November 2008, 20:00

Introduction

Top Gear is a car-focused magazine programme primarily aimed at car enthusiasts. In this edition, the three presenters were given the challenge of customising second-hand lorries and performing certain tasks to experience being an HGV driver.

In one sequence, while discussing the upcoming lorry challenge Jeremy Clarkson said to the other presenters:

“What matters to lorry drivers? Murdering prostitutes? Fuel economy?”

A few minutes later, whilst driving a lorry, Jeremy Clarkson said:

“This is a hard job [driving a lorry] and I’m not just saying this to win favour with lorry drivers: change gear; change gear; change gear; check your mirrors; murder a prostitute...”

Ofcom received 339 complaints about comments made by Jeremy Clarkson concerning lorry drivers.

Ofcom considered these complaints under Rule 2.3 (material that may cause offence must be justified by the context).

Decision

Top Gear is a long-running entertainment programme and viewers, in general, have come to expect a certain level of outspoken, adult-oriented humour from the presenters.

Taste in comedy can vary widely between people and Ofcom recognised that the comments made by Jeremy Clarkson could be offensive to some people. Ofcom is not an arbiter of good taste but rather it must judge whether a broadcaster has applied generally accepted standards by ensuring that members of the public were given adequate protection from offensive material. In each case when reaching a decision on whether material breached the Code, Ofcom must take into account the broadcaster’s right to freedom of expression, which includes the right to hold opinions and to receive and impart information and ideas without interference by public authority¹. The Code places no restrictions on the subjects covered by broadcasters, or the manner in which such subjects are treated, so long as offensive material that is broadcast is justified by the context.

On this occasion, Ofcom accepts that the comments made by Jeremy Clarkson could shock some viewers. However, Ofcom did not believe the intention of the comments could be seen to imply that all lorry drivers murder prostitutes, nor would it be reasonable to make such an inference. In Ofcom’s view, the presenter was clearly using exaggeration to make a joke, albeit not to everyone’s taste. The comments should therefore been seen in that context.

¹ As enshrined in Article 10 of the European Convention on Human Rights.

It is often the case that humour can cause offence. To restrict humour only to material which does not cause offence would be an unnecessary restriction of freedom of expression. However, in transmitting potentially offensive material, broadcasters must ensure that they apply generally accepted standards.

Ofcom considered that the large majority of the audience would have understood the comments as being made for comic effect, and were in keeping with what would normally be expected from this presenter in this particular programme.

Given the intent of the comment, the context of the programme and the time of broadcast, Ofcom concluded that the broadcast of this material was justified by the context. Therefore, the programme was not in breach of Rule 2.3.

Not in Breach

Harry and Paul

BBC1, 26 September 2008, 21:00

Introduction

Ofcom received 42 complaints regarding a sketch in the *Harry and Paul* show which depicted a so-called upper class character, played by Harry Enfield, encouraging a “Northern” man - whom he treats as his dog - to “mate” with his neighbour’s Filipina maid. The scene showed the “Northerner”, known as Clive, failing to show interest in the maid and the Harry Enfield character shouting encouragement and urging Clive to “*mount her*” before sending the maid back to the neighbour’s home.

The complainants expressed concern that the sketch was offensive to the Filipino community and women in general, by presenting the Filipina as an object of sexual gratification.

Decision

Ofcom recognises the sensitivities involved when comedy makes reference to or represents any particular ethnic community in the United Kingdom. In this case it was a Filipino who featured in the broadcast. We therefore considered this material in the light of Rule 2.3 (generally accepted standards) which says that “...broadcasters must ensure that material which may cause offence is justified by the context...”

Context includes such factors as the editorial content of the programme, the degree of harm and offence likely to be caused and the likely expectation of the audience.

This particular sketch was one of a number which ran throughout the series in which Harry Enfield plays an extreme comedy stereotype of an upper class “toff” living in the South of England. This caricature has little sensitivity to those outside of his social class. Consequently, he treats Clive like his dog. It is in this context that the sketch showed the Harry Enfield character encouraging Clive to “mate” with his neighbour’s domestic help, for whom he also has little or no respect.

Whilst *Harry and Paul* is a new series, Harry Enfield and Paul Whitehouse are long established comedians whose style of humour often focuses on presenting characters in an exaggerated and stereotyped way for comic effect. The comedy frequently comes from the absurdity of the situation.

In terms of the degree of offence and the likely expectation of the audience, we considered whether the material was justified by the context of the sketch as a whole.

As noted above, this item featured established comedians and the sketch was typical of the material presented by Harry Enfield and Paul Whitehouse in this, and other series. Therefore it is Ofcom’s view that the material would not have exceeded the likely expectation of the vast majority of the audience.

Further, in Ofcom’s view, there was no intention to ridicule women or the Filipino community in this sketch. The target of the humour was very clearly the upper class character played by Harry Enfield who holds such a deluded view of his social superiority that he treats individuals with lower social status with ridiculous disdain. The Filipina domestic help was featured as a character in the sketch to highlight this extreme and ridiculous behaviour.

Comedy often, and rightly, engages with challenging and sensitive subjects such as social class. In this respect Ofcom must regulate potentially offensive material in a manner that also respects freedom of expression – the broadcasters' right to transmit information and the viewers' right to receive it. Ofcom must therefore seek an appropriate balance between protecting members of the public from harm and offence on the one hand and the broadcaster's right to freedom of expression on the other, taking into account such matters as context.

Although this sketch may have caused offence to some individuals, it explored the issue of social class in an absurd way which was not intended to reflect real life. In our view this was the approach and effect of this sketch. On balance, it is Ofcom's view that the material did not breach generally accepted standards because it was justified by the context.

Not in Breach

Fairness and Privacy Cases

Partly Upheld

Complaint by Sri Guru Singh Sabha Sikh Temple made on its behalf by Dr Parvinder Singh Garcha

Programming between 1800 and 2000, Akash Radio, 19 May 2007

Summary: Ofcom has upheld the complaint of unfair treatment, but not the complaint of unwarranted infringement of privacy in the making and broadcast of the programme, made by the Sri Guru Singh Sabha Sikh Temple.

The Sri Guru Singh Sabha Sikh Temple's complaint was considered by the Executive Fairness Group.

In summary Ofcom found the following:

- Ofcom found that the programme resulted in unfairness to the Sri Guru Singh Sabha Sikh Temple because it included serious allegations about both the management committee of the Temple, and the President of this committee, and failed to give the complainant an appropriate and timely opportunity to respond to these allegations.
- The Sri Guru Singh Sabha Sikh Temple did not have a legitimate expectation of privacy in relation to either the recording or broadcast of footage of the service which took place in the Temple because nothing of a private nature was recorded or disclosed. Given this, Ofcom found that the Sri Guru Singh Sabha Sikh Temple's privacy was not infringed in either the making or the broadcast of the programme and it was not necessary for it to consider whether any infringement was warranted.

Introduction

Akash Radio is an inter-denominational radio station broadcast in both English and Punjabi which describes itself as "The Voice of the New Punjabi Generation". It can be heard throughout the UK and Europe via Astra digital satellite channel 918 and around the world on the internet.

On 19 May 2007 between approximately 1800 and 2000 hours Akash Radio broadcast a live event from the Sri Guru Singh Sabha Sikh Temple which featured hymns, chanting, speeches (including religious discourses) and prayers.

Dr Parvinder Singh Garcha, a Trustee of the Sri Guru Singh Sabha Sikh Temple, which is a faith Charity and is therefore referred to as "the Charity" in this complaint, complained to Ofcom that the Charity was treated unfairly and that its privacy was unwarrantably infringed in the programme as broadcast.

The Complaint

The Charity's case

In summary, the Charity complained that it was treated unfairly and that its privacy was unwarrantably infringed in the broadcast of the programme in that:

- a) The programme included personal insults about members of the Charity's management committee. Dr Singh Garcha said the comments made in the broadcast were offensive and threatening.

In summary, the Charity complained that its privacy was unwarrantably infringed in the making and the broadcast of the programme in that:

- b) The programme was recorded and simultaneously broadcast surreptitiously without the knowledge or consent of the members of the Charity's management committee.

By way of background to the complaint Dr Singh Garcha said that the programme had included: "speeches broadcast live and made by a group of disaffected members of a self-styled opposition group advocating violence and a probable threat to kill one of the members of the Charity's management committee".

The broadcaster's case

In summary the broadcaster responded to both heads of complaints made by the Charity together as follows:

Akash Radio denied that the programme had been unfair or had unwarrantably infringed the Charity's privacy in the making or the broadcast. It added that it had broadcast public messages addressed to those who attended the event and said that the programme did not include any threats or personal insults.

The broadcaster said that, like other media outlets, it was invited to cover the event and procession by the event organisers and added that the event organisers included some members of the Charity and some other organisations. Akash Radio said that it had covered the event for the event organisers not for the management committee of the Charity, that the management committee had permitted the organisers of the event to hold the function and that in these circumstances it had not needed consent from the Charity's management to record and broadcast the event.

Akash Radio argued that even if it had not broadcast the event the same material was heard by the people who attended the event and by people listening or viewing the broadcasts of the other media outlets which were at the event.

The broadcaster also argued that the programme did not breach Section 7.9 of the Code (presentation of material facts) because it broadcast live coverage of what the Temple stage secretary said to the people attending the event along with what was said by Mr Manmohan Singh [one of the organisers of the event] and others. Akash Radio added that it did not discriminate against anyone and that Section 7.11 of the Code (which relates to the obligation on broadcasters to provide an opportunity to respond to allegations of wrongdoing or incompetence) was not breached in that the programme mentioned Mr Himmat Singh Sohi (the management committee president) respectfully and ensured that he was not seen in a bad light.

Akash Radio said that it didn't need permission from the management committee of the Temple because it had been invited to provide live coverage of the protest march and prayer function by the organisers, namely Mr Manmohan Singh and other members of the Temple. The broadcaster indicated that a member of the

management committee invited Mr Manmohan Singh to the Temple podium and asked him to address the congregation. It also said that the recording and broadcast was not carried out surreptitiously.

Akash Radio also supplied a letter from Mr Manmohan Singh in which he said that he and some other members of the Charity organised a protest march against a man called Mr Gurmeet Ram Rahim Singh. Mr Manmohan Singh also said that the organisers invited the media to the event and that Akash Radio had been asked to cover the entire event live.

The Charity's second statement

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

Dr Singh Garcha said that the Charity strongly disputed Akash Radio's response to its complaint and considered that the broadcaster was trying to mislead Ofcom.

He argued that Akash Radio did not have a licence or permit to broadcast live, or otherwise, from the Temple without specific and prior consent from the management committee/trustees. He added that the person who was alleged to have invited Akash Radio to the Temple was not an authorised person. Dr Singh Garcha acknowledged that this person may have been a member of the Temple (or Charity) but added that the Temple had nearly 8000 members. Dr Singh Garcha also said that the so-called 'demonstration' was not authorised by the appropriate authorities.

The broadcaster's second statement

In summary Akash Radio responded to the complainant's comments and clarifications as follows:

Akash Radio indicated that there had been many and varied occasions when it had broadcast events that took place at the Temple. It said that the people who organised these events invited the attendees and decided if there was to be any media coverage and argued that the management committee did not have rights in this regard.

The broadcaster said that this event was organised and conducted by Mr Manmohan Singh and his associates, that they had invited people from around the UK to attend it and the press to cover it and that therefore he was the authorised person. It added that Dr Singh Garcha had not made clear the role of the organiser of the event in question, Mr Manmohan Singh, and noted that he was invited on to the stage to address the congregation by the management committee's stage secretary. (Akash Radio said that the recording and transcript of the programme showed that Mr Manmohan Singh was twice invited to the podium by the stage secretary).

Akash Radio argued that it did not need a licence or permission from the Temple management committee to record and broadcast the event because it was not their event rather it was a prayer function for a martyr and a demonstration (against the sacrilege committed by a pseudo-saint in Punjab) which was organised by Mr Manmohan Singh and others and that the management committee had known about it.

The broadcaster argued that if the complainant was concerned that Mr Manmohan Singh had organised the event without proper permission, this was an issue it needed to raise with him and not with Akash Radio. It also argued that if the complainant was concerned about what was said from the podium, including

comments made by Mr Manmohan Singh, it should file a case against those who said it and not against Akash Radio.

Akash Radio said that it had broadcast the entire event, witnessed by hundreds of congregation members, and that it had not breached any social, community, national or Ofcom rules and regulations.

Decision

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

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 Charity's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and a transcript in Punjabi with an agreed English translation, and both parties' written submissions.

- a) Ofcom considered the Charity's complaint that the programme included insults about members of the Charity's management committee which were offensive and threatening.

Ofcom noted that this complaint was made as both a complaint of unfair treatment and unwarrantable infringement of privacy in the broadcast. However, it recognised that the complaint concerned whether the broadcast included insulting comments about members of the management committee. Ofcom therefore considered this head of complaint in relation to unfair treatment in the programme as broadcast.

Ofcom considered this complaint in light of the requirement on broadcasters in Rule 7.1 of Ofcom's Broadcasting Code ("the Code") to avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also took particular account of Practice 7.9 of the Code which states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. In addition, Ofcom took particular account of Practice 7.11 of the Code which 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 noted that the programme was divided into three sections. In the first section of the programme a studio presenter (Mr Giani) and an outside broadcast reporter (Mr Sukhwinder Singh) reported on the last part of a street procession (including the arrival of the procession at the Temple). The programme indicated that the people taking part in the procession were demonstrating against the decision of the Charity's management committee not to allow prayers in the Temple for a Mr Kulwart Singh, also referred to as "*the martyr*", nor to allow

protest against Mr Gurmeet Ram Rahim Singh [leader of the RSS religious sect in India] described by Mr Giani (the presenter) as “a pseudo, rapist, a murderer” who had “dared to imitate Guru Gobind Singh [the tenth Sikh Guru] and ridiculed [the] Sikh baptism ceremony”.

The second section of the programme featured live coverage of events within the Temple including prayers and speeches. This section of the programme included a speech made to the congregation in the Temple by Mr Manmohan Singh as well as commentary by Mr Giani (the presenter) and Mr Sukhwinder Singh (the reporter). The third section of the programme was a short studio phone-in with four calls interspersed with commentary from the presenter.

Having examined the transcript, Ofcom observed that the programme included numerous negative comments or implications about both the management committee of the Charity and Mr Himmat Singh Sohi (the President of the Charity’s management committee) and that these comments were made by the presenter, by Mr Manmohan Singh within his speech to the worshipers at the Temple and by people who called in to the programme.

By way of example, Ofcom noted that after the reporter said that the Charity’s management committee [the management committee] was “not going to let the prayers take place”, the studio presenter said “if they are stopping the prayers from being offered then it’s tragic, it is against Sikh principles. Is this Committee on the side of the Sadh [Mr Gurmeet Ram Rahim Singh]? Where are they standing? Through Akash Radio I wish to say that nothing should happen that could affect the respect and honour of the Sikh nation”. He further said “If this management committee doesn’t let the prayers take place it would be the biggest diplomatic error of the committee.”

