

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

In Breach

UTV Live Tonight

UTV, 21 and 27 May 2009, 22:40

Introduction

Elections to the European Parliament were held in Northern Ireland on 4 June 2009. As part of its election coverage, UTV broadcast two reports featuring the candidates standing in the election. The first report was broadcast on 21 May 2009 and the second on 27 May 2009. The first report was introduced as follows:

"seven parties are contesting this election, and tonight we are going to look at three of them."

Three of the candidates were then profiled. The report ended with the following:

"...that was a look at three of our European candidates. Next week we'll look at the issues concerning the other four."

The following week the remaining candidates were profiled. A viewer complained that the report of 27 May 2009 did not name all of the candidates who were standing for election. Ofcom asked UTV to comment on the reports in light of Rule 6.13 of the Code which states that when broadcasters transmit constituency (or electoral area) reports focusing on prospective candidates then all the parties standing in that area constituency should be listed in sound and/or vision¹.

Response

UTV said it took its responsibility to its audience seriously. In this instance it said that its output had inadvertently breached Rule 6.13 of the Code and it apologised. The broadcaster went on to argue that the reports themselves thoroughly reviewed some of the key election policies of all the parties taking part in the European elections. It said that the purpose of Rule 6.13 is to ensure that the public is aware that there may be other parties not mentioned in reports that will feature on the ballot paper. In this respect it argued that even the most casual viewer of UTV's election coverage would have been aware of all of the parties and candidates. Finally, UTV was keen to point out that as a result of the complaint it had re-briefed its editorial team about its obligations under the Code.

Decision

The rules in Section 6 of the Code regarding the conduct of elections come from Ofcom's statutory duties as outlined in the Representation of the People Act 1983 (as amended) as well as the Communications Act 2003.

The requirement to broadcast the name of all parties standing in an electoral area, in a constituency report, is to ensure the electorate is aware of all the prospective candidates who are standing for election – irrespective of which candidate is the

¹ In the case of an independent candidate who is not standing on a party list, his or her name should also be included.

subject of the report. In both of these reports, UTV failed to list either in sound and/or vision as required, all of the parties with a candidate standing in the elections. This resulted in a breach of the Rule.

Ofcom welcomes UTV's acknowledgment of a breach of Rule 6.13 in respect of these two electoral reports and the steps that have been taken to remind the editorial team of its responsibilities under the Code.

We also recognise that during the two reports as a whole, coverage was given to all of the relevant parties. In Ofcom's view this reduced the potential for unfairness to any individual party arising from the broadcaster's failure to list all of the parties in the reports.

Breach of Rule 6.13

In Breach

The Land Cries Out for the Blood that Was Shed

Revelation TV, 23 June 2009, 15:30

Introduction

Revelation TV is a UK-based Christian channel that features a range of programmes with a religious theme. Ofcom received a complaint about *The Land Cries Out for the Blood that was Shed* ("The Land Cries Out"), objecting to the programme's stance against abortion, and the showing of graphic images of aborted foetuses. The complainant was concerned that the programme had been broadcast in the afternoon and prior to a children's programme called *R Kids*.

The programme was a documentary film, which consisted of commentary and interviews setting out facts, figures and opinions about abortion. All the interviewees (drawn mainly from anti-abortion organisations in the UK, the US and Israel) put forward arguments and opinions against abortion, with the views expressed being predominantly delivered from a Christian and Jewish perspective. During the programme, a range of images (collectively "the Images") were shown, which depicted, in photographic form, aborted foetuses or the process of abortion.

In summary, the Images consisted of the following:

- firstly, montages ("the Montages") of still photographs of late-stage aborted foetuses shown three times during the programme lasting in excess of thirty seconds in total¹; and
- second, a number of times, brief but discernable "flash frames"² (the "Flash-Frames") of photographs of late-stage aborted foetuses, shown intermittently throughout the programme.

The programme also touched on: the legal situation pertaining to abortion in the UK, the US and Israel; and the United Nations policy concerning abortion. In addition, a number of interviewees gave their perspectives on the legal situation surrounding abortion in the above countries, and how it was being dealt with at the UN.

Ofcom asked Revelation TV for its comments under the following Rules of the Code:

- Rule 1.3: Children must be protected by appropriate scheduling;
- Rule 2.1: Generally accepted standards must be applied to the contents of television programmes;
- Rule 2.3: Offensive material must be justified by the context and appropriate information should also be broadcast; and
- Rule 5.5: On matters of political controversy or relating to current public policy due impartiality must be preserved.

Response

¹ During the programme, the Montages were shown for separate periods of: approximately 12 seconds; approximately 19 seconds; and approximately 3 seconds.

² These "flash frames" were brief shots of aborted foetuses which lasted less than a second.

Revelation TV said that *The Land Cries Out* was a film that had been produced by the Hatikvah Film Trust ("Hatikvah"), and that the broadcaster intended, on 10 June 2009, to show excerpts of the film during an interview with the Chief Executive Officer of Hatikvah ("the 10 June Interview"). In preparing for the 10 June Interview, the broadcaster said that it realised that: the copy of *The Land Cries Out* supplied by Hatikvah was faulty, in that it abruptly stopped after 41 minutes; and that some of the images in the film were, according to the broadcaster: "too graphic for showing on TV". Revelation TV said that as the 10 June Interview "was only showing excerpts from the film, it was decided to go ahead using the faulty copy of the film". The broadcaster said that during the 10 June Interview: "an opportunity was given for viewers to respond and interact on the subject matter by email, texting and live phone calls to the studio".

Following the 10 June Interview, the broadcaster said that instructions had been given to staff "that the tape supplied by [Hatikvah] was not to be shown until a corrected version of the film arrived and some of the graphics had been toned down". Instructions were also given that "the corrected film could only be played after the 9.00 pm watershed". The broadcaster said that "Regrettably, those instructions were not followed".

Specifically, Revelation TV said that the tape of *The Land Cries Out* "regrettably... was put into the schedule for playing on the afternoon of the 23 June at 3.30 pm". This was despite the Head of Scheduling making "a note that we were not to schedule" this particular film. The broadcaster said that after it realised that the film was broadcast on 23 June 2009 "the programme was pulled from the schedule and has not been broadcast again". The broadcaster said the programme has been destroyed from its 'hard drive' so that it cannot be repeated in any form.

Concerning specific Rules of the Code, the broadcaster made a number of points:

Rule 1.3: Children must be protected by appropriate scheduling

Concerning Rule 1.3, Revelation TV said there was a fifteen minute gap between the end of *The Land Cries Out* and the children's programme *R Kids*.

Rule 2.1 and 2.3: Generally accepted standards and Offensive material must be justified by the context

Concerning Rules 2.1 and 2.3, Revelation TV said that it was "situated on the Sky platform in the Christian 'genre'" and that viewers to such genre of stations will expect there to be a Christian basis to the programmes. In addition, the broadcaster said what constitutes harmful and/or offensive material is a "subjective matter" and that "Many programmes shown on other TV channels would be considered by Revelation TV viewers to contain harmful and/or offensive material. But they realise that they have to accept those images and words because they are acceptable to others. What is acceptable to one person may not be acceptable to another".