Ofcom also noted that during a speech made at the Temple (and simultaneously broadcast on Akash Radio) Mr Manmohan Singh made the following comments:

“Since this management committee has been formed, it has never even sent a coach to mark the 1984 holocaust [of Sikhs in India at the time of the assassination of the then Prime Minister Indira Gandhi]. And the president of this Gurdwara [Temple] Himmat Singh Sohi, biggest traitor of RSS [the Rashtriya Sikh Sangat organisation]. The institution banned by Sri Akal Takht Sahib, he’s lighting the lamp. Where they have shown Guru Gobind Singh ji along with their leader, he’s congratulating them. You can see it now on the CD. CD will be shown to you. Respected congregation where we have to fight against the outside enemies, we have also to recognise the enemies within us. The enemies in our own homes are more dangerous, that’s why we should see that no such person stays as the Gurdwara president who has relations with the RSS. Victory shouts. Do you wish that such a person remain president of the Gurdwara, if not, raise both your hands. Revered congregation, even today it was very difficult holding the prayers for the martyr. Even last time, to malign our image they ceremonially closed Guru Granth Sahib [the Sikh Holy Scripture] and said wrong things about us in the press. Today, in Punjab and here, leaders of all the main Sikh institutions have come together, the Sikh Federation, Damdami Taksal etc. We thank all of them. Dear Sangat [congregation], we should make sure that such a person doesn’t remain Gurdwara president.”

Ofcom also noted that as background to the complaint the broadcaster stated that the Rashtriya Sikh Sangat organisation (“RSS”) referred to above was “an extremist Hindu organisation adjudged [to be] anti-Sikh”.

With regard to the final section of the programme Ofcom observed that each of the four people whose calls to the station were broadcast made critical comments about the actions of the management committee and/or Mr Sohi specifically and that the presenter Mr Giani agreed with these comments.

Ofcom considers that taken together the comments noted above, as well as others made throughout the programme, equate to very serious allegations concerning both Mr Sohi in his role of president of the Charity's management committee and the wider management committee itself. In particular, Ofcom noted that the programme included comments which clearly criticised Mr Sohi for a particular association (with the RSS) referring to him in this context as "*a traitor*". It also considered that the programme included comments which suggested that the management committee's initial decision to prevent prayers (referred to above) for "*the martyr*" being given in the Temple had poorly served the Sikh community, notably those worshippers present at the Temple. Further it indicated that the committee was sympathetic to "*the sadh*", a man who, as noted above, was described as being a rapist and murder who had carried out sacrilegious acts.

Given the inclusion of these serious allegations in the programme Ofcom considered that it was incumbent upon the broadcaster to offer the Charity an appropriate and timely opportunity to respond to these allegations. Ofcom noted that on the information available to it appears that Akash Radio did not offer the Charity an opportunity to respond the allegations made about it in the programme. It therefore considered that the Charity had been treated unfairly in this respect.

In light of the factors noted above Ofcom found that Akash Radio's broadcast resulted in unfairness to the Charity.

- b) Ofcom then considered the Charity's complaint that its privacy had been unwarrantably infringed in the making and the broadcast of the programme in that it was recorded and simultaneously broadcast surreptitiously without the knowledge or consent of the members of the Charity's management committee.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy both in relation to the making and the broadcast of the programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? (Rule 8.1 of the Code).

In light of the submissions of both parties Ofcom did not consider that the recording and simultaneous broadcasting of this programme took place surreptitiously. Therefore, rather than taking particular account of the parts of the Code which relate to the obtaining and use of surreptitiously recorded footage Ofcom took particular account of Practice 8.5 which states that any infringement of privacy in the making of a programme should be with the organisation's consent or be otherwise warranted and 8.6 which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom considered two discreet elements of the programme in relation to this head of the Charity's complaint: the end of the street procession and the service in the Temple. Ofcom observed the nature of the street procession. The footage of the

end of this event was taken and broadcast from the public highway where the activities taking place would have been available for the all to see. Ofcom also noted that this footage did not contain or reveal anything of an inherently private nature to the Charity. In light of these factors Ofcom did not consider that the Charity had a legitimate expectation of privacy in relation to either the recording or broadcast of footage of this procession. Given this Ofcom therefore concluded that the Charity's privacy was not infringed in the making or the broadcast of this footage, and it was not necessary for Ofcom to further consider whether any infringement of privacy was warranted. It then went on to consider whether the Charity's privacy had been infringed in the making or the broadcast of the footage of the service in the Temple or Gurdwara.

In relation to this section of this head of the complaint, Ofcom first considered whether the Charity had a legitimate expectation of privacy in relation to the making and broadcast of the (live) programme.

Ofcom recognised that a Charity could have a legitimate expectation of privacy in relation to activities of a private nature which need protection from unwarranted intrusion (for example exchanges which took place in the confines of a closed meeting or correspondence which could justifiably be regarded as private). Ofcom assessed whether the Charity and the members representing its management committee at the Gurdwara on the day the programme was made and broadcast had such an expectation in the specific circumstances of this case.

In Ofcom's view the Charity's expectation of privacy was raised by the fact that recording of the footage took place during a religious service at the Temple the organisation of which was the responsibility of the Charity's management committee. However, Ofcom also noted that this was a public event which was open to all members of the Sikh community, and others, if they wished to attend. Furthermore, Ofcom did not consider that any other aspect of the service recorded and broadcast by Akash Radio contained material of a private nature to the Charity.

In addition, Ofcom acknowledged that the submissions to this complaint make it clear that there is a conflict between the parties regarding whether the management committee of the Charity or Mr Manmohan Singh (who organised the street procession and addressed the congregation in the Temple) was the most appropriate authority to provide consent for Akash Radio to record and broadcast this event. However, given its view that the recording and broadcast did not include material of a private nature to the Charity Ofcom considered that it was not incumbent upon the broadcaster to obtain such consent. Therefore, on balance, Ofcom considered that the Charity did not have a legitimate expectation of privacy in relation to the making and broadcast of the footage of this event in these specific circumstances.

Given this Ofcom found that Charity's privacy was not infringed in the making and broadcast of the programme, and it was not necessary for Ofcom to further consider whether any infringement of privacy was warranted.

Accordingly Ofcom has upheld the Sri Guru Singh Sabha Sikh Temple's complaint of unfair treatment but not its complaint of unwarranted infringement of privacy in the making and broadcast of the programme.

Ofcom has directed Akash Radio to broadcast a summary of this finding.

Not Upheld

Complaint by Mr Ian Hunter

Reunited, BBC1, 18 December 2007

Summary: Ofcom has not upheld this complaint made by Mr Ian Hunter of unfair treatment and unwarranted infringement of privacy in the programme as broadcast.

On 18 December 2007, BBC1 broadcast the programme “Reunited” which looked at attempts by three women to trace one of their biological parents. Mr Hunter was one of the parents featured in the programme.

Mr Hunter complained that he was treated unfairly and that his privacy was unwarrantably infringed in the programme as broadcast in that reference to his imprisonment some 30 years earlier was referred to without his consent. He said he would have removed this reference had he been given the chance to preview the programme, of which he said he was assured.

Mr Hunter’s complaint was considered by Ofcom’s Executive Fairness Group.

In summary Ofcom found the following:

- Ofcom considered that Mr Hunter was properly informed about the nature and purpose of the programme and provided informed consent for his participation. Ofcom found no evidence that the complainant had secured a guarantee to either preview the programme or be able to affect the content of the programme. In any event Ofcom found that given that Mr Hunter himself volunteered the information regarding his prison sentence, he was not unfairly treated.
- Ofcom found that Mr Hunter had no legitimate expectation of privacy in relation to information about his imprisonment as he freely volunteered information about his past in the full knowledge of the purpose for which he was being filmed i.e. in connection with a programme about reunion with his long lost daughter. Therefore Ofcom found that his privacy was not unwarrantably infringed by the broadcast of this information.

Introduction

On 18 December 2007, BBC1 broadcast a documentary entitled *Reunited*. The programme followed the stories of three women as they attempted to trace one of their biological parents who had disappeared from their lives in early childhood. The programme featured one of the women, Ms Julie Kenyon, searching for her father. During the course of the search, which was successful, Ms Kenyon was shown with her Aunt Mel. The programme included her aunt saying in an interview that “*unfortunately at the time Julie was born, her dad was in prison*”.

Ms Kenyon’s father, Mr Ian Hunter, participated in the programme and complained to Ofcom that he was treated unfairly and his privacy was unwarrantably infringed in the programme as broadcast.

The Complaint

Mr Hunter’s case

- a) In summary, Mr Hunter complained that he had been treated unfairly in the programme as broadcast in that the programme makers advised that they would show Mr Hunter a preview of the programme but they failed to do so. Mr Hunter said that if he had known that his imprisonment was to be referred to in the programme he would have asked for that reference to be omitted from the programme.
- b) In summary, Mr Hunter complained that his privacy had been unwarrantably infringed in the programme as broadcast in that the programme showed footage of Miss Kenyon's Aunt Mel stating that he had been in prison when Miss Kenyon was born. This information was included in the programme without his knowledge or consent. By way of background Mr Hunter said he had been in prison thirty years ago when he was very young and did not want his friends and neighbours to know about it.

The BBC's first statement in response to the complaint

The BBC provided a written statement in response to the complaint. In summary the BBC responded to the complaint as follows.

- a) In response to Mr Hunter's complaint of unfair treatment, the BBC denied that the programme maker told Mr Hunter he would have the opportunity to preview the programme and delete anything he was unhappy with. It said such advice on the part a programme maker would have been contrary to the BBC's policy never to surrender editorial control of its output.

As regards the programme's reference to his imprisonment (which Mr Hunter said he would have removed had he been given a chance to preview the programme), the BBC noted that Mr Hunter had himself volunteered this information on two occasions during his filmed interview. In support of this, the BBC provided Ofcom with a recording of Mr Hunter's unedited interview and noted that Mr Hunter had provided details of his imprisonment, including the length of his sentence, naming the prison where he had served it, and describing an occasion when his baby daughter had been brought to visit him. This was more information about the matter than was included in the programme. The BBC argued that as Mr Hunter had been willingly interviewed in the full knowledge that anything he said might be broadcast, the programme makers took the view that he had no objection to information relating to the fact that he had served time in prison being included in the programme.

- b) In response to Mr Hunter's complaint that the broadcast of information relating to his imprisonment unwarrantably infringed his privacy, the BBC said that this information was central to the narrative of his separation from Ms Kenyon when she was a child. The BBC argued that Mr Hunter could therefore not have entertained an expectation that it would not be included in the final broadcast, given the subject of the programme that had been explained to him when he agreed to take part. The BBC also reiterated that Mr Hunter had willingly volunteered the information including specific detail about it.

With regard to the fact that this information was broadcast without his knowledge or consent, the BBC considered that irrespective of whether a consent form was signed, Mr Hunter's agreement to the filming (in full knowledge of its intended purpose) constituted consent to its use in the programme. The BBC said it was

not true that Mr Hunter's consent had been conditional on an offer of a preview of the programme with the right to remove any material he was not happy with.

The BBC further added that the issue of consent was central to this complaint and gave some background information in support of its case. It said that at the first meeting with the programme makers, Mr Hunter raised the subject of payment for his potential contribution to the programme. The programme makers explained that they were unable to offer payments to contributors but they were able to pay reasonable expenses. Mr Hunter agreed at the time to the filming of his meeting with Ms Kenyon, subject to an assurance from the producer that he could pull out of the arrangement at any point on the day. The BBC said this assurance was unconditional. After a second request to Mr Hunter for a follow-up interview, Mr Hunter again asked how much the BBC would be prepared to pay him, and again the programme maker explained that she was not able to pay fees to contributors. Mr Hunter agreed to this second interview, provided his other daughter Davina Hunter and her children could be involved as well as Ms Kenyon, who had been brought down to London at Mr Hunter's request at the expense of the BBC. The BBC said that consent forms had been discussed by the programme makers with Mr Hunter, but he brushed aside their request saying "the BBC are going to see us right" a number of times. He accepted £50 from the producers towards the cost of a family meal that evening but did not sign any forms. However, he appeared to be content to proceed with filming on that basis.

The BBC said that Mr Hunter was asked to sign consent forms a third time after filming of a family sequence in Mr Hunter's flat but was told by Mr Hunter that he would not sign until the BBC "sees us all right". The BBC noted that at no point did Mr Hunter indicate that his reluctance to sign a consent form was because of concerns about the possibility of personal information about him, from other contributors, being included in the programme. The BBC said that it was clear from the parts of the programme in which Mr Hunter featured, that he was entirely willing to be filmed and well aware of the purpose of filming.

The BBC said that the programme maker sought advice from the BBC's Programme Legal Advice Department and was advised that so long as the participants had a clear understanding at the time of filming, of the purpose for which the material was to be used (and in the absence of any undertaking that the participants would have the right of veto over the inclusion of any segments of the programme), there was no need for consent forms to be signed. The BBC said that it had concluded that in the circumstances explained above, it was not necessary for the programme makers to pursue the question of consent forms with Mr Hunter.

Mr Hunter's comments in response to the BBC statement

Mr Hunter provided comments in response to the BBC's first statement.

- a) In relation to his complaint of unfair treatment, Mr Hunter said that he had been told that before the programme was aired he would get a chance to see the programme in full and be allowed to change anything he was unhappy with. He also said he had told the programme makers from the start that if they wanted him to appear in the programme, he would need to be paid. He said that he told the producer that he wanted payment before he signed any consent forms. Mr Hunter reiterated in his response that his terms of appearing on the programme were that under no circumstances was the programme to be aired unless he

agreed to the final editing of it and that if he did then payment was to be made to him for his contribution.

- b) As regards Mr Hunter's complaint of unwarranted infringement of privacy, Mr Hunter stated that he was unhappy that the programme was broadcast without his signed consent because he said there were things shown that were very personal and which caused him great distress, namely the fact that he was in prison. He said he felt his privacy had been invaded and that people living in his area now knew about his past and his personal business which he did not want to be broadcast.

He said the programme makers had lied to him to get what they wanted with no thought of his (or his daughter Miss Hunter's) feelings about the material being shown without his consent.

The BBC's second statement in response to Mr Hunter's comments

The BBC provided a second statement in relation to both heads of complaint.

In response to the complaint of unfair treatment the BBC said that the programme makers had twenty years of experience between them and would not have surrendered editorial control of its output.

In relation to Mr Hunter's comments that his contribution to the programme was conditional on payment, the BBC said that if this had been the case surely this should have been a major ground for complaint by Mr Hunter, rather than just the issue of reference to his imprisonment. The BBC noted that there was no mention of a fee being a condition of the complainant's consent in his original complaint to Ofcom. In support of its statement the BBC provided Ofcom with a statement by Ms Kenyon (whose search featured in the programme) which it said supported the programme makers' recollections about Mr Hunter's interest in the possibility of making money from the programme.

The BBC reiterated that the programme makers had made it clear that they were unable to pay fees to contributors though they were able to meet reasonable expenses. It said that in light of Mr Hunter's agreement to be filmed on a second occasion at his home and that he had agreed to filming precisely on the basis that the programme makers would instead meet the cost of a visit to London by Ms Kenyon, and that his daughter and her children would be involved in that second meeting, the BBC argued that there was no reason why the programme makers should have regarded his consent to appear in the programme as being conditional on a fee.

Decision

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

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

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

Mr Hunter's complaint was considered by Ofcom's Executive Fairness Group ("Ofcom"). In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, a recording and transcript of Mr Hunter's unedited interview and both parties' written submissions.

- a) Ofcom first considered the complaint that the programme makers had not offered Mr Hunter the chance to preview the programme as promised, and by doing so Mr Hunter had been denied the opportunity to remove the programme's reference to his imprisonment.

In considering this part of the complaint Ofcom took account of Practice 7.3 of the Ofcom Broadcasting Code ("the Code") which includes the following:

"Where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor) they should normally, at an appropriate stage:

- be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute;
- be told the nature of their contractual rights and obligations and those of the programme maker and broadcaster in relation to their contribution; and
- be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it.

Taking these measures is likely to result in the consent that is given being 'informed consent'."

It also took account of practice 7.7 of the Code which states:

"Guarantees given to contributors, for example relating to the content of a programme, confidentiality or anonymity should normally be honoured". Ofcom considered the basis on which Mr Hunter had consented to take part in the programme and whether he had been given any assurances that he would be able to preview the programme and make any changes to it.

In reaching its decision Ofcom had regard to the unedited recordings of Mr Hunter's contribution to the programme in which he gave his reasons for losing contact with his daughter, and expressed his feelings about their reunion. Ofcom noted that on 15 July 2007 Mr Hunter seemed happy to be filmed being reunited with Ms Kenyon and that on 22 October 2007, Mr Hunter met the programme makers again for a follow up interview. There was no material to suggest that he withdrew his consent to participate either during or after the filming.

Ofcom acknowledged that Mr Hunter did not sign a consent or release form however, it also noted his continuing active and willing participation in the filming over a number of months. Further, Ofcom noted that the nature of the filming,

which focused on the reunion with his daughter, and of the interviews conducted with him, indicated that Mr Hunter's contribution was given on an informed basis with a clear understanding of the nature and purpose of the programme.

Ofcom then turned to consider the reference made in the programme to Mr Hunter's imprisonment. The programme included the following reference made by Ms Kenyon's aunt:

"Unfortunately at the time Julie were born her dad was in prison and I went to tell him that my sister had had the baby and he were absolutely delighted. When he came home he really did try to make a little family unit. He worked, he got a job, he helped with the baby".

Ofcom also noted from untransmitted material that Mr Hunter himself openly volunteered information about his imprisonment of his own free will on two occasions, providing some detail about it.

On the first occasion:

Mr Hunter: "I just came out the nick."

And later during the interview he recalled that at the time of Ms Kenyon's birth he had been in prison:

Mr Hunter: "I was in jail weren't I ...Strangeways...yeah 9 month I did...9 months yeah."

Ofcom considered that in view of these references to his imprisonment, freely volunteered by Mr Hunter in his interview, it was reasonable for the programme makers to have concluded that he would not be unhappy for this information to be included in the programme as broadcast, whether spoken by himself or, as was the case in the broadcast programme, by another contributor. Furthermore, given the subject matter of the programme i.e. the search for long lost parents, the reference to his imprisonment appeared in Ofcom's view to have been a key reason why he had lost touch with his daughter in the first place, and was, Ofcom noted, placed in a positive context: *"When he came home he really did try to make a little family unit. He worked, he got a job, he helped with the baby".*

Additionally, on the information before it Ofcom found no evidence that Mr Hunter's contribution was conditional on a guarantee being given that he would have a chance to preview the programme and remove any parts he was unhappy with including the reference to his imprisonment. Ofcom considered that the inclusion of the reference was not unfair given the complainant's willingness to disclose this information in his filmed interview. Ofcom therefore found that the programme did not result in unfairness to Mr Hunter and it has not upheld this head of his complaint.

- b) Ofcom next considered Mr Hunter's complaint that the reference to his imprisonment within the programme unwarrantably infringed his privacy and that this information was included in the programme without his knowledge or consent.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering

complaints about the unwarranted infringement of privacy in relation to the broadcast of the programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? This is in accordance with Rule 8.1 of the Code which states:

“Any infringement of privacy in programmes or in connection with obtaining material included in programmes, must be warranted”.

In reaching a decision in relation to this part of the complaint Ofcom also took account of Practice 8.6 which states that:

“If the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast unless the infringement of privacy is warranted.”

Ofcom first considered whether Mr Hunter had a legitimate expectation of privacy in relation to the information regarding him having served a term of imprisonment. Ofcom considers that reference to a term of imprisonment some thirty years before would usually be information of a personal and private nature.

However Ofcom also considered that any expectation of privacy was considerably diminished by the fact that Mr Hunter himself disclosed this information in the interview filmed with him (and quoted above at head a). Ofcom noted that Mr Hunter had not signed a consent form, and that the information broadcast was from an interview with another contributor. However for the reasons detailed above at head a), in Ofcom’s view Mr Hunter had consented to this information being disclosed since he had freely volunteered it during a taped interview and he had a clear understanding of the nature and purpose of the programme through his continued engagement with the filming process.

Taking into account all of these factors Ofcom found that Mr Hunter had no legitimate expectation of privacy in relation to the disclosure of information about his past imprisonment and therefore there was no infringement of his privacy in the programme as broadcast. In these circumstances it was not necessary for Ofcom to go on to consider whether or not any infringement was warranted.

Accordingly Ofcom has not upheld Mr Hunter’s complaint of unfair treatment or unwarranted infringement of privacy in the programme as broadcast.

Complaint by Miss Davina Hunter on behalf of herself and her son (a minor)

Reunited, BBC1, 18 December 2007

Summary: Ofcom has not upheld this complaint made by Miss Davina Hunter of unfair treatment and unwarranted infringement of privacy in the programme as broadcast.

On 18 December 2007, BBC1 broadcast the programme “Reunited” which looked at attempts by three women to trace one of their biological parents. Miss Hunter was the daughter of one of the parents featured in the programme (referred to as “Ian”).

Miss Hunter complained that she and her son were treated unfairly and that their privacy was unwarrantably infringed in the programme as broadcast in that footage of her and her son was broadcast without her consent. Miss Hunter said the programme makers assured her she would have the opportunity to preview the programme but this did not happen before the programme was broadcast.

Miss Hunter’s complaint was considered by Ofcom’s Executive Fairness Group.

In summary Ofcom found the following:

- Ofcom considered that Miss Hunter was properly informed about the nature and purpose of the programme and provided informed consent for her participation. Ofcom also noted Miss Hunter’s active engagement with the programme making process on a number of occasions and found no evidence that she secured a guarantee to either preview the programme or be able to make changes to its content. Ofcom therefore found that she and her son were not treated unfairly.
- Ofcom found that Miss Hunter had no legitimate expectation of privacy in relation to footage of her and her son being shown given that Miss Hunter had freely consented to the filming in full knowledge of its nature and purpose. Ofcom therefore found that Miss Hunter’s privacy was not unwarrantably infringed in the programme as broadcast.

Introduction

On 18 December 2007, BBC1 broadcast a documentary entitled *Reunited*. The programme followed the stories of three women as they attempted to trace one of their biological parents who had disappeared from their lives in early childhood. The programme featured one of the women, Ms Julie Kenyon, who successfully traced her father, Ian Hunter. Mr Hunter’s other daughter, the complainant Miss Davina Hunter, featured in the programme together with her son.

Miss Hunter complained to Ofcom on her own behalf and on behalf of her five year old son that they were treated unfairly and their privacy was unwarrantably infringed in the programme as broadcast.

The Complaint

Miss Hunter’s case

- a) In summary, Miss Hunter complained that she was treated unfairly in the programme as broadcast in that the programme makers broadcast footage of her and her son without her consent. By way of background Miss Hunter said she did not sign a consent form. Miss Hunter explained that she was concerned about her son being shown in case his father would see the programme and try to make contact with him, and was also concerned about the area in which she and her son live being identified. She explained that she did not communicate these reasons to the programme makers, but did communicate her doubts about participating in the programme when asked to sign consent forms.

Miss Hunter said that the programme makers told her that she would be able to view the programme before transmission and “cut out” parts she was unhappy with but that this was the last time that Miss Hunter or her father heard from them. She said there was confusion about whether the footage of herself and her son would be included in the film and it was only on the day of transmission that she discovered they would be shown.

- b) In summary, Miss Hunter complained that both her own and her son’s privacy was unwarrantably infringed in the programme as broadcast in that footage of herself, her five year old son and the area in which they live was included in the programme without her consent. By way of background Miss Hunter said this had caused unnecessary distress to her and her son.

The BBC’s statement in response to the complaint

The BBC provided a written statement in response to the complaint. In summary the BBC responded as follows:

- a) In response to Miss Hunter’s complaint of unfair treatment in that footage of her and her son was broadcast without her consent, the BBC argued that irrespective of whether a consent form was signed, Miss Hunter’s agreement to filming of herself and her son in full knowledge of its intended purpose constituted consent to its use in the programme. In support of this the BBC provided Ofcom with a recording of unedited footage of Miss Hunter and her son that was filmed for the programme.

It also denied that consent to broadcast any filmed footage was conditional on an offer of a preview of the programme before broadcast. It said such advice on the part of a programme maker would have been contrary to the BBC’s policy to never surrender editorial control of its output.

The BBC said that there appeared to be no sign of misgiving on Miss Hunter’s part about herself or her son being filmed in the unedited footage of a visit to a neighbouring park by Miss Hunter and her son with her half-sister, Ms Kenyon, and that it seemed apparent that she was aware of the purpose of it. Miss Hunter’s father, Mr Hunter, had told her not to sign consent forms until the BBC “sees us all right” before she went to the park to be filmed, although it said she still agreed to the outdoor filming as noted above. When she returned from the park Mr Hunter reiterated to Miss Hunter to “sign nothing”. The programme makers noted that Miss Hunter neither at this point nor at any previous point indicated a reluctance to sign a consent form.

The BBC said that the programme makers sought advice from the BBC’s Programme Legal Advice Department about the issue of consent and were advised that so long as the participants had a clear understanding at the time of

filming of the purpose for which the material was to be used (and in the absence of any undertaking that the participants would have the right of veto over the inclusion of any segments of the programme), there was no need for consent forms to be signed. The BBC said that it had concluded that in the circumstances explained above, it was not necessary for the programme makers to pursue the question of consent forms with Miss Hunter.

- b) As to Miss Hunter's complaint of unwarranted infringement of privacy in the programme as broadcast and the subsequent distress caused to Miss Hunter and her son, the BBC said that according to Miss Kenyon, Miss Hunter revealed to Ms Kenyon in a telephone conversation that her concern was that the programme would enable her son's father to identify where they lived. However, the BBC noted that the scenes in the programme in which Miss Hunter and her son featured were not such as to identify where they lived to anyone not already familiar with the immediate area and nothing was said in the script which located their address more precisely than London. Further, the BBC argued that if Miss Hunter was concerned that her son's father might identify where they lived, it was surprising that this issue was not mentioned to the programme makers from the outset. Miss Hunter had expressed no misgivings about the filming including the outdoor scenes.

Miss Hunter's comments in response to the BBC statement

In summary, Miss Hunter provided the following comments in response to the BBC's statement:

- a) In relation to her complaint of unfair treatment, Miss Hunter said she was under the impression (as was her father Mr Ian Hunter) that she would be able to preview the programme and make a decision as to what might be included before it was broadcast. In any event, she understood that the programme would not be broadcast without her signed consent.

Miss Hunter added that when her father approached the production team and asked about payment for appearing in the programme he was told that the BBC would "see him alright". She claimed that the programme makers were under no illusion that she wanted payment before signing consent forms and that it was obvious she would not be able to veto the programme or get any sort of payment without the filming actually taking place.

She maintained that the programme makers assured her when at one point she refused to continue filming, that she would be paid and be able to veto the content of the programme, and that that was why she continued with the requested filming.

- b) As regards Miss Hunter's complaint of unwarranted infringement of her and her son's privacy she explained that she would have asked for her son's face to be masked and any identifying features of where they live removed when she was given the opportunity to veto the finished programme. Miss Hunter said that if she had not been assured of this and that she was to be paid for her contribution, she would not have taken part in the programme.

The BBC's second statement in response to the complaint

In summary the BBC provided the following response to the complaint's comments regarding both heads of complaint:

The BBC stated that the programme makers had twenty years of experience between them and would not have surrendered editorial control of its output. To this end it argued that Miss Hunter's claim that she allowed herself and her son to be filmed on the conditional basis that she would be allowed to preview the programme, was an entirely implausible scenario. The BBC stated that if Miss Hunter's concern that her son's father would be able to identify him was genuine, she would have expressed this concern at the outset and it would not have been a last minute consideration when the BBC claimed it had become clear that no payment for participation in the programme was to materialise. The BBC added that if Miss Hunter's concern was that her son and the area in which they live would be revealed then why did she volunteer her son to be filmed when there had been no request from the programme makers to film anyone other than Mr Hunter and Ms Kenyon.

In relation to Miss Hunter's comments that her contribution to the programme was conditional on payment, and that she refused to carry on filming when told all she and her father would get would be £50 towards the cost of a family meal, the BBC said that this was at odds with what actually happened. The BBC said the offer of £50 was made on the second day of filming and far from refusing to be filmed on such a basis, Miss Hunter had proceeded to be filmed as agreed. Finally, if payment had been a condition on which Miss Hunter had agreed to take part the BBC questioned why this fact was not included in her original complaint to Ofcom.

Decision

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

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

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed. Miss Hunter's complaint was considered by Ofcom's Executive Fairness Group ("Ofcom"). In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, a recording of unedited filmed footage of Miss Hunter and her son and both parties' written submissions.

- a) Ofcom first considered the complaint that the programme makers broadcast footage of Miss Hunter and her son without her consent and that she was told that she would be able to view the programme before transmission and edit parts she was unhappy with before the programme was broadcast.

In considering this part of the complaint Ofcom took account of Practice 7.3 of the Ofcom Broadcasting Code ("the Code") which includes the following:

"Where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor) they should normally, at an appropriate stage:

- be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute;
- be told the nature of their contractual rights and obligations and those of the programme maker and broadcaster in relation to their contribution; and
- be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it.

Taking these measures is likely to result in the consent that is given being 'informed consent'."

It also took account of Practice 7.7 of the Code which states:

"Guarantees given to contributors, for example relating to the content of a programme, confidentiality or anonymity should normally be honoured".

Ofcom first sought to determine whether Miss Hunter had consented for herself and her son to take part in the programme.

It appeared from the submissions before it, that Miss Hunter chose not to sign a consent or release form, but agreed nevertheless to being filmed. It is important to note that consent does not rest on the signing of a consent or release form. Rather Ofcom noted that Miss Hunter appeared to be an active and willing participant to the filming for the programme, with a clear understanding of the nature and purpose of it. This appeared to indicate that her contribution and that of her son was given on an informed basis.