The broadcaster said that whilst it recognised that abortion is legal in the UK, Revelation TV, in common with "the majority of traditional Christians" and most viewers who watch Revelation TV, believe that "in God's eyes, abortion is murder and should not happen". According to the broadcaster: "The film's images were there to illustrate the views being expressed in the film, and not to cause shock or offence". In summary, the broadcaster considered that *The Land Cries Out* had complied with Rules 2.1 and 2.3 because it: "dealt with a subject that is considered important by

Christians; it presented the traditional Christian view; and it dealt with it from a moral and biblical perspective".

Rule 5.5: Due impartiality on matters of political controversy

Concerning Rule 5.5, the broadcaster said that it "does not consider abortion to be a matter of political or industrial controversy, as defined in Rule 5.5. Rather it believes it is a moral issue". Revelation TV considered that: all the main political parties contain those who support, and those who oppose, what can be stated as being the Christian view on this matter; that the channel, as a Christian broadcaster "has an obligation to present the issues concerning abortion"; and *The Land Cries Out* had made clear that abortion is legal in the UK, US and Israel.

In conclusion, the broadcaster said that it gave ample opportunity to debate issues such as abortion through its live interactive programming. In particular, it said that on the day of the broadcast of *The Land Cries Out* "there were two live, one and a half hour programmes, where viewers were able to discuss the subjects of their choosing by email texting, and live phone call to the studio".

Decision

Ofcom recognises that broadcasters cover issues in their programming that raise strong opinions. This will include such matters as abortion that is widely perceived to have a moral dimension, about which advocates of different religions will have strong views. It is therefore not surprising that broadcasters aimed at a religious audience, should wish to cover the issue of abortion. Ofcom recognises that, in so doing, such broadcasters are exercising their right to freedom of expression, which includes the freedom to hold opinions and receive and impart information and ideas without interference by public authority³. Broadcasters must be permitted to deal with controversial issues and images so long as the material complies with the requirements of the Code such as scheduling, the application of generally accepted standards and due impartiality.

Therefore, broadcasters should not be prohibited from transmitting potentially offensive material or controversial subject matter which may elicit strong divergent views amongst the audience. Further, it should be noted that the manner in which a subject is covered is an editorial decision for the broadcaster.

In this case, a Christian broadcaster transmitted a film on the subject of abortion from a strongly anti-abortion perspective. Given the known position of many sections of the Christian community against abortion, Ofcom acknowledges that it would be unsurprising if such a programme (i.e. one showing an anti-abortion perspective) might be broadcast on a channel of this kind.

However, Ofcom had two broad areas of concern about the programme:

Firstly, Ofcom noted that collectively the Images consisted of depictions in photographic form of late-stage aborted foetuses. Ofcom therefore had to consider whether by broadcasting the Images, Revelation TV had failed to ensure that people under eighteen were protected, and generally accepted standards were maintained.

Second, given that the programme was touching on and discussing Governmental and international policy on abortion, Ofcom had to consider whether Section Five of

³ As enshrined in Article 10 of the European Convention on Human Rights ("the Convention").

the Code (concerning due impartiality) was engaged, and if so, whether due impartiality was maintained on a matter of political or industrial controversy or matter relating to current public policy.

The Images

Ofcom considered the Images collectively as being highly problematic, with real potential to cause harm and offence, including harm to any children watching.

Firstly, the Montages consisted of extremely graphic still photographs showing full images of different late stage aborted foetuses outside of the womb. These images included severed body parts including heads and limbs. Given the very explicit nature of these photographs, and the length of time they were visible to viewers, Ofcom considered the Montages had the greatest potential to cause harm and offence, including harm to any children watching. There were similar concerns about the graphic nature of the Flash Frames which included some of the same stills in the Montages.

Rule 1.3: Children must be protected by appropriate scheduling

This programme was broadcast well before the 9pm Watershed, and in fact, at a time when children would be arriving home from school. It also was broadcast only a short time before one of Revelation TV's programmes aimed at children (*R Kids*). Ofcom therefore considered that there was a material chance that some children might be in the audience for *The Land Cries Out*. Ofcom considered that the strength and highly graphic nature of the Images were totally unacceptable to be broadcast at a time when children might have been watching. The highly graphic nature of the Montages in particular, would have had, in Ofcom's opinion, the likely potential to have caused distress and upset amongst any child viewers exposed to such material. As a consequence, Ofcom considered the content to be in breach of Rule 1.3.

Rule 2.1 and 2.3: Generally accepted standards and Offensive material must be justified by the context

In relation to generally accepted standards, under the Code, there is no absolute prohibition on offensive content being broadcast. Ofcom recognises that a broadcaster may transmit content, including images, which might have the potential to cause offence, so long it is justified by the context. Ofcom recognised that this programme was shown on a Christian channel, where a programme taking a position that was strongly against the act of abortion, would not, in general, have gone beyond the likely expectation of the audience for this channel. Ofcom also noted that Revelation TV is classified by Ofcom as a "specialist religious" broadcaster. As Ofcom's Guidance Notes on Section 4 of the Code states⁴, broadcasters: "who wish to label their output more clearly as religious, [and/or] who wish to proclaim or expound their doctrines and beliefs at the lowest risk of giving offence...usually apply for a specialist religious licence".

Ofcom noted Revelation TV's statements about its moral position on abortion and further the channel's assertion that many of its viewers find material broadcast on other channels harmful and/or offensive. However, Ofcom's duty is to ensure that generally accepted standards are applied across all of its licensees. In this case, Ofcom considered that: audience expectations; the broadcaster's perspective on the subject of abortion; and the specialist religious determination of the channel could

⁴ See <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/guidance4.pdf>

not act in mitigation for the broadcast of pictures of aborted foetuses and the process of abortion, especially in the case of the Montages broadcast at this time. In applying generally accepted standards broadcasters must understand that the audience expect that the most potentially offensive material would be broadcast much later in the schedule and certainly not before the watershed. Further, and importantly, the broadcaster failed to give any information to the audience about the contents of this programme.

Therefore, Ofcom considered that a combination of the Images, and in particular, the Montages, could not be justified by the context given the time of broadcast and the failure to provide adequate information, and were, therefore, in breach of Rules 2.1 and 2.3.

Rule 5.5: Due impartiality on matters of political controversy

Outside of news programmes, under Section Five of the Code, broadcasters must ensure that they preserve “due impartiality” on matters relating to political or industrial controversy or matters relating to current public policy. However, just because a broadcaster is dealing with a subject, such as abortion, which elicits strong opinions and reactions amongst people, does not automatically mean that Section Five is engaged. In addition, when interpreting due impartiality, Ofcom must take into account the requirements of the Convention, which includes the broadcaster’s and viewers’ right to freedom of expression, which includes the right to hold opinions and to receive and impart information and ideas without interference by public authority.

However, the broadcaster’s right to freedom of expression is not absolute and broadcasters must always comply with the Code. Ofcom therefore recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured.

In assessing whether due impartiality has been applied, the term “due” is important. Under the Code, it means adequate or appropriate to the subject and nature of the programme. Therefore, “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

During the programme, Ofcom noted there were various references to the law on abortion in the UK, the US and Israel. In this case, Ofcom considered that there were a number of examples in the programme of statements which discussed the policy on, and desirability of abortion. In these examples, strong opinions were expressed about the legal situation concerning abortion in the UK, the US, and Israel, and at the level of the UN. In particular, the programme commentary and several interviewees variously: gave interpretations of what the practical effects of legalised abortion are; described what they saw as the defects of the legislation pertaining to abortion in different jurisdictions; and described their efforts to lobby to change legislation or judicial decisions relating to abortion. In this way, Ofcom therefore considered that the programme was dealing with a matter of political or industrial controversy or a matter relating to current public policy.