In reaching its decision, Ofcom had regard to the unedited recordings and noted that Miss Hunter seemed happy to be filmed chatting to Ms Kenyon at the park. She was open in her discussions with Ms Kenyon in front of the camera and showed no reluctance for the cameras to focus on her and her son. In further untransmitted material it was evident that Miss Hunter was happy to pose for photographs with her family and Ms Kenyon and for her son to be filmed with his grandfather, Mr Hunter. At one point when being filmed at the park, she offered detailed information on camera about her upbringing by her father and about his custody of her as a child. Also there was no indication of her asking the programme maker to restrict filming of her son whilst in the playground at the park. A conversation took place between the programme maker and Miss Hunter in which she makes clear that she is happy for her son to be filmed:

Programme maker: "Can we get a shot of your boy on the slide? Are you sure you don't mind?"

Miss Hunter: "Yeah yeah"

Miss Hunter later says to her son with regard to filming:

Miss Hunter: "Don't you want to do nothing Reece? I thought you liked the cameras".

Ofcom took from this active engagement with the programme makers an indication that she would not be unhappy for any or all of this filmed footage or information provided in it to be used in the edited programme as broadcast and no material to suggest this consent was subsequently withdrawn.

Ofcom then sought to determine whether the complainant had been given any assurances that she would be able to preview the programme and make any changes to it. On the information before it Ofcom found no evidence of a guarantee being given to the complainant that she would be given the opportunity to preview the programme and request edits to the content.

Ofcom therefore found that the programme did not result in unfairness to Miss Hunter either in relation to the consent given or in relation to any assurances regarding a preview of the programme and it has not upheld this head of the complaint.

- b) Ofcom next considered Miss Hunter's complaint that both her own and her son's privacy was unwarrantably infringed in that footage of them and the area in which they live was included in the programme without her consent.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about unwarranted infringement of privacy in relation to the broadcast of a programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? This is in accordance with Rule 8.1 of the Code which states:

"Any infringement of privacy in programmes or in connection with obtaining material included in programmes, must be warranted".

In reaching a decision in relation to this part of the complaint Ofcom took account of Practice 8.6 which states that:

"If the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast unless the infringement of privacy is warranted."

It also took account of Practices 8.2 and 8.21 of the Code which respectively state:

"Information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted";

and

"Where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from:

- a parent, guardian or other person of eighteen or over in loco parentis; and
- wherever possible, the individual concerned;
- unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent".

Ofcom first considered whether Miss Hunter and her son had a legitimate expectation of privacy in relation to the footage filmed of them, including exterior footage near their home.

Ofcom noted that broadcasters must take particular care in the filming of minors and noted that Miss Hunter's son is five years old. Ofcom therefore considered

whether Miss Hunter had given consent for the broadcast of footage filmed of her son and herself as noted above.

Ofcom noted that Miss Hunter did not sign a consent or release form but as discussed above at head a), Miss Hunter's free and active engagement in the filming process and awareness of the nature and purpose of it indicated that the consent she had given on behalf of herself and her son was informed consent. Ofcom found no evidence of a guarantee being given to the complainant that she would be given the opportunity to preview the programme and request edits to the content.

With regard to Miss Hunter's complaint that the area in which she lived being identified, Ofcom noted there was nothing in the broadcast programme or script of that programme that identified it other than that it was a flat in London. It is Ofcom's view that the footage broadcast of Miss Hunter and her son in their local neighbourhood and park would not have revealed anything more specific about where it was to those persons not already very familiar with the area, and did not identify a street name or number or any other details in reference to Miss Hunter's address.

Taking into account all of these factors, Ofcom found that Miss Hunter and her son did not have a legitimate expectation of privacy and that therefore their privacy was not infringed in the programme as broadcast. In these circumstances it was not necessary for Ofcom to go on to consider whether or not any infringement was warranted.

Accordingly Ofcom has not upheld Miss Hunter's complaint of unfair treatment or unwarranted infringement of privacy on her own behalf and on behalf of her son in the programme as broadcast.

Complaint by the British Toy and Hobby Association

Dispatches: How Safe Are Your Christmas Toys?, Channel 4, 17 December 2007

Summary: Ofcom has not upheld this complaint of unfair treatment made by the British Toy and Hobby Association.

On 17 December 2007, Channel 4 broadcast an edition of its current affairs documentary series *Dispatches*, entitled *How Safe Are Your Christmas Toys?* This edition examined toy safety in the EU and the US, and investigated the selling of poor quality and counterfeit toys in the UK. The programme interviewed the families of children who had swallowed magnetic components from toys, and documented the work of trading standards officers.

The programme included an interview with Mr David Hawtin who, at the time of filming, was the Director General of the British Toy and Hobby Association (“BTHA”), an organisation which represents the British Toy Industry. Footage of Mr Hawtin’s interview, including him abruptly calling it to an end, was shown in the programme.

In summary Ofcom found that:

- The programme investigated the issue of the safety of toys on sale in the EU and the efficacy of the regulatory framework in relation to such toys. The programme makers referred to European regulations including the toy safety directives, toy safety standards, enforcement processes and systems, and the fact that European regulations were updated when safety issues arose.
- The programme makers referred to the UK toy industry’s efforts to enforce stricter quality controls in Chinese toy factories. The programme makers investigated the regulatory framework in relation to the safety of toys on toy shop shelves, at that point in time, and therefore recent action by the Chinese authorities was not pertinent to the focus of the programme, so there was no unfairness to the BTHA in this respect.
- The programme makers investigated the safety of toys on sale and the regulatory framework surrounding these sales, so it was not incumbent on them to refer to the BTHA’s guidelines, but in any event the programme did warn of the particular dangers associated with shopping for toys.

Taking the programme as a whole, it was Ofcom’s view that there was no unfairness to the BTHA in the programme as broadcast, and the programme makers had taken reasonable steps to ensure that material facts had not been presented, disregarded or omitted in a way that was unfair to the BTHA.

Introduction

On 17 December 2007, Channel 4 broadcast an edition of its current affairs documentary series *Dispatches*, entitled *How Safe Are Your Christmas Toys?*

This edition examined toy safety in the EU and the US, and investigated the selling of poor quality and counterfeit toys in the UK. The programme also interviewed the families of children who had swallowed magnetic components from toys, investigated

the internal injuries caused to children from magnets linking up after being swallowed, and documented the work of trading standards officers.

The programme included an interview with Mr David Hawtin who, at the time of filming, was the Director General of the British Toy and Hobby Association (“BTHA”), an organisation which represents the British Toy Industry. Mr Hawtin was asked why it had taken so long for the industry to redesign toys or label boxes of toys following the death of a child who had swallowed magnets. Footage of Mr Hawtin abruptly calling the interview to an end was also shown in the programme.

Ofcom received a complaint from Mr Hawtin, on behalf of the BTHA, that the BTHA was treated unfairly in the programme as broadcast.

The Complaint

The BTHA’s case

In summary, the BTHA complained that it was treated unfairly in the programme as broadcast in that:

- a) The programme makers ignored material facts which were provided to them by the BTHA prior to broadcast in a briefing in October 2007. The omission of the following information unfairly belittled the BTHA’s efforts in pursuit of toy safety:
 - i) Despite information being provided by the BTHA, there was no reference in the programme to European regulations including toy safety directives, standards and enforcement processes and systems and the fact that these regulations were updated when safety issues arose.
 - ii) There was no reference to the efforts of the UK toy industry, including the BTHA, to enforce stricter quality controls in Chinese toy factories or to the Chinese authorities’ decision to discontinue exports.
 - iii) There was no reference to the guidance the BTHA had helped to formulate to enable consumers to buy safe toys.

Channel 4’s case

In summary and in response to the complaint, Channel 4 responded in the following way.

- a) Channel 4 said that the impetus for developing the programme was a series of toy product recalls and associated incidents of injury and fatality to children, caused by unsafe toys in the UK and the US. The programme investigated the significant public interest issue of the safety of toys on sale in the EU and the efficacy of the regulatory framework in relation to toys. Channel 4 said that the safety of toys was of immediate concern given the lead up to Christmas 2007 when British consumers would be purchasing large quantities of toys which might be unsafe. The reporter talked to a range of people in the UK and the US, including Mr Hawtin, who at the time of the filming of his interview was the Director General of the BTHA.

Channel 4 said that the BTHA was given sufficient and accurate information about the programme. A letter sent to Mr Hawtin during the initial research phase of the programme had made it clear that a background briefing given to the

reporter was for the purpose of research only. Channel 4 noted that the letter did not state that information provided by the BTHA in the background briefing would be included in the programme as broadcast. Channel 4 said that a second letter to the BTHA stated the likely content of the programme and said that it would focus on two different kinds of toys: branded products from Western manufacturers and those containing magnets in particular, and secondly the cheaper unbranded and counterfeit toys which may not have gone through any form of quality and safety testing. Channel 4 also noted that this second letter set out the questions the reporter was likely to ask Mr Hawtin.

Channel 4 said that Mr Hawtin was provided with an opportunity to participate in the programme and to provide Channel 4 with detailed information of the BTHA's policy and activities with respect to the issues the programme had raised. He had been unable to do so in a comprehensive fashion. Channel 4 said that in the interview as broadcast Mr Hawtin was asked a series of questions that would reasonably be expected from a *Dispatches* programme and which the BTHA, in light of its published mission statement, reasonably would be expected to answer. It was Channel 4's view that Mr Hawtin was not able to sufficiently answer these questions. Channel 4 pointed in particular to the part of the interview when Mr Hawtin stood up to walk away and called the interview to an end.

Channel 4 then responded specifically to the BTHA's heads of complaint in the following way:

- i) In response to the complaint that there was no reference to European regulations including toy safety directives, Channel 4 said that trading standards officer and representative of the trading standards institute, Ms Christine Heemskerk, had said in relation to a counterfeit toy sold at Kempton Park Market:

*"Searching all over for **an EEC address**, didn't find anything. Now **that CE Mark is meant to be a declaration of conformity that it complies with the Toy Safety Regulations**. I suspect they've just photocopied some packaging, and so it's almost like a meaningless mark, because I can't imagine they've done any testing to make sure this is safe".*
(Channel 4's emphasis)

Channel 4 argued that this statement included a specific reference to the "Toy Safety Regulations", indicating that the packaging of a toy must include a CE Mark and an EEC address.

Channel 4 also said that the commentary said:

*"these are **standard tests spelt out by Europe**. Good firms will regularly test samples before they leave the factory. Toys that **fail these tests** should never reach the shops".*
(Channel 4's emphasis)

As regards the complaint that there was no reference to toy safety standards, Channel 4 said that relevant toy standards were both directly and indirectly referred to in the programme.

Channel 4 noted that the commentary referred to "*detailed standards*".

Channel 4 also noted that Mr Hawtin himself referred to the EU standards, in the programme.

In addition, Channel 4 emphasised that the programme had made it clear to viewers that the BTHA had published a Code of Conduct with respect to toys containing magnets.

Channel 4 said that taking the above into account the programme had made it clear that a regulatory framework, consisting of European Regulations, toy standards, and a Code of Conduct, was in place specifying minimum standards with respect to toy safety and that, if such standards were not complied with, such toys must not be sold.

As regards the complaint that there was no reference to enforcement processes and systems, Channel 4 said that in the programme there were two sequences where relevant enforcement processes and systems were demonstrated.

Channel 4 said, firstly, that the reporter and several trading standards officers went to a shop in Blackpool which they suspected was selling counterfeit and hazardous toys. One of the trading standard officers was shown speaking to a counter assistant in the shop.

The programme also showed one of the trading standards officers having a phone conversation with the owner of the business.

Channel 4 said, secondly, that when the reporter and Ms Heemskerk, the trading standards officer, revisited Kempton Park Market, a conversation between her and the market trader was shown.

As regards the complaint that there was no reference to the fact that regulations were updated when safety issues arose, Channel 4 said that the programme's commentary had made an express reference to the fact that the regulations with respect to toys containing magnets were being reviewed by the European Commission.

Furthermore Channel 4 said that the programme should be viewed in the context of the actual regulatory framework existing at the date the programme was completed and that the purpose of the programme was to investigate the immediate public interest issue of the extent to which unsafe toys were available in the UK in the lead up to Christmas 2007. Channel 4 also said that as Mr Hawtin did not refer in his interview to any regulations which had been updated after safety issues had arisen there was no unfairness to the BTHA in the way that the programme had dealt with the updating of the regulations.

- ii) In response to the complaint that the programme did not refer to the UK toy industry's (including the BTHA's) efforts to enforce stricter quality controls in Chinese toy factories, Channel 4 said that the commentary said:

"Both the British and European authorities are trying to persuade the Chinese to sort out their own factories".

Channel 4 also said that the programme had included a contribution from Mr Ross Perkins, who had worked extensively in China and was actively supervising the manufacturing process of various Chinese factories which

had made products for British companies. Mr Perkins' experience was that the EU regulatory framework was a "soft-touch" compared to the US regulatory framework. He said:

"...the Chinese government is worried but not by European threats...I think it's a direct result of the pressure that the Americans have been putting on to the Chinese, and perhaps, the European Union hasn't been matching that."

Channel 4 then noted that Mr Hawtin had referred in the untransmitted footage of his interview to the Chinese toy industry.

However, Channel 4 said that it had decided on editorial grounds not to include this statement in the broadcast because the programme already included a reference to attempts by the EU and the British authorities to "*persuade*" the Chinese to sort out their factories. It also included a reference to Mr Perkins' experience in China to show the steps taken by a British individual to enforce stricter quality control in Chinese factories. In addition, Channel 4 said that Mr Hawtin had failed to provide examples of any specific efforts made by the EU and British authorities (including the BTHA), to enforce stricter quality controls in China. Furthermore the programme had not suggested that the BTHA (or any other body) had failed to make efforts to enforce stricter quality controls in Chinese toy factories. Therefore the omission of Mr Hawtin's comments with respect to China did not result in unfairness to the BTHA.

As regards the complaint that the programme did not refer to the Chinese authorities' decision to discontinue exports, Channel 4 noted that Mr Hawtin had referred in the untransmitted footage of his interview to the Chinese system.

Again, however, Channel 4 said that it had decided on editorial grounds not to include this statement in the programme as broadcast because at the time of producing the programme the programme makers had been denied access into China and to the relevant Chinese authorities with respect to product safety. Therefore the programme's focus moved to the efforts made by the EU and the UK authorities. In any event, the purpose of the programme was to investigate the very immediate public interest issue affecting the British consumer (i.e. the extent of counterfeit and hazardous toys manufactured in China that were available in the UK in the lead up to Christmas 2007) and no unfairness had arisen to the BTHA from the omission of a reference to China's decision to revoke particular export licences.

- iii) In response to the complaint that there was no reference to specific guidance which the BTHA had helped to formulate to enable consumers to buy safe toys, Channel 4 said the programme had referred to the efforts made by trading standards officers to help consumers to buy safe toys.

Furthermore Channel 4 said that the continuity announcer had said to viewers at the end of the programme:

"If you're worried about your children's toys, log on to channel4.com/dispatches for help and advice".

The Channel 4 website had included a web link to the "Trading Standards" and "Consumer Direct" websites, which had general information for

consumers with respect to products and safety and informational papers including “One Day Sales – Be On Your Guard”.

In addition, Channel 4 said that there were indirect references in the programme to consumer advice. For example, the programme had showed the risks of purchasing counterfeit and hazardous toys at car boots, markets, less known local stores, reputable stores and shown that toys with removable objects (including magnets) labelled as not suitable for under 3s could in fact cause injury (and even death) to children as old as 12 years old.

Channel 4 said that the programme had never suggested that the BTHA had failed to provide consumers with guidance on how to purchase safe toys, so Channel 4 was not required to include in the programme a response on behalf of the BTHA in relation to the acts or omissions of the BTHA (or any other body) in disseminating consumer guidance.

Decision

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

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 BTHA’s complaint was considered by Ofcom’s Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of both the programme as broadcast and the untransmitted material of Mr Hawtin’s interview, and the parties’ written submissions.

- a) Ofcom considered the BTHA’s complaint that the programme makers omitted material facts provided to them by the BTHA prior to broadcast in a briefing in October 2007.

Ofcom noted that on 17 October 2007 the programme’s reporter met with Mr Hawtin and the BTHA’s safety representative. The BTHA said that at the meeting it briefed the reporter about:

“the operation of the EU toy safety regime since 1990- the toy safety directive and the supporting EU toy safety standards and how they are updated in the light of new evidence on safety incidents, the enforcement processes, the RAPEX system of notifying non-complying products, product recalls and the importance of the “precautionary principle”...industry efforts to enforce stricter quality controls in Chinese toy factories, [and] the drastic action taken recently by the Chinese authorities to cancel hundreds of export licences...the sustained efforts over many years by UK trading standards officers (in conjunction with the BTHA and other organisations) to help consumers to buy safe toys, for example:-

1. Avoid street traders, pre-Christmas temporary shops, car boot sales and fairgrounds; always go to a reputable shop.

2. Follow critical age warnings such as, “not suitable for children under 36 months, contains small parts.”
3. Those toys you buy for an older child may not be suitable for younger brothers and sisters.

Ofcom also noted that on 17 October 2007, at the BTHA’s request, the reporter sent a confirmation letter to Mr Hawtin which described the programme as follows:

“We’re making an hour long programme for the Channel 4 Dispatches series, which is intended for broadcast in December, in the run up to Christmas, investigating the safety of toys on sale in the UK. The programme will examine the existing safety regulations and the mechanisms for enforcement in the UK and EU, in the country where the products are made and in countries that the products may pass through en route to the UK”.

Ofcom noted that a few weeks after the initial briefing, the reporter recorded an interview with Mr Hawtin, some footage of which was included in the programme.

In order to consider whether any unfairness arose to the BTHA Ofcom turned to consider each element of the BTHA’s complaint at head a) and in considering each element took account of Practice 7.9 of the Code which states that before broadcasting a factual programme, including programmes examining past events, 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.

- i) Ofcom first considered the BTHA’s complaint that the programme made no reference to European regulations including the toy safety directives, standards, enforcement processes and systems and the fact that European regulations were updated when safety issues arose.

Ofcom noted that the programme investigated the issue of the safety of toys on sale in the EU and the efficacy of the regulatory framework in relation to such toys. Ofcom then noted that the trading standards officer, Ms Heemskerk, referred to European regulations including the toy safety directives in her discussion with the reporter about the toys they had bought from Kempton Park Market. Ms Heemskerk said:

“[looking at a Pirates of the Caribbean bow and arrow set] Searching all over for an EEC address, didn’t find anything... that CE mark is meant to be a declaration of conformity that it complies with the Toy Safety Regulations.”

Ofcom further noted that the reporter referred in the programme to toy safety standards when she said:

“The safety of toys is supposed to be guaranteed by these very detailed standards – 11 sections, 400 odd pages – they spell out in great detail what should and should not happen when children play with every different kind of toy. And in all of this documentation there’s not one single word about magnets”.

Ofcom noted that no explicit reference was made in the programme to the RAPEX EU alert system, the EU system the complainant emphasised, which allows Member States to notify each other of dangerous consumer products.

However, Ofcom noted that the programme did refer to other enforcement processes and systems when the programme showed Ms Heemskerk confiscate toys from a stall in Kempton Park Market:

Ms Heemskerk: *"We need to take all those [expandable growing lizard toys]."*
Market Trader: *"Are you going to steal it?"*
Commentary: *"Again, they object – without success."*
Ms Heemskerk: *"We're gonna take it, I'm afraid. Yes, we can. You cannot sell these to anybody, full stop."*
Commentary: *"The toys are confiscated. The market company is also making every trader display a leaflet warning the public how to spot counterfeit goods. At least there are regulations covering fake toys, even if they're rarely enforced".*

Ofcom also noted that the programme directly referred to the argument that precautionary action should be taken when there was uncertainty, when member of the European Parliament Ms Arlene McCarthy said in the programme:

"I think the precautionary principle would say...let's just take them off the shelves".

Ofcom further noted that the programme referred to the fact that the European regulations were updated when safety issues arose when the commentary said:

"Only in the last few months has a committee been set up to write new safety standards for magnetic toys. That could take up to two years, and the committee is dominated by industry representatives".

In Ofcom's view, the above references demonstrated that the programme set its investigation of toy safety within an exploration of the regulatory framework in relation to the safety of toys. It was also clear that the programme makers were not simply producing a descriptive account of the regulatory framework but also demonstrating the work of enforcement officers.

Ofcom was satisfied that the programme makers had taken reasonable steps to ensure that material facts in relation to the regulatory framework were not presented, disregarded or omitted in a way that was unfair to the BTHA.

- ii) Ofcom next considered the BTHA's complaint that there was no reference in the programme to the efforts of the UK toy industry (including the BTHA) to enforce stricter quality controls in Chinese toy factories, or to the Chinese authorities' decision to discontinue exports.

Ofcom noted that the programme referred to the UK toy industry's efforts to enforce stricter quality controls in Chinese toy factories when the commentary said:

"Both the British and European authorities are trying to persuade the Chinese to sort out their own factories."

Ofcom noted that the programme had not included any explicit reference to the Chinese authorities' decision to discontinue exports, and that Mr Hawtin described this in the untransmitted footage of his interview.

However, as stated above in relation to head a) i) of the decision, in Ofcom's view the programme makers clearly aimed to investigate the regulatory framework in relation to the safety of toys on toy shop shelves, at that point in time, and therefore recent action by the Chinese authorities was not pertinent to the focus of the programme's investigation which was the current risk to consumers and their children. Ofcom was therefore satisfied that there was no unfairness to the BTHA in the programme as broadcast in this respect.

- iii) Ofcom next considered the BTHA's complaint that there was no reference to specific guidance which the BTHA had helped to formulate to enable consumers to buy safe toys.

Ofcom noted the BTHA's full complaint about the lack of reference to its guidance to consumers, as set out in decision head a) above.

Ofcom noted that the programme set out to investigate the safety of toys on sale in reputable shops as well as markets, in the weeks prior to Christmas, and the regulatory framework surrounding these sales. In Ofcom's view, it was not therefore incumbent on the programme makers to include references to the BTHA's guidelines. The first guideline stressed that customers should go to reputable shops, but the programme set out to demonstrate problems with toys sold in such shops. The second two guidelines gave advice regarding children under 36 months but the programme sought to establish that certain magnetic toys placed older children at risk. In Ofcom's view it was therefore not incumbent on the broadcasters to include references to these guidelines.

However, in any event, Ofcom noted that the programme did warn of the particular dangers associated with shopping for toys in street markets, in the sequences quoted above where the trading standards officers were shown confiscating unsafe products from a shop in Blackpool. Ofcom also noted that the programme included Mr Hawtin himself giving specific advice regarding children under 36 months when he said in the programme:

"... the important thing about the- children's safety, particularly toddlers, any child under 36 months, is to make sure they don't ingest any small parts".

Taking the programme as a whole, it was Ofcom's view that the programme investigated the risk to consumers of purchasing counterfeit and hazardous toys at car boots, markets, less known stores and reputable stores. It had shown that toys with removable objects (including magnets) labelled as not suitable for under 3s could cause injury to children as old as 12 years old. In these circumstances Ofcom was satisfied that there was no unfairness to the BTHA in the programme as broadcast from the lack of reference to BTHA's safety guidelines.

Taking into account the findings at heads i), ii) and iii) above Ofcom found no unfairness to the BTHA in the complaint at head a).

Accordingly Ofcom has not upheld the BTHA's complaint of unfair treatment in the programme.

Complaint by Ms Roberta Marchesin

China's Terracotta Army, BBC2, 15 September 2007

Summary: Ofcom has not upheld this complaint of unwarranted infringement of privacy made by Ms Roberta Marchesin.

This programme about 'The First Emperor', the British Museum's exhibition about China's terracotta army, included an image of the complainant in the British Museum Reading Room.

In summary Ofcom found that, given the context in which the footage of Ms Marchesin was shown, she did not have a legitimate expectation of privacy in respect of the broadcast of an image of her carrying out a public-facing activity (looking at a computer screen in the Paul Hamlyn Library) in a place to which the public had free access (the British Museum Reading Room). Therefore Ofcom found that there was no infringement of Ms Marchesin's privacy and it was not necessary for it to further consider whether any infringement of privacy was warranted.

Introduction

On 15 September 2007, BBC2 broadcast *China's Terracotta Army*, a programme about 'The First Emperor', the British Museum's exhibition about China's terracotta army. The programme also considered the history and legacy of Qin Shihuangdi, the emperor who created the Xin dynasty and who commissioned the construction of the terracotta army.

The programme included an explanation of how the British Library Reading Room ("the Reading Room"), which is located within the museum, was being converted into a temporary exhibition space. During this explanation the programme included a shot of Ms Roberta Marchesin, who worked as a library assistant for the Paul Hamlyn Library ("the Library"), which was then located in the Reading Room.

Ms Marchesin complained to Ofcom that her privacy was unwarrantably infringed in the programme as broadcast.

The Complaint

Ms Marchesin's case

In summary, Ms Marchesin complained that her privacy was unwarrantably infringed in the programme as broadcast in that she was featured in the programme in a way which made her clearly identifiable without her consent. By way of background, Ms Marchesin noted that due to the then imminent relocation of the Paul Hamlyn Library (because of the conversion of the Reading Room) none of its staff had job security. In these circumstances Ms Marchesin argued that the broadcaster should have taken extra care to ensure that it either had consent from her to appear in the programme or that her privacy was maintained.

The BBC's case

In summary the BBC responded to the privacy complaint made by Ms Marchesin as follows:

The BBC did not consider that the programme unwarrantably infringed Ms Marchesin's privacy. It said that the complaint arose out of single shot of Ms Marchesin while she was looking at a computer screen in the Reading Room which was to be turned into an exhibition space. The BBC acknowledged that Ms Marchesin had said that she was opposed to the room's change of use.

The BBC said that Ms Marchesin's principal claim was that due to the sensitive situation (the imminent relocation of the Library and job insecurity for the Library's staff) the broadcaster should have taken special care only to include members of staff who wished to participate. It also argued that behind this claim lay the embarrassment which it believed Ms Marchesin had felt at being portrayed as someone who supported the conversion of the Reading Room. The broadcaster did not believe that the brief shot of Ms Marchesin was capable of carrying this implication, particularly given the neutral nature of the accompanying commentary. It said that the words which were being said as the shot of Ms Marchesin was shown were "*the engine room of British intellectual life*". It also quoted the commentary prior to, during and after the inclusion of this shot to support its position. This is quoted in full in the Decision below.

The BBC also argued that any embarrassment which Ms Marchesin may have felt at being portrayed as someone who supported the conversion of the Reading Room could not be regarded as an infringement of privacy because the misrepresentation of someone's views would normally be regarded by Ofcom as a matter of unfairness.

With regard to the issue of privacy, the BBC said that Ms Marchesin was, as she had acknowledged in her complaint, working in a public workplace and in public view, which in itself limited her expectation of privacy.

The broadcaster said that BBC Wales, who made the programme, and the British Museum had an arrangement for filming between December 2006 and September 2007, that consent forms were signed by all the individuals who were interviewed and that it was agreed with the museum that no members of staff or the public would be filmed if they made it known that they did not want to be filmed. The broadcaster also described how the agreement worked in practice. It said that all filming visits were arranged through the British Museum communications department which circulated information to Reading Room staff to advise them that filming would take place and that if anyone preferred not to be filmed they only had to make this known to the film team. The BBC added that Ms Marchesin would have been aware that the BBC would be filming at various times before, during and after the conversion of the Reading Room.

In its response the BBC included an email from Ms Patricia Wheatley of the British Museum communications department, to the programme's producer which described these arrangements. In the email Ms Wheatley said that staff were aware of the filming being done for the First Emperor documentary and that this had come following a year when the BBC had been on the premises. She said that she could not find written proof that every member of staff was informed that there would be filming on this occasion but that it was normal practice for her assistant to issue an 'Event Brief' detailing areas to be filmed before each day's filming and that these were circulated throughout the Museum.

Ms Wheatley added that her assistant would always telephone the relevant people, that she [the assistant] supervised the crew most of the time during filming and that both the assistant and the crew would inform whoever was supervising the area to be filmed when they entered it. Ms Wheatley also said that at the time the Reading

Room was very quiet and rather empty and that in her opinion the film crew would have been “very visible” and it would have been unlikely that any member of staff working there would not have been informed of the crew’s presence or not have noticed it.

The BBC said that the programme’s producer recalled the assistant speaking to the staff when the crew arrived to film the Reading Room, although she does not recall her speaking to Ms Marchesin. The broadcaster added that filming was done openly by a crew of three with a large camera on a tripod. It said that it was possible that Ms Marchesin did not notice the crew at the precise moment the shot of her was filmed but that it was inexplicable that she did not know that there was a film crew in the room at all. The BBC also said that at no stage did Ms Marchesin make it known to the BBC crew that she did not wish to be filmed and nor, as the Head of Libraries confirmed, did she inform her own management.

Ms Marchesin’s comments in response to the BBC’s statement

In summary, Ms Marchesin responded to the BBC’s statement as follows:

Ms Marchesin said that she had not been unaware of the presence of the film crew but that she had been unaware that they had been filming her (and in particular that they were able to get such a close up shot of her). She added that her complaint was not about the specific nature of the commentary that was used in conjunction with her image but about the inclusion of her image in a programme which promoted the reason for her resignation from the Library.

She said that regardless of any agreement between the BBC and the British Museum, she had never been informed that it was her responsibility to approach film crews if she did not wish to be filmed and that it was unreasonable for any member of staff in a public facing role (such as hers) to have had to watch out for and pursue film crews in order not to be filmed. Ms Marchesin also stated that the management had been aware of her opposition to the conversion of the Reading Room and that she had started applying for other jobs.

Ms Marchesin said that the Reading Room had not been supervised when the crew arrived or when it started filming and argued that, given that she was the only member of the Library staff to appear in the programme, it should not have taken very long for the BBC to seek her consent and that the broadcaster should have done so.

Ms Marchesin added that the programme had been repeated a number of times on BBC World and argued that the broadcaster had no right to judge the level of distress that had been caused to her by her inclusion in the programme as broadcast.

The BBC’s second statement in response to the complaint

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

The BBC said that the three-person film crew had been fifteen feet away from Ms Marchesin and was present for thirty minutes, that it believed that she had had only a limited expectation of privacy in the circumstances and that the programme maker’s responsibilities were met by the arrangements agreed with the Museum’s communications department. The broadcaster added that it was the production team’s clear understanding that staff had been notified in advance and reiterated that on the day of filming the crew had been accompanied by the assistant from the

communications department who spoke to staff members about the filming (although it again acknowledged that the producer did not specifically recall whether the assistant spoke to Ms Marchesin).