For example, the following statements within the programme:

The UK

Andrea Minichiello Williams (Director, Christian Legal Centre) said the following at different times:

"And what we found was this: because there was permissive legislation, legislation which actually allowed for abortion, it then became essentially abortion on demand despite these huge restrictions.⁵

"And what we did in legislation is that we crossed a clear moral boundary...that very crossing of the boundary has meant that we are taking lives in their thousands but it's in our law."

David M. Noakes (former lawyer) said:

"By legalising abortion in 1967, we turned abortion from an individual sin into a national sin and the whole nation is implicated. Therefore the whole nation is now responsible for the shedding of the innocent blood of millions of unborn children."

The programme commentary stated:

"In the United Kingdom, the legislation of abortion was intended to protect women from the dire consequences that often result from back-yard operations. However, like other countries, official statistics show there has been a massive escalation in the number of abortions."

Peter Smith (SPUC Evangelicals and the International Right to Life Federation) said:

"I believe the legislation of abortion in 1967 was probably one of the most disastrous times for the United Kingdom...It has affected the whole fabric of British society."

The US

Allan Parker (the Justice Foundation) said:

"In the year 2000, we began to have the opportunity to represent Norma McCorvey, who was 'Roe' of Roe v Wade, the main legal case that brought abortion to America in 1973. And we also began to represent Sandra Cano, who was 'Doe' of Doe v Bolton, which was a companion case to Roe v Wade. And together in January 1973, those two cases were decided by the United States Supreme Court and legalised abortion on demand up to the point of birth, including partial birth abortion."

William Koenig (the Watch Foundation) said:

"Abortion's violence. It's violence inside the mother's womb...And from the time of Roe versus Wade, and from the time that abortion was allowed in America, we have seen violence increase exponentially from that point of Roe versus Wade. I believe there is a direct connection."

⁵ The UK 1967 Abortion Act allows abortions under exceptional circumstances e.g. if the mother's life is at risk.

Israel

The programme commentary said:

"There is a small band of pro-life young Israelis who are demonstrating against what they see as a culture of death. Among them is a nineteen-year old Messianic Jew called Joel Jelski."

This was followed by Joel Jelski (Bound4life), saying:

"We do what we call 'sieges': It's pretty much where we stand in front of abortion clinics, the Parliament - the Knesset – and we pray... We believe that prayer is what is going to change things in this nation."

Later in the programme, concerning the policy, reported in the programme, of the Israeli army paying for female soldiers to have up to two abortions, Joel Jelski said:

"I believe that God despises abortion. And the very army that was created to protect Israel is destroying it. So many abortions are coming through the army and so many lives are being destroyed. Immorality is rampant in the army because it's supported by those laws that say: 'you can have an abortion if you are immoral, we don't care'. And it's destroying the very thing, the idea it was created for: to protect lives, and to protect Israel, the Jewish Nation."

Joel Jelski also said, indicating one of the walls built to divide communities in Israel:

"Well, you only have to look behind me to the wall to see the demographic problems that have been caused by abortion."

United Nations

The programme commentary said:

"Meanwhile, the United Nations has an agenda for globalising abortion on demand."

This was followed by Peter Smith (SPUC Evangelicals and the International Right to Life Federation), saying:

"They're trying to make abortion a universal human right and most of the countries of the world don't have legalised abortion. They don't think killing their children is a really good thing. So there's a lot of resistance to it. But Britain's leading the pack there, especially with the EU, and trying to push it through, along with a lot of other depraved stuff. But the compliance committees for all the different conventions have been taken over by people who are totally pro-abortion and have invented this universal right to abortion. And they have been pressurising about sixty nations to legalise abortion. And a couple have but most of them have held out. But the UN is doing a lot of dreadful things in this regard."

Ofcom considered that the inclusion of such statements do not in themselves cause an issue under the Code, as long as the broadcaster ensured that due impartiality was maintained. However, having reviewed the programme, Ofcom noted that *The Land Cries Out* contained no opinions or viewpoints that could be portrayed as being from a pro-abortion stance. Further, Ofcom noted that Revelation TV could not point to any specific examples as to how due impartiality had been maintained in editorially linked programmes, dealing with the issue of abortion, within an appropriate period

and aimed at a like audience. Given the above, Ofcom therefore considered the programme to be in breach of Rule 5.5.

Conclusion

Ofcom considered these breaches of the Code to be serious. This was especially the case given past regulatory action against Revelation TV⁶. Broadcasters have the right to transmit a range of material, some of which might be both offensive to some as well as highly emotive or controversial. However, in doing so, broadcasters must comply with the Code at all times. In particular, all broadcasters must ensure that: material is appropriately scheduled and labelled; offensive content is justified by the context; and due impartiality is maintained on matters of political and industrial controversy and matters relating to current public policy.

Breach of Rules 1.3, 2.1, 2.3 and 5.5

⁶ See Bulletin 85, *World in Focus* and *R Mornings*, Breach of Rules 2.3 and 5.5; and Bulletin 120, *Vision for Israel*, Breach of Rule 4.1.

In Breach

Sky HD cross-promotions featuring the Ashes series

Various Sky channels, 27 May to 27 June 2009, various times

Introduction

Under Ofcom's rules television broadcasters are able to place items in their schedules promoting their own 'broadcasting-related services' without such promotions being subject to the limits on maximum permissible advertising time. These items are known as cross-promotions and are for most purposes regulated under a specific Ofcom Cross-promotion Code ("the Cross-promotion Code") and, in respect of their content, under Ofcom's Broadcasting Code.

Since cross-promotions essentially seek to promote broadcasting-related services, they may contain claims about those services. Therefore, where relevant, cross-promotions have to comply with the rules in the BCAP Television Advertising Standards Code ("the TV Advertising Code")¹. In particular Ofcom has publicly stated that this will be the case where, for instance the issue of misleading material arises.

Between 27 May and 27 June 2009, Sky ran a cross-promotion² on many of its channels for its sports service available in high definition (HD). The cross-promotion encouraged viewers to subscribe to the service to watch the then forthcoming Ashes cricket series, which was to begin on 8 July 2009 and finish on 24 August 2009.

The cross-promotion was 30 seconds long. Former England captains Sir Ian Botham and Nasser Hussain were shown talking about the sporting importance of the Ashes, the high quality of Sky's cricket coverage and how the sharpness of HD pictures enhances that coverage. The first 20 seconds showed cricket being played or Botham or Hussain speaking; the final 10 seconds was a sequence showing the Sky Sports HD channel logo, a Sky logo and the line "*believe in better*" against a black background.

During the final sequence a voice-over originally said: "...*For the first time ever watch the entire Ashes series live in high definition with Sky Sports HD...*" (this was subsequently edited – see Response section below).

Six viewers complained to Ofcom that when they had contacted Sky after seeing the cross-promotion they had been told that the HD service could not be provided in time for them to watch the Ashes series. The complainants therefore considered the cross-promotion to be misleading.