Decision

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

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.

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

Ofcom considered the complaint that Ms Marchesin's privacy was unwarrantably infringed in the programme as broadcast in that she was featured in the programme in a way which made her clearly identifiable without her consent.

In considering this part of the complaint Ofcom observed the obligation within the Broadcasting Code ("the Code") which states that "any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted" (Rule 8.1). The Code also explains that an individual's "legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question". Ofcom also took particular account of Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy both in relation to the making and the broadcast of the programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? (Rule 8.1 of the Code).

In reaching a decision about whether Ms Marchesin's privacy was infringed in the broadcast of the programme, Ofcom sought first to establish whether the complainant had a legitimate expectation of privacy.

Ofcom noted that the programme included an image of Ms Marchesin looking at a computer screen in the British Library Reading Room ("the Reading Room") and that the commentary which accompanied the section of the programme in which she was included was as follows:

"The Exhibition is to be held in the British Museum's historic Reading Room. Now a public library, it was once the preserve of scholars, the engine room of British

intellectual life. Chinese visitors want to know where Karl Marx sat when he wrote Das Capital here.”

“It’s a marvellous tomb-like space, but converting it was controversial. The books will move, and a modern gallery will be inserted into this Grade 1 listed building.”

Ofcom recognised that an individual could have a legitimate expectation of privacy in relation to activities of a private nature that are undertaken in the individual’s work place which need protection from unwarranted intrusion (for example a discussion about personal matters with a colleague or the undertaking of a business function in a work place to which the public did not have open access). In order to decide whether Ms Marchesin had such an expectation Ofcom examined the specific circumstances of this case.

Ofcom noted that the footage of Ms Marchesin in the programme was of her carrying out a public-facing role in a public space (namely, the Reading Room) and that she was not named or referred to in the programme as broadcast. It considered that the shot of Ms Marchesin was incidental and was shown in the context of other images of people visiting and using the Reading Room.

In addition, Ofcom considered that neither the footage of the complainant nor the accompanying commentary disclosed any private information about Ms Marchesin. The shot of Ms Marchesin did not show her engaged in any private activity nor even indicate that she was a member of the staff of the Paul Hamlyn Library (“the Library”), which was then based in the Reading Room (rather than a member of the general public). Nor did it disclose any information about her views on the conversion of the Reading Room.

In Ofcom’s opinion, the context in which the image of Ms Marchesin was shown meant that the broadcast fell into the category of general views filmed in a public place. Ofcom takes the view that programme makers should not be restricted from taking and subsequently broadcasting shots in a public place without prior consent, unless the filming of the event, image or action is such that prior consent is required, or it is otherwise warranted.

In light of the above considerations Ofcom found that Ms Marchesin did not have a legitimate expectation of privacy in relation to the footage of the broadcast and does not therefore consider that consent was required for the broadcast of the general shot of Ms Marchesin in the Reading Room. Ofcom therefore found that Ms Marchesin’s privacy was not infringed in the broadcast of the programme, and it was not necessary for Ofcom to further consider whether any infringement of privacy was warranted.

Accordingly Ofcom has not upheld Ms Marchesin’s complaint of unwarranted infringement of privacy in the broadcast of the programme.

Complaint by Mr Graham McGrath

Totally Jodie Marsh – Who'll Take Her Up The Aisle? MTV1, 19 August 2007

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

This edition of the reality series, which featured glamour model Jodie Marsh's search for a husband, included a scene at the Chessington World of Adventures theme park where she was accompanied on a date. A photographer was shown in the programme taking photos and asking questions of Jodie Marsh. Mr McGrath was shown with his face obscured, as part of a group of park staff escorting the photographer off the premises.

Mr McGrath complained he was treated unfairly in the programme and his privacy was unwarrantably infringed in the making and broadcast of the programme.

Ofcom found as follows:

- a) Ofcom found that Mr McGrath was not treated unfairly by being included in the programme as broadcast. Ofcom considered that as Mr McGrath's participation was minor his employer had consented to the filming and Mr McGrath was shown in the course of carrying out his legitimate employment related duties together with the fact that his face was obscured by the programme makers, no unfairness to Mr McGrath resulted.
- b) and c) Ofcom found that Mr McGrath's privacy was not unwarrantably infringed in the making or broadcast of the programme. In reaching this finding Ofcom noted that Mr McGrath's participation in the footage was minor, his employer consented to the filming which took place in a theme park which is open to the public and nothing of a private nature was recorded or broadcast. Furthermore, in the broadcast of the programme Mr McGrath's face was obscured.

Introduction

On 19 August 2007, MTV1 broadcast an episode of its reality series *Totally Jodie Marsh – Who'll Take Her Up The Aisle*. This series documented glamour model Jodi Marsh's UK-wide search for her future husband. In this episode, Jodi Marsh and one of her prospective husbands visited the theme park, Chessington World of Adventures. During the visit, the couple was approached by a photographer who took their photograph and asked questions about their relationship. The programme showed footage of the photographer being escorted away by theme park staff. Steps had been taken to obscure the faces of the staff members, who led the photographer away, had been obscured.

Ofcom received a complaint from Mr Graham McGrath, who was one of the staff members who helped to escort the photographer away from Jodi Marsh.

Mr McGrath complained that he was treated unfairly and that his privacy was unwarrantably infringed in both the making and broadcast of the programme.

The Complaint

In summary, Mr McGrath complained that he had been treated unfairly in the programme as broadcast in that:

- a) The programme featured an incident involving Mr McGrath, despite him specifically refusing to sign a disclosure form for his participation and stating that he did not wish to be included in the programme as broadcast. Mr McGrath also said that the programme makers had agreed that the footage of the incident would not be included in the programme.

In summary, Mr McGrath complained that his privacy was unwarrantably infringed in the making of the programme in that:

- b) The programme makers “exploited” him by staging an incident which required him, as the park’s manager, to attend. Mr McGrath said that he did not believe the photographer was a real member of the press and that the incident had been staged.

In summary, Mr McGrath complained that his privacy had been unwarrantably infringed in both the making and broadcast of the programme in that:

- c) The programme makers filmed and broadcast footage of Mr McGrath managing the situation with the photographer. Mr McGrath said that this was done without his permission and despite him telling the programme makers that he did not wish to be included in the programme. Mr McGrath said that although his face had been blurred out, his voice was clearly audible, and the footage contained several frames in which he could be clearly identified.

MTV’s case

In summary, MTV made the following combined response in respect of Mr McGrath’s complaint of unfair treatment and unwarranted infringement of privacy in the making and broadcast of the programme:

MTV stated that the programme makers obtained permission to film from the complainant’s employers and made reference to the premises permit they obtained. MTV stated that to address Mr McGrath’s concerns it had actively taken steps to protect his privacy in the broadcast of the programme by blurring his face. In respect of Mr McGrath’s complaint that his voice was audible and he was clearly identified in several frames, MTV stated that his face was not obscured (because he was moving quickly) in only three frames of the forage and this represented approximately one tenth of a second which is almost too fast to spot even examining the footage closely.

In respect of Mr McGrath’s voice being audible, MTV stated that if Mr McGrath did speak it was in a scene in which an argument was taking place, there was considerable movement and a number of people speaking and it was difficult to make out individual voices and impossible to attribute each voice to any individual. MTV stated further that even if Mr McGrath had a distinctive voice it would not be possible for even close acquaintances to be able to identify him by his voice.

MTV concluded by stating that the security guards were shown to be acting in an exemplary manner and taking entirely appropriate steps in the circumstances.

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, and from unwarranted infringement of privacy in the making and broadcast of 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 a 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.

This case was considered by Ofcom's Executive Fairness Group. In reaching a decision it considered the written submissions from both parties, a recording of the programme, the programme transcript and a copy of the unedited material.

- a) Ofcom first considered Mr McGrath's complaint that he was treated unfairly as he featured in the programme despite him specifically refusing to sign a disclosure form and stating that he did not wish to be included in the programme.

In considering this aspect of Mr McGrath's complaint, Ofcom took account of Rule 7.1 of Ofcom's Broadcasting Code ("the Code"), which states that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also took account of Practice 7.3 which provides that where a person is invited to make a contribution to a programme they should normally be told matters such as the nature and purpose of the programme, what the programme is about and when (if known) and where it is likely to be first broadcast. Taking measures such as these is likely to result in the consent that is given being 'informed consent'.

In considering Mr McGrath's complaint of unfair treatment, Ofcom first considered whether it was incumbent on the programme makers to have sought Mr McGrath's consent before broadcasting the footage of him.

Ofcom noted that he was not named or referred to in the broadcast, his participation was brief and incidental to the storyline concerning Jodie Marsh; and his face was obscured. Ofcom also considered that his voice was not distinguishable in the footage broadcast. In these circumstances, Ofcom considered that the programme makers were not required to have obtained Mr McGrath's consent to include the footage in the programme.

Ofcom noted that the footage showed Mr McGrath engaged in a legitimate work related activity of dealing with a park security matter. In Ofcom's view, nothing in the broadcast footage would diminish Mr McGrath in viewers' eyes and, indeed, by obscuring his face the broadcaster had taken steps to limit considerably the ability of viewers to identify him.

Ofcom also noted from the pre-transmission material that Mr McGrath's employer had authorised the programme makers to film at the park. Ofcom could find no material to suggest that the programme makers had agreed not to show the footage of Mr McGrath, but appeared aware that Mr McGrath did not wish to feature in the footage. Ofcom noted that in order to address Mr McGrath's wishes the programme makers had, as discussed above, obscured his face in the broadcast material.

Taking these factors into account, Ofcom did not consider that unfairness resulted to Mr McGrath.

- b) Ofcom next considered Mr McGrath's complaint that his privacy was unwarrantably infringed in the making of the programme in that he was "exploited" by the programme makers staging an incident which required him to attend.

In assessing this head of Mr McGrath's complaint, Ofcom took into consideration Rule 8.1 of the Code which provides that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

In relation to this head of complaint, Ofcom noted that Mr McGrath complained that he was exploited in the making of the programme through a staged event. On the information before it Ofcom could not determine whether or not the event was staged and, in any event, Ofcom's duty is rather to adjudicate on whether Mr McGrath's privacy was unwarrantably infringed in the recording of footage of him during the incident in question. This is considered below under Decision head c).

- c) Ofcom considered Mr McGrath's complaint that his privacy had been unwarrantably infringed in the making and broadcast of the programme in that of footage of him was filmed and broadcast without his permission.

In its consideration of this head of Mr McGrath's complaint, and as discussed above, Ofcom took into consideration Rule 8.1 of the Code which provides that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted. Ofcom also took account of Practice 8.8 which provides that when filming or recording in institutions, organisations or other agencies, permission should be obtained from the relevant authority or management, unless it is warranted to film or record without permission. Individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public will not normally be required.

In Ofcom's view the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. When considering and adjudicating on a complaint of unwarranted infringement of privacy, Ofcom must therefore address itself to two distinct questions: First has there been an infringement of privacy? Secondly, if so was it warranted? (Rule 8.1 of the Code).

Privacy in the making

Ofcom first considered whether Mr McGrath's privacy was infringed in the making of the programme and began by considering whether Mr McGrath had a legitimate expectation of privacy in relation to the recording of the footage of him.

Ofcom noted that Mr McGrath was filmed in a location open to the public and the filming of him was incidental to the main subject matter involving Jodie Marsh. Ofcom also noted that the programme makers had obtained consent from the appropriate authority to film at Chessington World of Adventures. In Ofcom's view, nothing of a private nature was filmed since, as discussed above at head a), Mr McGrath was filmed in the course of his ordinary work in an area open to the public.

For these reasons, Ofcom did not consider Mr McGrath had a legitimate expectation of privacy in relation to the recording of the material of him and therefore his consent was not required in relation to the filming of the footage. Ofcom therefore found that Mr McGrath's privacy was not infringed and did not need to further consider whether any infringement was warranted.

Privacy in the broadcast

In relation to whether Mr McGrath's privacy was infringed in the broadcast of the material of him, Ofcom took into account Rule 8.1 as detailed above, and Practice 8.6 which provides that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement is warranted.

Ofcom again first considered whether Mr McGrath had a legitimate expectation of privacy in relation to the broadcast of the footage of him. Ofcom noted the incidental nature of the broadcast footage and that Mr McGrath was not named in it nor was his voice discernible. Ofcom also considered the public location of the filming and the steps taken by the broadcaster to limit any identification of Mr McGrath, by obscuring his face in the broadcast footage. Ofcom noted that Mr McGrath's employer had consented to the filming and subsequent broadcast of the material. Furthermore, the footage broadcast showed Mr McGrath carrying out his duties in public as a member of the park's staff and did not reveal any conduct or action by Mr McGrath that was of a private or personal nature.

Accordingly, Ofcom found that Mr McGrath did not have a legitimate expectation of privacy in relation to the broadcast of the footage. Ofcom therefore found that his privacy was not infringed and did not need to further consider whether any infringement was warranted.

Accordingly, Mr McGrath's complaint of unfair treatment, and unwarranted infringement of privacy in the making and broadcast of the programme was not upheld.

Complaint by Miss Elizabeth Young

Supersize vs Superskinny, Channel 4, 12 February 2008

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Miss Elizabeth Young.

Each episode of channel 4's reality series *Supersize vs Superskinny* featured a "supersize" person and a "superskinny" person in the programme's "feeding clinic", discussing their weight and diet with the programme's medical expert Dr Christian Jessen. The "supersize" person and the "superskinny" person then swapped diets with one another and lived on that diet for five days. The aim of the programme was to get participants to reflect on their relationship with food. Miss Elizabeth Young was the "superskinny" participant in one episode.

In summary Ofcom found the following:

- The programme fairly portrayed Miss Young's attitude to her diet. It did not state, as she complained, that she thought that she had found the elixir of eternal youth, nor did it suggest that she survived on a diet of brazil nuts, prunes, raw garlic, pasta and little else. There was no criticism of her in relation to her taking part in a dancing session.
- The programme was not unfairly edited so as to suggest that she had changed her mind about her diet and any impression viewers formed about her would have been based on what she herself said about her diet.
- Miss Young had no legitimate expectation of privacy in relation to the questions put to her about her diet, which were in keeping with the stated aims of the programme given to her.

Introduction

On 12 February 2008, Channel 4 broadcast an episode of *Supersize vs Superskinny*, a reality show about food, weight and body image.

Each programme featured a "supersize" person and a "superskinny" person in the programme's "feeding clinic", discussing their weight and diet with the programme's medical expert Dr Christian Jessen. The participants then swapped diets with one another and lived on that diet for five days.

In the episode broadcast on 12 February 2008, Miss Elizabeth Young was the "superskinny" participant. She swapped diets with the "supersize" participant Mr Stefan Ginesi. The programme followed Miss Young's efforts to stick to Mr Ginesi's diet during the five days of the swap, and her progress 12 weeks later was reported on at the end of the programme.

Miss Young complained to Ofcom that she was treated unfairly in the programme as broadcast and that her privacy was unwarrantably infringed in the making of the programme.