Ofcom sought Sky's comments on how the cross-promotion complied with the following rules of the TV Advertising Code:

¹ BCAP is the Broadcast Committee of Advertising Practice. BCAP is the code administering arm of the Advertising Standards Authority (ASA). Ofcom has contracted out its advertising control function to the ASA. Ofcom has put on record that it will apply the TV Advertising Code to cross-promotions where appropriate – see paragraphs 7.27 and 7.28 of the Ofcom Regulatory Statement *Review of the cross-promotion rules*, available at: <http://www.ofcom.org.uk/consult/condocs/promotion/statement/statement.pdf>.

² An edited version of the cross-promotion was aired from 6 June to 27 June – see further below.

Rule 5.1.1: “No...[cross promotion]... may directly or by implication mislead about any material fact or characteristic of a product or service”.

Rule 5.1.2: “No ...[cross promotion]... may mislead by omission about any material fact or characteristic of a product or service...”.

In particular Ofcom drew the licensee’s attention to note (2) of the notes that accompany these rules and which makes clear that availability is a relevant consideration for misleadingness:

“(2) [The content]...is likely to be considered misleading if, for example, it contains a false statement, description, illustration or claim about a material fact or characteristic. Material characteristics include price, availability and performance. Any ambiguity which might give a misleading impression must be avoided.”

(Extract from notes to Rules 5.1.1 and 5.1.2)

Response

Sky explained that consumers who wish to purchase its HD service can be divided into three groups:

- i. existing Sky customers who already have a Sky+ HD box [a type of Sky set-top box necessary for displaying HD channels] but have not subscribed to the HD service;
- ii. existing Sky customers who have a non-HD capable Sky box; and
- iii. consumers who do not already subscribe to Sky.

Those in group (i) can have HD services enabled in a matter of hours, Sky said, and those in group (iii) would have had an installation within seven days.

However, the demand from consumers in group (ii) – existing Sky customers who would need an upgraded box – was sufficiently great that Sky had introduced a pre-registration process. Under this process Sky collected customers’ information and contacted them periodically to let them know how long Sky estimated it would be before an order could be placed for their HD box. Once an installer in a customer’s area was available Sky invited the customer to complete and pay for their Sky+ HD order.

How long a customer would have to wait within the pre-registration scheme depended on a number of factors, including the customer’s location, engineers’ availability and the demand for HD boxes in the customer’s area.

Sky said that when it had become aware that some customers joining the pre-registration process may not be installed in time for the start of the Ashes, it had added superimposed text to the cross-promotion saying: *“Pre-registration required and installation may happen after the Ashes has started.”* This text was added on 6 June 2009 and ran until 27 June 2009, when the campaign finished.

At the same time the text was added Sky also altered the cross-promotion’s voice-over so that “entire” was omitted from the original wording: *“...For the first time ever watch the entire Ashes series live in high definition with Sky Sports HD...”*

There were therefore two versions of the cross-promotion. The earlier one ran from 27 May to 6 June 2009 without the warning text and included the word “entire” [Ashes series] in voice-over. The later version ran from 6 June to 27 June 2009 with the additional text and with the word “entire” removed.

In addition, Sky commented that it had invested substantially in extra engineers before January 2009 when an HD promotion was introduced and that, subsequently, resources had been re-directed to areas with greater demand. Because of this, Sky said, the waiting times for many customers in the pre-registration process dropped significantly in early June so that customers who were initially advised of relatively long waiting times in May were actually installed much sooner. Therefore, according to Sky, it was possible that a number of complainants would have received installations in time for the Ashes series.

Decision

In light of the problems experienced by some customers in getting an HD sports service in time for some or all of the Ashes, Ofcom did not consider either of the versions of the cross-promotion to be acceptable. Figures requested by Ofcom from Sky showed that the number of customers who could not be installed in time for the start of the Ashes or in some cases in time for any of the series was, in Ofcom’s view, a small but importantly significant minority.

This minority was confined to existing Sky customers who did not have an HD capable set-top box, i.e. to those in group ii) as explained in the Response section above.

The cross-promotion clearly stated that viewers would be able “*For the first time ever watch the [entire] Ashes series live in high definition with Sky Sports HD...*” Ofcom judged Sky’s inability to fulfil in time all the demand created to be *prima facie* evidence of both versions of the cross-promotion being misleading.

We did not consider the changes made to the promotion (the removal of the word “entire” and the addition of a ‘disclaimer’) to have overcome the problem for the later part of the campaign. Other than the end logos, all of the images used in the cross-promotions concerned the Ashes coverage and emphasised the benefits of watching the matches in high definition. Similarly, virtually all of the audio used in both promotions, whether spoken to camera or presented in voice-over, referred to the Ashes coverage. Because of this, the effects of adding the text and removing the word “entire” were not, in Ofcom’s view, sufficient to overcome the overall impression that HD coverage was available in time for the Ashes to anyone who requested it.

In respect of the ‘disclaimer’, Ofcom took account of the ASA’s published guidance³ that:

“The principal offer and any important qualifications to it should not normally appear only in the form of superimposed text...

Superimposed text may be used to expand or clarify an offer or to make minor qualifications. It may also be used to resolve minor ambiguities. Superimposed text

³ Available at: http://www.cap.org.uk/NR/rdonlyres/566E8E1B-D3C7-45DB-9E6D-84A9478FF1B1/0/BCAP_Advertising_Guidance_Notes.pdf

that flatly contradicts a claim made elsewhere in the advertisement is not acceptable."

(Paragraphs 2a and b of Advertising Guidance Note No. 1 of the BCAP Advertising Guidance Notes)

Ofcom therefore concluded that both versions of the cross-promotion were in breach of the TV Advertising Code.

Breaches of Rules 5.1.1 and 5.1.2 of the BCAP Television Advertising Standards Code

In Breach

Costa Coffee sponsorship of competitions in breakfast shows *Kiss 101, Key 103, Forth One, 18 to 27 March 2009, various times*

Introduction

Costa Coffee sponsored competitions in breakfast shows on three Bauer-owned radio stations (Kiss 101, Key 103, Forth One). Sponsor credits used in trails for the competitions and in the competitions themselves contained the claim:

"7 out of 10 coffee lovers prefer Costa coffee".

(The Code allows legitimate advertising claims in sponsor credits on radio but not in those on television.)

Starbucks complained to Ofcom that the claim was unqualified and could not be supported. It asserted that the meaning of the claim could be understood as a preference claim against all coffee drinks or even more widely as a claim against all aspects of its business, so including such things as "store ambiance". Starbucks therefore objected that the claim could not be substantiated in respect of coffee preference or of other features of Costa's business.

Starbucks said that the tasting trial commissioned by Costa Coffee (which was the source of the claim and detailed on Costa Coffee's website) had been limited to preferences expressed about cappuccino coffee alone, a drink that represents just a small proportion of coffee sales. The trial examined no other aspects of coffee retailing (whether the preference for other types of coffee or for stores themselves).

Starbucks further objected that, whether interpreted as a preference claim for coffee drinks or more widely, the claim was also unqualified as who the comparison was made against. It considered that such a wide claim (*"7 out of 10 coffee lovers prefer Costa coffee"*) would need to be justified against all other outlets, whether chains or independent traders, yet the taste test had tested cappuccino drinks from Costa Coffee against only two competitors, one of them Starbucks.

Rule 9.3 of the Code states:

"Sponsorship on radio and television must comply with both the advertising content and scheduling rules that apply to that medium".

Therefore advertising claims made in radio sponsor credits must comply with the BCAP Radio Advertising Standards Code¹ ("the Radio Advertising Code").

In this case the relevant rules are those that address misleading claims – Section Two, Rule 3 of the Radio Advertising Code – and fair comparisons – Section Two, Rule 6. These rules' requirements include a provision that:

In particular:

¹ BCAP is the Broadcast Committee of Advertising Practice. BCAP is the code administrating arm of the Advertising Standards Authority (ASA). Ofcom has contracted out its advertising control function to the ASA.

- a) [Sponsorship credits]... must not contain any descriptions, claims or other material which might, directly or by implication, mislead about the product or service advertised or about its suitability for the purpose recommended.
- b) [Sponsorship credits]...must clarify any important limitations or qualifications, without which a misleading impression of a product or service might be given;
- c) Before accepting ...[sponsorship credits], Licensees must be satisfied that all descriptions and claims have been adequately substantiated by the advertiser. A half-truth, or a statement which inflates the truth, or which is literally true but deceptive when taken out of context, may be misleading for these purposes. Ambiguity in the precise wording of advertisements and in the use of sound effects must be avoided.

(Extract from Section Two, Rule 3)

And:

[Sponsorship credits]...containing comparisons with other advertisers, or other products, are permissible in the interest of vigorous competition and public information provided that:

- a) the principles of fair competition are respected and the comparisons used are not likely to mislead listeners about either product;
- b) points of comparison are based on fairly selected facts which can be substantiated;
- c) comparisons chosen do not give the advertiser an artificial advantage over his competitor;

(Extract from Section Two, Rule 6)

Ofcom sought Bauer's comments on how the "*7 out of 10 coffee lovers prefer Costa coffee*" claim complied with these rules.

Response

In its response, which included a submission from Costa Coffee, Bauer told us that the "*7 out of 10...*" claim was included in sponsor credits in pre-recorded trails on the three stations concerned, but not in credits in trails that had been read out live. The claim was also made in the sponsor credits included in 'set-ups' (introductions) to the competitions.

Bauer explained that the scripts used were cleared in-house (i.e. not sent to the central radio advertising clearance body²) and substantiation assembled. The licensee stated that it had studied the supporting research provided to it by the sponsor and reassured itself that the sample size of the research was satisfactory and that it was a robust survey, and that the company conducting the survey was experienced in this form of test. (The test survey was commissioned by Costa Coffee

² This body is the Radio Advertising Clearance Centre (RACC). While certain categories of advertising require mandatory clearance by RACC before transmission, that condition did not apply in this case.

from a research firm, Tangible. It was conducted in three locations in the UK, the tests scored preferences was for only cappuccino drinks from Costa against only Starbucks and one other. The sample size of self-defined ‘coffee lovers’ within the tests was 174.)

Bauer said (as did Costa in its submission via the licensee) that advice had been sought on the non-broadcast advertising from the ASA’s pre-publication advisory unit.

Within the limited time available for the sponsor credits, the licensee said, it did not have the room to include supporting information to qualify the claim. But throughout the campaign the licensees’ websites carried further information on the promotion and included full details of the research carried out by the sponsor. Although none of the trials or competition sponsor credits referred listeners online for more information, Bauer told us, all of its stations’ websites are continually promoted on-air as the destination to find out more information about promotions and other editorial elements.

Bauer therefore believed the sponsorship campaign to have been compliant with the Code.

Decision

The claim in the sponsorship credit that “*7 out of 10 coffee lovers prefer Costa coffee*” was not qualified in any way (though important qualifications and details of the ‘taste test’ existed on Costa Coffee’s website).

Costa’s tests were plainly based on a subjective and limited assessment by the test subjects of one coffee drink. (See Response section above for a description of the test.) Given these limitations of the trial, we do not consider that an unqualified claim such as “*7 out of 10...prefer Costa coffee*” could be made without appropriate qualification to the claim itself and accompanying explanatory detail.

Where claims require such qualification it is not sufficient to rely on these being placed on websites or in other places away from the broadcast sponsor credit: the claim itself must be qualified.

Ofcom therefore judged the claim to be unsubstantiated and so to have breached Rule 9.3 of the Code, with reference to Section Two, Rule 3 and Section Two, Rule 6 of the Radio Advertising Code.

Breach of Rule 9.3

Breach of Section Two, Rule 3 and Section Two, Rule 6 of the BCAP Radio Advertising Standards Code

In Breach

XXX Channel AKA - 'Playtime Two', Giggs Featuring Kyze

Channel AKA, 25 June 2009, 22:45 approximately

Introduction

Channel AKA is an urban music channel whose licence is held by Mushroom TV Limited ("Mushroom TV"). The channel is available without any access restrictions. *XXX Channel AKA* is part of the channel's late night programming, broadcast between 22:00 and 05:30. The programme features music videos of a more adult nature containing stronger images.

A viewer complained about the broadcast of the music video 'Playtime Two' by Giggs Featuring Kyze, which featured material of a sexual nature. The complainant considered the sexual material broadcast in this video too strong to be available at approximately 22:45 and on this channel. Ofcom noted that the video included: frequent shots of naked breasts; women wearing revealing thongs and pulling at their underwear to expose genital detail; women touching their breasts and genital area in a sexual manner; women squirting water and licking whipped cream off each other's naked breasts; frequent shots between women's legs (while wearing thongs); frequent close up shots of female buttocks (while wearing thongs); a brief shot of a woman pulling her buttocks apart to show anal detail; and a man simulating sexual stimulation between a woman's legs.

Ofcom asked Mushroom TV for its comments in relation to Rules 2.1 (generally accepted standards) and 2.3 (material which may cause offence must be justified by the context).

Response

The broadcaster said that it did not consider the content of the music video exceed generally accepted standards. It stated that *XXX Channel AKA* is broadcast post-watershed, between 22:00 and 05.30, and includes adult-oriented music videos primarily from the urban music genre. It highlighted that the music video complained of was broadcast at 22:45. Mushroom TV continued that the programme title *XXX Channel AKA* was clearly labelled both onscreen during the broadcast and on the Electronic Programme Guide. It also said that the channel is aimed at an adult audience and has low child audience figures.

However, in response to the complaint, Mushroom TV stated that it has now withdrawn the video broadcast on 25 June 2009 from the late-night playlist and will replace it with an edited version.

Decision

Rule 2.3 makes clear that "in applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context." "Context" in turn includes a variety of different potential factors such as the editorial content of the programme, the service on which the material is broadcast, the time of broadcast and the effect of the material on viewers who may come across it unawares. In this case Ofcom considered that, given the nature and strength of the sexual imagery broadcast in this particular music video, it had the clear potential to

cause offence. Therefore the broadcaster was required to ensure that the material was justified by the context in order to provide adequate protection for viewers and compliance with the Code.

Ofcom appreciates that music videos are an artistic and creative medium, which can and do sometimes contain challenging content which some may find offensive. It recognises that the music video in this case was transmitted after the watershed during Channel AKA's late night programming, which is aimed at an adult audience and features material of a more adult nature. In addition Ofcom recognises that the programme title (*XXX Channel AKA*) would have provided some indication to viewers regarding the type of content included in the programme. Given these factors, Ofcom considered that there would have been a certain amount of audience expectation for the broadcast of more challenging material during this particular programme. In taking its decision Ofcom also had regard to the broadcaster's and the audience's right to freedom of expression under Article 10 of the European Convention on Human Rights.