The Complaint

Elizabeth Young's case

In summary, Miss Young complained that she was treated unfairly in the programme as broadcast, in that:

- a) She was portrayed unfairly, in that:
 - i) She was wrongly and unfairly portrayed as claiming to have found the “elixir of eternal youth”. She said she had never made any such claim, either privately or publicly.
 - ii) She was wrongly and unfairly portrayed as surviving on a daily intake of brazil nuts, prunes, raw garlic, pasta and little else, when these foods were supplementary to her diet, which was normal.
 - iii) She was wrongly and unfairly portrayed as having taken time out to dance when the dancing session featured in the programme had been arranged by the programme makers.

By way of background Miss Young said that she was ridiculed, harangued and bullied during the making of the programme to fit the profile of the show, namely, as someone who wanted or claimed to have the secret of eternal youth and who was obsessed with remaining a child and with ageing.

- b) The footage of her was unfairly edited, in that:
 - i) She was unfairly and wrongly portrayed as having accepted that she had issues with food and as having changed her opinion, when in fact she had clearly stated she would not be sticking to the diet proposed for her. Footage of her was edited so as to suggest, wrongly, that she was pleased with the results of the diet swap.
 - ii) She was made to look ridiculous and “messed up” in her thinking about food.

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

- c) She was probed during the making of the programme by the programme makers and Mr Ginesi in an attempt to make her “open up” and admit to having issues with food and to discuss private and personal matters. This was done despite the fact that she had stated from the outset that she wanted to prove that not all skinny people were afraid to eat junk food. She was constantly judged by the programme makers during the making of the programme as being too controlled and the programme became more than just a diet swap.

Channel 4's case

In summary and by way of background, Channel 4 said that the programme makers' aim was to direct the debate about the relationship people had with food. The programme focused on two extremes. On one extreme, the programme focused on people who were very conscious of their weight and sought to keep it at a level seen by them as desirable, regardless of the cost to their long term well being. On the other extreme, the programme focused on people who were morbidly obese and were not focused on the long-term detriment their eating habits were creating for them. A key theme of the programme involved understanding the complex relationship between health, food and weight. This was explored through use of the

“Diet Lab” where, each week, two participants would live together for five days and swap diets and lifestyles. After their time in the Diet Lab, each participant was provided with a comprehensive dieting regime tailored to their needs and given the chance to work on that regime. The aim was to see if the participant’s relationship with food could be improved. The participants would meet up after some weeks on their new regimes, to see if they had changed their attitudes to food and weight. Channel 4 said all of this was made clear to the complainant before filming commenced.

- a) As regards the complaint that Miss Young was portrayed unfairly, Channel 4 responded in the following way.
- i) In response to the complaint that Miss Young was portrayed as having found the “elixir of eternal youth”, Channel 4 said that at no time during the programme was the phrase “elixir of eternal youth” used, either in relation to the complainant or to anyone else.

Channel 4 noted that the programme had expressed, in a shorthand way, the programme makers’ analysis of Miss Young’s approach to diet prior to her participation in the programme. The programme makers saw Miss Young as a person who thought that she had found the secret of eternal youth, or words to that effect, and this was reflected in the voiceovers in the programme.

Channel 4 said that this analysis of Miss Young’s position was fair in light of her actual views, actions, and beliefs as expressed in the programme. Miss Young had made it clear that, from a very early age, she had determined not to age. To achieve this she exercised extraordinary mind control over herself and reduced the role of food in her life to that of fuel. She had developed and maintained an exacting, unwavering diet, which, together with exercise, contributed to her retaining looks which she regarded as “youthful”. Miss Young was quite clear, when discussing her health with Dr Jessen, that she regarded ageing as an ailment and one that she was taking measures to defeat.

Channel 4 said that it would have been clear to viewers that the references to “*eternal youth*” were not made by Miss Young and that such references were the programme makers’ shorthand way of referring to Miss Young’s regime, her approach and her rationale.

- ii) In response to the complaint that Miss Young was portrayed as living on a daily intake of brazil nuts, prunes, raw garlic, pasta and little else, Channel 4 noted that, in the programme, Dr Jessen explained to Miss Young what the total amount of food she would normally ingest in a week was and compared this to the average recommended intake for women of Miss Young’s age and height. During this section of the programme the audience was shown that, in any given week, Miss Young ate dried cereal, orange juice, prunes, bananas, brazil nuts, turkey curry, pasta, rice dishes and garlic. There was no suggestion at this, or any other point in the programme, that Miss Young ate only brazil nuts, prunes, raw garlic, pasta and little else. In addition, during the diet swap phase of the programme, Mr Ginesi was shown eating Miss Young’s usual diet, which included bananas, prunes, brazil nuts, chicken and rice and garlic, bran flakes, pastas with garlic, and high fibre bran mixed with yoghurt and apple.

- iii) In response to the complaint that Miss Young was portrayed as having taken time out to dance, Channel 4 said that all of the activities that Miss Young undertook during the course of the programme were arranged by the programme makers and no viewer would have thought otherwise. Channel 4 said that viewers would have seen the dancing sequence as part of the programme's aim to take two people out of their regular routines and subject them to the discipline of an eating and behavioural regime imposed on them. Viewers would have seen the dancing sequence as an activity imposed on Mr Ginesi, the "supersize" participant in the programme, rather than a frolic of Miss Young's choosing, since dancing was an activity with which Miss Young was at ease- unlike Mr Ginesi. Channel 4 added that the programme was not one in relation to which viewers were likely to form an unfavourable view about Miss Young because she was dancing.

In response to the background information given by Miss Young in head a) of her complaint, Channel 4 said that Miss Young had applied to be part of the programme so she was well aware of the nature of the programme. Miss Young saw the programme as a way of getting across her message that, just because a person was skinny did not mean they had an "issue" with food, and the programme makers had conveyed Miss Young's views to the audience. Further, the programme was about people whose eating habits and patterns of behaviour were not what current medical practice considered "normal" and Miss Young fitted this profile. Miss Young knew, or should have known, that her attitudes and beliefs would be challenged during the film process.

- b) In response to the complaint that footage of Miss Young was unfairly edited, Channel 4 responded in the following way.
 - i) In response to the complaint that footage of Miss Young was edited so as to portray her, wrongly, as having accepted that she had issues with food and as having changed her opinion, Channel 4 said that no reasonable viewer would have reached the conclusion that Miss Young had herself accepted that she had issues with food or had changed her opinion. Throughout the programme, Miss Young was accurately portrayed as resolutely sticking to her beliefs and as being unwavering about them despite whatever was put to her. She was never portrayed in the programme as accepting that anything she was doing was wrong.

In addition, when Miss Young was shown at the end of the programme saying that she was happy with her weight gain, the programme makers were correctly reporting what Miss Young had said repeatedly during filming of her meeting with Dr Jessen and Mr Ginesi at the end of the 12 weeks on her new diet. It would have been clear to viewers that Dr Jessen hoped that Miss Young would stick to the diet, but there was nothing in the programme to suggest that Miss Young intended to do so or that she had accepted that she needed to change her ways. The programme may have suggested that Miss Young was surprised that she could still feel good about herself after putting on nine pounds, but this was justified, given the statements she made in the programme.

Whilst Channel 4 noted that in the filming of the meeting after 12 weeks on the diet swap, Miss Young made it plain that she found the diet irritating and that eating was getting in her way, Channel 4 said that it was not necessary or desirable for this to be included in the programme as it did not affect any impression the audience would have gained from Miss Young's statements

about her weight gain. Channel 4 said that it was also not necessary to include footage of Miss Young saying that she would not be sticking to the special diet, as there was no suggestion in the programme that she would do so.

- ii) In response to the complaint that Miss Young was made to look ridiculous and “messed up” in her thinking about food, Channel 4 said that, by Miss Young’s own admission during the programme, her attitude to food was not that of a normal person. While there may be viewers who would regard Miss Young’s attitudes, beliefs and desires as “ridiculous” or “messed up”, the programme itself did not make that judgement and it did not require the audience to make that judgement.

The programme had fairly and accurately portrayed Miss Young’s beliefs and attitudes and the programme makers were not unduly judgmental, critical or unfair. Miss Young was allowed to freely express herself and was given advice and the opportunity to change if she desired.

Channel 4 then responded to the complaint that Miss Young’s privacy was unwarrantably infringed in the making of the programme in the following way.

- c) In response to the complaint that Miss Young was constantly being judged by the programme makers, during the making of the programme, as being too controlled, Channel 4 said that this could not amount to any infringement of Miss Young’s privacy.

Channel 4 said that there was strict protocol for programmes such as *Supersize vs Superskinny* to ensure that no harm would come to its participants and as part of this protocol, Miss Young was examined by an independent clinical psychiatrist who wrote in his report to the programme makers that he had invited her to make contact with him if she felt that would be likely to be helpful. Channel 4 said that at no stage during the filming did Miss Young request access to the doctor, nor did she object to the “probing” she now complained of. Had Miss Young expressed any discomfort, embarrassment or reluctance about any particular line of questioning, it would have been abandoned (as provided for in the agreement she signed).

Furthermore, Channel 4 said that it was clear from her complaint to Ofcom that Miss Young had known from the outset that participation in the programme would see the programme makers seeking to “get under the skin of” the “obsessions” of the participants “with the aim of transforming their relationship with food and weight”. Channel 4 said that it must have been clear to Miss Young that in order to “get under the skin” of a participant, the programme makers would challenge participants’ attitudes, question them about their beliefs and try to persuade them to a different way of thinking. The kind of questioning referred to in this part of Miss Young’s complaint was precisely the sort of questioning Miss Young ought to have expected.

Decision

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

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.

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

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

- a) Ofcom first considered the complaint that Miss Young was portrayed unfairly. In considering this part of the complaint Ofcom took account of Practice 7.9 of the Ofcom Broadcasting Code ("the Code"). Practice 7.9 states that before broadcasting a factual programme broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.
- i) Ofcom considered the complaint that Miss Young was portrayed as having found the "elixir of eternal youth". Ofcom noted that a number of statements in the programme referred to Miss Young's attitude to her diet. Some were made by her, some by Dr Jessen and some by the narrator. At the start of the programme the narrator referred to her as:

"... a woman who thinks she's unlocked the secret to ageing".

Miss Young said of herself:

"...I've always said that I was never getting old...My mind controls my body".

Later on the narrator said:

"She thinks her restrictive diet is the key to eternal youth".

Miss Young said:

"I've never really embraced the ageing process, from a very young age I've always said that I was never getting old".

There were other references to Miss Young's "quest for eternal youth" and her belief that, with her diet, she would live longer.

When Dr Jessen asked her where she had heard that eating very little would make her live longer, Miss Young said:

"It's not so much about eating very little, it's, it's about, it's just my mindset. I've pretty much found out that some foods are good for you, some, some are bad, so I choose the ones that are good".

Later on Dr Jessen said:

“Elizabeth thinks she’s found the secret to eternal life, but because her diet is so poor and she’s missing important vitamins and minerals, she’s actually gonna age quite rapidly”.

Ofcom also noted the following conversation:

Miss Young: *“I heard what you told me but like I said, I’m working on the cures.”*
Dr Jessen: *“You’re working on the cures?”*
Miss Young: *“As far as I’m concerned old age is an illness, its an ailment.”*
Dr Jessen: *“Old age is an illness?”*
Miss Young: *“It’s an ailment, yeah”*
Dr Jessen: *“So old age isn’t a natural thing that should happen? It only happens to sick people?”*
Miss Young: *“I’m hearing what you’re saying, but I’m talking about things that I am doing for myself.”*

Ofcom noted that at no point in the programme was the phrase “elixir of eternal youth” used. However, it was clear from the footage referred to above and other parts of the programme that the suggestion was that Miss Young linked her diet to staying young and preventing ageing. In Ofcom’s view, the programme fairly included Miss Young’s views on this. As regards the commentary, and the opinions expressed by Dr Jessen, Ofcom took the view that these fairly reflected Miss Young’s own position on her diet. The programme had made her reasons for her diet and her views about it clear to viewers. There was therefore no unfairness to Miss Young in this respect.

- ii) Ofcom considered the complaint that Miss Young was unfairly portrayed as surviving on a daily intake of brazil nuts, prunes, raw garlic, pasta and little else.

Ofcom noted that it was clear from the programme that brazil nuts, prunes, raw garlic and pasta did form an important part of Miss Young’s diet. She explained her attitude to such foods as follows:

“I don’t necessarily like brazil nuts or prunes, but they serve a purpose, so I eat them”.

The positive qualities of these foods were referred to, for example, when the narrator said:

“...prunes are packed with essential minerals and antioxidants, great to keep skin looking young, and as a traditional remedy for constipation...”

The programme also made clear that Miss Young ate other foods. Early on in the programme there was a sequence in which Dr Jessen demonstrated to Miss Young and Mr Ginesi what their weekly intake of food looked like, by having that amount of food poured into a large transparent container. This demonstrated that Miss Young’s diet also included orange juice, bananas and turkey curry. At meal times, when Miss Young and Mr Ginesi had swapped diets, Mr Ginesi ate high fibre bran, with yoghurt and apple, chicken and rice—all foods that Miss Young served to him as food that she would normally eat.

In these circumstances, Ofcom took the view that whilst viewers would have seen that Miss Young’s diet was restricted, and that brazil nuts, prunes, raw

garlic and pasta formed part of her diet, the programme had made it clear to viewers that she did not survive on these foods and little else. There was therefore no unfairness to Miss Young in this respect.

- iii) Ofcom next considered the complaint that Miss Young was unfairly portrayed as having taken time out to dance.

Ofcom noted that the narrator said of the dancing session:

"...after a couple of days on Stefan's diet, Elizabeth needs some time out and opts for her favourite activity, dancing, and for Stefan it could be just what he needs to win new hearts back home."

Miss Young was shown taking part in an activity she clearly enjoyed and encouraging Mr Ginesi to join in with her. In Ofcom's view there was no criticism made, or implied, regarding Miss Young in this introduction to the dancing session and there was no unfairness to her in including the commentary or the footage.

Ofcom has not upheld the complaint that Miss Young was portrayed unfairly.

- b) Ofcom considered the complaint that footage of Miss Young was edited unfairly. In considering this part of the complaint Ofcom took account of Practice 7.6 of the Code, which states that when a programme is edited, contributions should be represented fairly.

- i) Ofcom considered the complaint that footage of Miss Young was edited so as to suggest that she accepted that she had issues with food and as having changed her opinion.

Ofcom noted that, as set out under decision head a) i) (above), Miss Young was shown challenging Dr Jessen's opinions regarding her diet. She explained her diet and her reasons for it clearly and articulately in the programme. At the end of the first day on the diet swap, the narrator said:

"At the end of day one Elizabeth's stubborn mindset is not changing".

Later on in the swap, when Dr Jessen was shown explaining to Miss Young the damage her diet could do to her, in Ofcom's view, it would have been clear to viewers that she remained unconvinced by Dr Jessen's views. Towards the end of the swap, Dr Jessen asked Miss Young if she thought she needed to put on weight and she said "No". It would have been clear to viewers from these exchanges that Miss Young had not changed her views and did not accept that she had any issues with food.

When Miss Young and Mr Ginesi returned after 12 weeks on the swap, Ofcom noted that, in the untransmitted footage, Miss Young's reaction to her time on the special diet and the news that she had put on some weight, was mixed. Ofcom also noted that the broadcast programme had included Miss Young's comment that:

"I feel great, I actually feel comfortable, I can, I don't feel heavy with this amount of weight on and that makes me feel kinda good".

While this comment may have suggested to viewers that Miss Young was happy with the outcome of the 12 weeks on the diet, when the untransmitted footage showed a more mixed response, in Ofcom's view, the words used were her own and fairly reflected her overall response to her weight gain.

At the end of the programme, Dr Jessen said:

"Elizabeth's put on more weight than I ever imagined she would and she's looking so much healthier and happier that I really hope she keeps this up for life now".

In Ofcom's view, Dr Jessen was expressing his hope that Miss Young would continue with her special diet and he was not suggesting that he believed that she had changed her mind.

Taking the programme as a whole, Ofcom considered that for the reasons discussed above, the editing of the programme was fair and therefore no unfairness resulted to Miss Young.

- ii) Ofcom went on to consider the complaint that Miss Young was made to look "ridiculous and messed up".

Ofcom noted that Miss Young acknowledged at the beginning of the programme:

"I'm different. So my habits are not the habits that normal people would have. It's a mind over matter thing. So my mind controls my body".

Later she said:

"...I know that my eating habits isn't that of a normal person".

Miss Young explained, in an articulate manner in the programme, why she felt as she did about her diet and her reasons for eating as she did. Dr Jessen and Mr Ginesi both discussed this with her. In Ofcom's view, while her diet was challenged and questioned, Miss Young was not ridiculed in the programme. Some viewers might have formed the opinion that Miss Young's diet was highly unusual, but Ofcom did not consider that the material was unfairly edited in this respect.

Ofcom has not upheld the complaint that the footage of Miss Young was edited unfairly.

- c) Ofcom considered Miss Young's complaint that her privacy was unwarrantably infringed in the making of the programme in that she was probed during the making of the programme in an attempt to make her "open up" and admit to having issues with food and to discuss private and personal matters.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about unwarranted infringement of privacy both in relation to the making and the broadcast of the programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? (rule 8.1 of the Code).

In considering whether Miss Young's privacy was infringed in the making of the programme, Ofcom considered whether she had a legitimate expectation of privacy in the circumstances in which she was filmed.

Ofcom noted that the advertisement for the programme, to which Miss Young responded, included the following explanation of the programme:

"Channel 4 Features department had commissioned Cheetah Television (an Endemol company) to produce a new eight-part series which explores our increasingly dysfunctional relationship with food: Supersize vs. Superskinny"

In addition, the programme included the following explanation of the programme:

"The series will get under the skin of their [the participant's] obsessions with the aim of transforming their relationship with food and weight".

On the basis of the untransmitted footage and the programme as broadcast, it did not appear to Ofcom that Miss Young was questioned or probed about matters that were not relevant to the stated aims of the programme, about which she had been informed. While issues were discussed that were challenging, these did not go beyond the issues of food and diet. Given that the aims of the programme were clear in the advertisement to which Miss Young responded and the contract she signed, it is Ofcom's view that Miss Young did not have a legitimate expectation of privacy in relation to the making of the programme. Given this, Ofcom therefore found that Miss Young's privacy was not infringed in the making of the programme and it was not necessary for Ofcom to further consider whether any infringement of privacy was warranted.

Accordingly Ofcom has not upheld Miss Young's complaint of unfair treatment or unwarranted infringement of privacy in the making of the programme.

Other Programmes Not in Breach/Resolved

19 November to 2 December 2008

Programme	Transmission Date	Channel	Category	No of Complaints
3 Minute Wonder: Frieze Films 2008 - Road Movie	13/10/2008	Channel 4	Violence	1
A Year in Tibet	29/10/2008	BBC4	Animal Welfare	1
Absolute Radio	07/11/2008	Absolute Radio	Due Impartiality/Bias	1
Absolution With Tim Shaw	07/11/2008	Absolute Radio	Generally Accepted Standards	1
Afternoon Play - Mandrake	22/10/2008	BBC Radio 4	Religious Offence	1
Airwick sponsorship of Emmerdale	n/a	ITV1	Inaccuracy/Misleading	1
Al Hiwar Al Sarih Bada Al Tarawih	01/09/2008	Al Mustakillah	Generally Accepted Standards	2
Alan Brazil's Sports Breakfast	31/10/2008	Talksport	Inaccuracy/Misleading	1
All Star Family Fortunes	01/11/2008	ITV1	Generally Accepted Standards	3
Andy Townsend and Mike Parry	31/10/2008	Talksport	Generally Accepted Standards	1
BBC Breakfast	29/10/2008	BBC1	Generally Accepted Standards	31
Beautiful People	27/10/2008	BBC2	Generally Accepted Standards	1
Big Fight Live	08/11/2008	ITV4	Generally Accepted Standards	1
Blossom Hill sponsorship / Heart Drivetime	n/a	Heart FM	Advertising	1
Breakfast with Joanne Good and Paul Ross	03/11/2008	BBC Radio London	Generally Accepted Standards	3
Britannia High	02/11/2008	ITV1	Generally Accepted Standards	1
Channel 4 News	05/11/2008	Channel 4	Generally Accepted Standards	2
Chaos at the Zoo	30/11/2008	Channel 4	Offensive Language	1
Cloak and Dagger	18/11/2008	Channel 4	Generally Accepted Standards	1
Comedy Fortnight	10/10/2008	2-Ten FM	Generally Accepted Standards	1
Coming of Age	04/11/2008	BBC Three	Generally Accepted Standards	1
Coronation Street	31/10/2008	ITV1	Offensive Language	1
Coronation Street	05/11/2008	ITV1	Generally Accepted Standards	1
Dead Set	27/10/2008	E4	Violence	2
Dead Set	27/10/2008	E4	Generally Accepted Standards	1
East is East	01/11/2008	Film4	Religious Offence	1
Eastenders Whodunnits	02/11/2008	BBC Three	Offensive Language	1

Embarrassing Teenage Bodies	28/10/2008	Channel 4	Inaccuracy/Misleading	1
Emmerdale	05/11/2008	ITV1	Animal Welfare	1
Emmerdale	03/11/2008	ITV1	Inaccuracy/Misleading	1
Eurovision Dance Contest	06/09/2008	BBC1	Generally Accepted Standards	1
F1: Brazilian Grand Prix - Live	02/11/2008	ITV1	Generally Accepted Standards	1
Fifth Gear	15/09/2008	Five	Competitions	1
Fighting Talk	08/11/2008	BBC Radio 5 Live	Generally Accepted Standards	1
GMTV	30/10/2008	ITV1	Generally Accepted Standards	1
GMTV	03/11/2008	ITV1	Generally Accepted Standards	1
George Lamb	03/09/2008	BBC 6 Music	Generally Accepted Standards	1
Gigglebox	12/11/2008	CBeebies	Generally Accepted Standards	1
Going For Gold Extra	19/11/2008	Five	Use of Premium Rate Numbers	1
Goodfella's Pizza sponsors You've Been Framed	01/11/2008	ITV1	Generally Accepted Standards	1
Graham Norton Uncut	02/11/2008	BBC2	Generally Accepted Standards	2
Harry & Paul	15/09/2008	BBC2	Generally Accepted Standards	1
Harry Hill's TV Burp	01/11/2008	ITV1	Generally Accepted Standards	2
Hell's Kitchen USA	15/09/2008	ITV2	Flashing images	1
Heroes Unmasked	01/10/2008	BBC2	Violence	1
House	03/11/2008	Five US	Generally Accepted Standards	1
How To Look Good Naked	27/11/2008	E4	Sex/Nudity	1
Hydronauts	01/11/2008	CITV	Religious Offence	1
I'm A Celebrity, Get Me Out of Here Now!	26/11/2008	ITV2	Sex/Nudity	1
I'm A Celebrity, Get Me Out of Here Now!	27/11/2008	ITV2	Animal Welfare	
I'm A Celebrity, Get Me Out of Here!	18/11/2008	ITV1	Offensive Language	1
ITV News	28/10/2008	ITV1	Animal Welfare	6
ITV News	31/10/2008	ITV1	Due Impartiality/Bias	1
Jack Osbourne: Celebrity Adrenaline Junkie	05/11/2008	ITV2	Generally Accepted Standards	1
Jon Gaunt	13/10/2008	Talksport	Generally Accepted Standards	1
Kanal 5	28/09/2008	Kanal 5	Other	1
Loose Women	06/11/2008	ITV1	Sex/Nudity	1
Low Bid Auction	18/11/2008	Absolute Radio	Competitions	1
Mark Edwards	12/11/2008	Sunshine FM	Generally Accepted Standards	1
Martin & Sue	24/10/2008	Essex FM	Sex/Nudity	1
Max Magic	30/10/2008	Sky One	Dangerous Behaviour	1
Merlin	01/11/2008	BBC1	Religious Offence	1

Miss Naked Beauty	28/10/2008	Channel 4	Generally Accepted Standards	8
Miss Naked Beauty	28/10/2008	Channel 4	Sex/Nudity	6
Morning Extra	03/11/2008	BBC Radio Scotland	Generally Accepted Standards	1
Most Annoying Couples We Love to Hate	27/10/2008	BBC Three	Offensive Language	1
Most Haunted Live: Village of the Damned	26/10/2008	Living	Generally Accepted Standards	3
My Parents Are Aliens	24/11/2008	CITV	Sex/Nudity	2
My Parents Are Aliens	23/10/2008	CITV	Generally Accepted Standards	1
Never Mind the Buzzcocks	30/10/2008	BBC2	Generally Accepted Standards	3
Paul Merton in India (trailer)	07/10/2008	Five	Sex/Nudity	1
Power Rangers Wild Force	22/10/2008	Jetix	Violence	1
Promo	14/10/2008	Channel 4	Sex/Nudity	1
Question Time	30/10/2008	BBC1	Generally Accepted Standards	1
Quiz Call	11/10/2008	Five	Competitions	1
Radio 1's Chart Show	09/11/2008	BBC Radio 1	Offensive Language	1
Real Radio	12/11/2008	Real Radio Wales	Crime (incite/encourage)	1
Real Radio Breakfast Show	27/08/2008	Real Radio Yorkshire	Competitions	1
Remembrance Sunday	09/11/2008	Pirate FM102	Generally Accepted Standards	1
River Cottage Autumn	01/11/2008	Channel 4	Animal Welfare	1
River Cottage Autumn	30/10/2008	Channel 4	Animal Welfare	7
Rude Tube	05/11/2008	E4	Animal Welfare	1
Sally Morgan: Star Psychic	28/10/2008	ITV1	Exorcism/Occult/Paranormal	1
Sam and Mark's Guide to Dodging Disaster	02/11/2008	CBBC	Violence	1
Severn Sound Breakfast with Warren Moore	05/11/2008	Severn Sound	Generally Accepted Standards	1
Sharpe's Peril	02/11/2008	ITV1	Religious Offence	1
Sky Sports News	30/09/2008	Sky Sports News	Generally Accepted Standards	1
Sky player promo	26/10/2008	Sky One	Inaccuracy/Misleading	1
Soulful Connoisseurs Grooves	31/10/2008	Solar Radio	Generally Accepted Standards	1
Spooks	03/11/2008	BBC1	Generally Accepted Standards	1
Star Stories	02/10/2008	Channel 4	Generally Accepted Standards	1
Streetz Grime and Life	25/10/2008	Channel U	Offensive Language	1
Sunday Night Show with Iain Lee	16/11/2008	Absolute Radio	Generally Accepted Standards	1
TV's Naughtiest Blunders	31/10/2008	ITV1	Offensive Language	1
Taggart	03/11/2008	ITV1	Generally Accepted Standards	6
That Mitchell and Webb Look	28/10/2008	BBC4	Generally Accepted Standards	1
The Alan Titchmarsh Show	31/10/2008	ITV1	Religious Offence	1
The Ambulance: 8 Minutes to Disaster	18/09/2008	Channel 4	Generally Accepted Standards	1

The American Future: A History, by Simon Sharma	17/10/2008	BBC2	Unconscious influence/hypnosis/subliminal	1
The Andrew Marr Show	02/11/2008	BBC1	Offensive Language	1
The Bill (Trailer)	05/11/2008	ITV1	Violence	1
The Bill (Trailer)	01/11/2008	ITV1	Violence	1
The Bill (Trailer)	05/11/2008	ITV1	Generally Accepted Standards	1
The Christian O'Connell Breakfast Show (Trailer)	13/10/2008	Virgin Radio	Generally Accepted Standards	1
The Fashion Show	13/11/2008	ITV2	Generally Accepted Standards	1
The Jeremy Kyle Show	01/12/2008	ITV1	Generally Accepted Standards	1
The Legends Football Phone In	27/10/2008	Century Radio	Generally Accepted Standards	1
The Lost Treasure Of Fiji	07/11/2008	CITV	Violence	1
The Media Show	05/11/2008	BBC Radio 4	Generally Accepted Standards	1
The National Television Awards 2008	29/10/2008	ITV1	Generally Accepted Standards	1
The National Television Awards 2008	29/10/2008	ITV1	Dangerous Behaviour	6
The New Generation Sex Show (Trailer)	13/11/2008	Fiver	Generally Accepted Standards	1
The ONE Show	30/10/2008	BBC1	Religious Offence	1
The ONE Show	27/10/2008	BBC1	Generally Accepted Standards	2
The ONE Show	28/10/2008	BBC1	Generally Accepted Standards	1
The Paul O'Grady Show	27/11/2008	Channel 4	Offensive Language	2
The World Today	02/11/2008	BBC World Service	Generally Accepted Standards	1
The Wright Stuff	03/11/2008	Five	Generally Accepted Standards	1
The X Factor	01/11/2008	ITV1	Generally Accepted Standards	1
The X Factor	01/11/2008	ITV1	Crime (incite/encourage)	4
This is the Paranormal Channel	01/11/2008	Paranormal Channel	Generally Accepted Standards	1
Today	20/11/2008	BBC Radio 4	Religious Offence	1
Tom & Jerry	01/11/2008	CNToo	Violence	1
Tony Horne in the Morning	13/11/2008	Metro Radio	Generally Accepted Standards	1
Unbreakable	27/10/2008	Five	Generally Accepted Standards	1
Unbreakable	27/10/2008	Five	Animal Welfare	1
Nation Radio	01/11/2008	Nation Radio	Generally Accepted Standards	1
Mercury FM	11/11/2008	Mercury FM	Generally Accepted Standards	1
Up All Night	07/11/2008	BBC Radio 5 Live	Generally Accepted Standards	1
Vanessa Feltz	01/11/2008	BBC London 94.9	Sex/Nudity	1

Walter's War	09/11/2008	BBC4	Generally Accepted Standards	1
Weakest Link	19/11/2008	BBC1	Generally Accepted Standards	1
Weakest Link	30/10/2008	BBC1	Generally Accepted Standards	5
Wood You Believe It	29/10/2008	ITV1 (Yorkshire)	Generally Accepted Standards	1
World News Europe	12/09/2008	CNN	Generally Accepted Standards	1