Ofcom was concerned by the strong sexual imagery included in the 'Playtime Two' video and in particular the time of broadcast. This video contained frequent shots of naked breasts; women touching their breasts and genital area in a sexual manner; women licking whipped cream off each other's breasts; and a man simulating sexual stimulation on a woman. In Ofcom's view, given the strength of the material and the time of broadcast Ofcom did not consider that the broadcaster had applied generally accepted standards. In Ofcom's opinion, despite the title of the programme and the later evening scheduling, Ofcom considered that this particular material would have exceeded audience expectations for a music programme of this nature broadcast at 22:45 without any access restrictions on a music channel.

While taking into account the name of the programme and that it does include music videos of a more adult nature, it was Ofcom's view that, on balance, the broadcaster did not apply generally accepted standards to this content and the material was not justified by the context. Therefore the material breached Rules 2.1 and 2.3 of the Code.

Breach of Rules 2.1 and 2.3

In Breach

UK Tings

Channel AKA, 13 June 2009, 07:00

Introduction

Channel AKA is an urban music channel whose licence is held by Mushroom TV Limited (“Mushroom TV”). Ofcom received 12 complaints from viewers regarding the broadcast of various music videos from 07:00 on a Saturday morning, during the programme *UK Tings*. The complainants said the videos contained material of a sexual nature, including sexual language, partial nudity, and women touching each other’s breasts. The complainants considered the videos to be inappropriate for broadcast at this time.

Response

The broadcaster said it was unable to provide Ofcom with a recording of the material because it experienced a “faulty physical connection”. It did state, however, that it was likely that such material was broadcast at the times noted by the complainants. Channel AKA explained that the videos were scheduled in error after a temporary late night shut-down in transmission took place while new equipment was being installed.

The broadcaster said the problem has now been rectified and apologised for any offence caused. It said that it has broadcast a series of on-air apologies and written to all complainants who had contacted it directly to express its regret.

Decision

In the absence of a recording we were unable to consider the complaints made in this case. It is a condition of Channel AKA’s licence that recordings of output are retained for 60 days after transmission, and that they must provide Ofcom with any such material forthwith upon request. Failure to supply this recording is a serious and significant breach of the broadcaster’s licence.

Ofcom has recently published a breach of Licence Condition 11 by Mushroom TV¹ regarding complaints made about similar content scheduled inappropriately on Channel AKA. Ofcom is therefore concerned that technical faults have resulted in the broadcaster failing to provide recordings on two recent occasions and that, by its own admission, inappropriate material was probably broadcast on this channel on 13 June 2009. Ofcom is concerned by the recent compliance record of Mushroom TV, and in particular Channel AKA, as regards failing to comply with Licence Condition 11 of its licence and will discuss this issue at a meeting with the licensee to review its compliance arrangements².

¹ Broadcast bulletin issue 135, published 8 June 2009:
http://www.ofcom.org.uk/tv/obb/prog_cb/obb135/

² Please see also the previous finding in this Bulletin concerning a music video containing sexual imagery broadcast on Channel AKA on 25 June 2009 which breached Rules 2.1 and 2.3 of the Code.

Ofcom puts Mushroom TV on notice that it must take all necessary and appropriate measures to ensure its channels comply with the Code in the future. If there are further breaches of Licence Condition 11 concerning Channel AKA, Ofcom will consider the imposition of a statutory sanction.

Breach of Licence Condition 11 (Retention and Production of recordings)

In Breach

Bangla TV

29 May 2009

Introduction

Bangla TV (“Bangla”) is a general entertainment channel aimed at a Bengali-speaking UK audience. Ofcom received a complaint that a late-night broadcast by Bangla on 29 May 2009 contained unsuitable images of deceased flood victims. During its investigation into this complaint Ofcom experienced serious delays by Bangla in providing a recording of the programme and a translation of its content.

Between 8 June and 20 July 2009 Ofcom was in extensive and prolonged contact with Bangla asking for it to provide a recording and English transcript of the programme. During this period Bangla failed to meet a number of deadlines set by Ofcom and at one point provided a recording of the programme that was not ‘as broadcast’ (i.e. it did not contain any audio). An acceptable recording of the programme and corresponding English transcript was eventually received by Ofcom on 21 July 2009, over six weeks after the initial request for the programme recording was made. Ofcom’s procedures for the handling of complaints state that licensees should normally provide Ofcom with a copy of a recording it requests within five working days.

After reviewing the recording and translation Ofcom found that the broadcast did not breach the Code as the material was appropriately justified by context. However it wrote to Bangla on 24 July 2009 asking for it to provide formal comments as to how it complied with Condition 11 of its licence. This states that:

“Retention and production of recordings

Section 325(1) and
(2) of the Communications Act

- (1) The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings in sound and vision and of any programme which is the subject matter of a Standards Complaint ...

Section 334(1) of
the Communications Act

- (2) In particular, the Licensee shall:...
 - (b) At the request of Ofcom forthwith produce to Ofcom any such recordings for examination or reproduction; and
 - (c) At the request of Ofcom forthwith produce to Ofcom any script or transcript of a programme included in the Licensed Service which he is able to produce to it.”

Guidance Notes, Paragraph 69 states that (for a television licence of this kind): “The licensee must retain, or arrange for the retention of, recordings of everything included in the licensed service for a period of 60 days. If Ofcom requests of copy of any recording, the licensee must provide this forthwith. Recordings must be of a standard and in a format which allows Ofcom to view

the material as broadcast. The licensee must also (where possible) provide Ofcom with scripts or transcripts of any material included in the service.”

Response

Bangla apologised for the delay in this case. It said that “as an ethnic broadcasting company we are managing our administration, main-control-room, and production with a limited number of staff”. It said that despite this “all staff are very serious (and trained) about compliance issues and the requirements of Ofcom, at all times”.

Bangla said that it had failed to provide the recording on 17 June and 9 July because the relevant staff member was sick. Notwithstanding this, it said it understood that it has an obligation to provide Ofcom with recordings on time. Bangla said that in the future it would be “more cautious and will try to extend our capacity” to ensure compliance with its licence requirements.

Decision

It is a condition of all broadcast licences that the licensee adopts procedures for the retention and production of recordings and supplies recordings to Ofcom “forthwith” if requested. Further, the recordings should be ‘as broadcast’ (i.e. the same quality in terms of both sound and picture as when originally transmitted).

Ofcom acknowledges that Bangla did eventually provide the requested material. However, this was only after numerous and time-consuming requests from Ofcom; the provision by Bangla of an incomplete recording; and, repeated failures to meet Ofcom’s stated deadlines. Further, Ofcom considered that some of the reasons for delay given by Bangla (for example that it did not receive Ofcom’s correspondence and was unable to deal with Ofcom’s request due to a combination of technical faults and staff illness) were unacceptable. It is the responsibility of all broadcasters to update Ofcom of any changes to its contact details in a timely way and to ensure that it has a sufficient number of staff (who are appropriately trained) to be able to carry out all its compliance responsibilities effectively. Clearly, a key function of any compliance team is to be able to respond to requests from Ofcom as and when they arise.

Taking these factors into account, Ofcom has found Bangla in breach of Condition 11 of its licence for failing to provide a requested recording in “as broadcast” quality and failing to provide the requested recording and transcript “forthwith”.

This is a serious and significant breach of the broadcaster’s licence and will be held on record by Ofcom. The actions of the broadcaster in this case were entirely unacceptable. Should these problems recur, Ofcom may consider further regulatory action.

Breach of Licence Condition 11 (Retention and Production of recordings)

In Breach

Most Haunted

Living 2, 21 July 2009, 11:00

Introduction

Most Haunted is a programme which shows a team of so-called investigators visiting locations where, in the past, according to the programme, there have been allegations of haunting. Ofcom received one complaint that this particular episode included a number of instances of the most offensive language being broadcast during daytime. Ofcom noted the programme contained sixteen uses of the word “fuck” and “fucking”.

Ofcom asked Virgin Media Television Limited (“Virgin Media”), which provides compliance for Living 2, for its comments under Rule 1.14 of the Code (the most offensive language must not be broadcast before the watershed).

Response

Virgin Media expressed its apologies for the programme being broadcast containing offensive language. It added that: it took the transmission of swearing on its channels during daytime hours “very seriously”; and where a programme containing offensive language is to be broadcast before the watershed, the broadcaster takes “careful steps to ensure that such content is suitably censored”.

Virgin Media said that this particular episode “was identified as being a post 2100 show due to the swearing, and as such had a language warning attached to the programme”. However, the broadcaster said due to human error the programme had been broadcast in the morning. The broadcaster added that following the broadcast, it had undertaken “further checks to this series to avoid a similar incident”. In addition, on air apologies were broadcast at the beginning and end of the edition of *Most Haunted* shown on the channel in the same time-slot the following week.

Decision

Ofcom’s research¹ confirms that most viewers find the word “fuck” and its derivatives one of the most offensive words. To allow a programme containing sixteen uses of the most offensive language during daytime was a clear breach of Rule 1.14. To broadcast this language before the watershed was obviously unacceptable..

Ofcom welcomes Virgin Media’s apologies on screen and admission of the compliance error, and the steps it has taken to improve compliance procedures. Ofcom remains very concerned however that this clear breach of Rule 1.14 was allowed to occur, especially in light of previous and recent published Findings against Living 2’s sister channels Bravo, Living and Virgin 1². All of these channels, including Living 2, are owned by Virgin Media, which also provides compliance for them.

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

² See *Dirty Cows*, Living, Bulletin 100, 14 January 2008; *Look Who’s Talking*, Living, Bulletin 112, 23 June 2008; *Brit Cops: Frontline Crime*, Bravo, Bulletin 129, 8 March 2009; and *To the Manor Bowen*, Virgin 1, 12 July 2009, Bulletin 140.

These cases also involved the broadcast of the most offensive language before the watershed. Ofcom is concerned that despite these previous Findings, Living 2's compliance procedures were such that a further breach involving the repeated broadcast of the most offensive language during daytime should now be recorded against another channel owned and complied by Virgin Media. As a consequence, Ofcom is therefore requiring Virgin Media to attend a meeting with the regulator to discuss its compliance record and arrangements.

Breach of Rule 1.14

In Breach

The Jeremy Kyle Show

ITV2, 2 July 2009, 14:35

Introduction

Jeremy Kyle presents a popular confessional talk show where members of the public discuss their personal problems in a frank and frequently confrontational manner. A viewer complained to Ofcom that one of the interviewees referred to his partner as a “*fat, lazy cunt*”. Ofcom wrote to ITV Broadcasting Limited (“ITV Broadcasting”) which holds 11 ITV licences and is responsible for the compliance of *The Jeremy Kyle Show* on behalf of the ITV network. Ofcom asked ITV Broadcasting to comment under Rule 1.14 (the most offensive language must not be broadcast before the watershed). Ofcom was particularly concerned in light of two fairly recent recorded breaches against ITV for the use of the same word in the *Jeremy Kyle Show*.¹

Response

ITV Broadcasting said that the offensive language complained of occurred when two guests were talking across each other and, whilst it did not consider that it was readily audible, it accepted that it was possible to hear it. It said that this offensive language had been noted prior to broadcast and been edited out of the main programme. But, unfortunately, the same original exchange between the two guests was subsequently used in a brief ‘tease’ to be included in a different part of the programme, and this use of the offensive language was not spotted by the producer or editor responsible. It explained that ‘teases’ are added to the programme after the principal editing of the main programme has been completed. Two different compliance advisors viewed the programme before its original broadcast and another reviewed it before the repeat broadcast complained of, and none noticed the ‘tease’ included the offensive word.

ITV Broadcasting apologised and acknowledged that the word “*cunt*” is considered to be one of the most offensive phrases by viewers and is not acceptable in a daytime talk show. It considered however that the fact Ofcom received only one complaint after three transmissions of the programme supported its view that it was not readily audible to most viewers. It considered that the two previous recorded breaches in relation to the use of the same word also occurred because the word was not clearly audible. However, to improve compliance processes further, ITV Broadcasting said it had introduced various changes. For example where in the past ‘teases’ have been prepared by a different production team members to those editing the main programme, individual producers will now be responsible for the content of all teases as well as the main programme, and material used in ‘teases’ will only be taken from pre-edited programme material.

Decision

The word “*cunt*” is a clear example of the most offensive language. Its use in a daytime talk show would be highly offensive and unacceptable, as ITV Broadcasting has acknowledged. A recording of the programme showed that while the word was

¹ http://www.ofcom.org.uk/tv/obb/prog_cb/obb128/issue128.pdf dated 23 February 2009 and http://www.ofcom.org.uk/tv/obb/prog_cb/obb113/Issue113.pdf dated 7 July 2008.

audible, it did occur during a heated exchange between two guests talking over each other – and therefore may have been difficult to identify. Ofcom welcomes the statement by the broadcaster that it has now taken steps to tighten up its editing processes to avoid a recurrence.

However, this is the third instance during a period of just over one year where the most offensive language has been included in error in a daytime edition of *The Jeremy Kyle Show*. Whilst Ofcom acknowledges the broadcaster's apology and the subsequent steps to improve compliance processes, the broadcast of such language before the 21:00 is a clear breach of Rule 1.14 and is unacceptable.

Breach of Rule 1.14

In Breach

Midlands Today

BBC1 (*Midlands*), 26 June 2009, 18:30

Introduction

This news bulletin featured a report on local rock bands. It contained footage of a band performing on stage with strobe lighting effects. No warning was given of these effects before the broadcast. Ofcom received a complaint from a viewer who after watching the report experienced a migraine, and, was concerned that the flashing images could have led to seizures in photosensitive viewers.

Certain types of flashing images can trigger seizures in viewers who are susceptible to photosensitive epilepsy ("PSE"). Rule 2.13 of the Code therefore states that:

"Broadcasters must take precautions to maintain a low level of risk to viewers who have PSE. Where it is not reasonably practicable to follow the Ofcom guidance...and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item".

Ofcom requested a statement from the BBC in relation to Rule 2.13.

Response

The BBC said that footage of this nature is normally assessed prior to broadcast to ensure that it meets industry guidelines. On this occasion the report was not tested in the usual way because the senior picture editor, responsible for editing the report, believed the footage of flashing lights was acceptable. The BBC acknowledged that the footage did not comply with the appropriate standards and should not have aired without an appropriate warning. It said this was an unfortunate error of judgement, and apologised for any problems this may have caused viewers.

The BBC said it had sent a note to those staff members responsible for news output in BBC West Midlands, reminding them of the issues regarding PSE, and scheduled further training for the coming months. It said a warning would now be broadcast as a matter of course for all material that has potential to cause problems, such as flash photography at news conferences or music videos, and the relevant news report has been deleted from the library to ensure that it cannot be broadcast again by mistake.

Decision

Ofcom's Guidance Note advises on the technical limits necessary for flashing images and is intended to minimise the level of risk to photosensitive viewers. All broadcasters should ensure that their technical teams are familiar with Ofcom's

published guidance as regards flashing images¹.

Ofcom analysed the report complained of against the Guidance. We found that it contained six distinct sequences (totalling approximately 13 seconds) where the brightness, frequency and screen areas contained flashing which exceeded the limits as set out in the Guidance. The flashing was therefore clearly in breach of Rule 2.13.

In Breach Rule 2.13

¹ The Guidance states that a potentially harmful flash occurs when there is a pair of opposing changes in luminance (i.e. an increase in luminance followed by a decrease, or a decrease followed by an increase) of 20 candelas per square metre (cd.m-2) or more. This applies only when the screen luminance of the darker image is below 160 cd.m-2. However, irrespective of luminance, a transition to or from a saturated red is also considered potentially harmful. In addition, a sequence of flashes is not permitted when the combined area of flashes occurring concurrently occupies more than one quarter of the displayed screen area and there are more than three flashes within any one-second period. Full published guidance available at: <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/guidance2.pdf> .

Fairness and Privacy cases

Partly Upheld

Complaint by Mr Michael Fellows

Don't Blame The Builder, Channel 4, 19 August 2008

Summary: Ofcom has upheld parts of this complaint of unfair treatment made by Mr Michael Fellows.

Channel 4 broadcast an episode of *Don't Blame The Builder*. This was one of a series of three documentaries that showed a mediator working with builders and clients after their relationships had broken down, with a view to getting building works completed. This programme followed the mediation and subsequent relationship between builder Mr Michael Fellows and his clients, the Fitzsimons.

Mr Fellows complained to Ofcom that he was treated unfairly in the programme as broadcast.

In summary, Ofcom found the following:

- Ofcom was satisfied that Mr Fellows had received sufficient information about the nature and purpose of the programme for him to provide informed consent for his participation in the programme as broadcast.
- In providing a brief account of the reasons why the original contract failed, material facts had been presented, disregarded or omitted in a way that resulted in unfairness to Mr Fellows.
- As the programme made clear that Mr Fellows was left significantly in debt by the building job, it was not unfair to Mr Fellows that the exact amount of debt he said he had incurred was not specified.
- A statement that Mr Fellows refused to be in the same room as the Fitzsimons for the arbitration hearing was not unfair to him.
- Ofcom was not satisfied that events were shown out of sequence. However, the inclusion at the start of the programme of the Fitzsimons' views on the problems over the original contract, but the omission of Mr Fellows' views, meant that material facts had been presented, disregarded or omitted in a way that resulted in unfairness to Mr Fellows.
- The omission from the programme of various events alleged by Mr Fellows to have occurred, resulted in no unfairness to him.

Introduction

On 19 August 2008, Channel 4 broadcast an episode of *Don't Blame The Builder*, a three-part documentary series in which building expert Mr Jeff Howell mediated with builders and clients who were in dispute. Mr Howell aimed to bring the two sides back together to get the building work finished.

This episode featured a dispute between builder Mr Michael Fellows and his clients Jo and Julian Fitzsimons (the "Fitzsimons") concerning the building of an extension to the rear of their house. The programme included a brief explanation of the dispute over the original contract and then showed the mediator helping Mr Fellows and the Fitzsimons enter into a further mediated contract. When the mediated contract also broke down, the programme showed the Fitzsimons attending an arbitration hearing

during which Mr Fellows submitted his evidence by video. The programme showed the arbitrator ruling in favour of Mr Fellows in respect of the mediated contract.

Mr Fellows complained to Ofcom that he had been treated unfairly in the programme as broadcast.

The Complaint

Mr Fellows' case

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

- a) He did not give informed consent for his participation in the programme, in that he had agreed to take part having been informed that the programme was to show the viewing public that not all builders were cowboys or rogue tradesmen and that clients could and did make builders lives a misery. Mr Fellows said that he was assured that the programme would be a true account of the difficulties he had experienced, but that the programme was heavily biased in favour of the clients.
- b) He was portrayed unfairly in that:
 - i) The programme wrongly suggested that he priced the job and then realised that it was going to cost a lot more money once the building work started. Mr Fellows said that what happened was that he priced the job based on architects' drawings and a site visit but that the architects made some serious errors and were sacked by the clients. Mr Fellows said that he was left almost £20,000 in debt. No mention of this was made in the programme even though he had thoroughly explained this to the programme makers.
 - ii) When the programme showed the arbitration hearing the narrator said incorrectly that Mr Fellows "could not bear to be in the same room as the clients and therefore refused to attend". In fact, Mr Fellows had told the programme makers at the time that he would not be able to attend the hearing as he was broke and had to go elsewhere to earn money.
- c) The programme was unfairly edited in that:
 - i) Events were shown out of sequence, resulting in him being portrayed in a bad light.
 - ii) He was interviewed by the building expert, Mr Howell, but this interview did not appear at the start of the programme after Mr Howell's interview with the Fitzsimons. This resulted in "a totally one-sided account" of events, from the outset.
- d) Relevant information was omitted from the programme in that the programme did not show that the Fitzsimons tried to have Mr Howell removed from the programme. Nor did it show that the Fitzsimons went "ballistic" and "hysterical" when the arbitrator found in Mr Fellows' favour. Instead, the programme portrayed them as calmly accepting the decision. In addition, the programme did not show the Fitzsimons issuing threats to sue Channel 4 and the production company.

Channel 4's case

In summary, Channel 4 responded to Mr Fellows' complaint of unfair treatment as follows:

- a) Channel 4 first responded to the complaint that Mr Fellows did not give informed consent for his participation in the programme.

Channel 4 explained that the programme was one of a series in which Mr Howell, building "agony aunt" and builder, attempted to mediate between homeowners and builders when relationships had broken down. The purpose of the series was to recognise that when building jobs went wrong, it could be the homeowners as well as the builders who have played a part.

Channel 4 said that the production company first contacted Mr Fellows in November 2006 after the Fitzsimons contacted the programme makers, having seen a flyer about the programme.

Channel 4 said that the director spoke to Mr Fellows by telephone and explained at length what the programme was about. In particular, the director explained that the purpose of the programme was to involve a mediator to try and resolve building issues and, in contrast to some programmes which had in the past been critical of builders, the idea was to explore both sides of the building relationship. The director said that Mr Fellows "felt very much that he was the wronged party" and after this conversation Mr Fellows agreed to meet the director to discuss the programme.

Channel 4 said that on 27 November 2006, the director and the assistant director met Mr Fellows. At this meeting, the director recalled that she gave Mr Fellows another fair and accurate description of what the programme was about, explaining that it focused on homeowners and builders who had reached a stalemate. The director explained that a mediator would be provided who would work with both sides to bring them together and hopefully set out a clear plan of how best to move forward. She explained that the producers would not be paying for any building work, but would facilitate, through the mediator, a more constructive way of achieving the results the parties wanted. The director stated that Mr Fellows was "heartened greatly by the concept of the mediator and said that all he ever wanted was to finish the job he started".

Channel 4 said that on 29 November 2006, Mr Fellows signed a contributor release form, which included the clause that the "nature of the ... programme" had been explained to him and he was "happy to participate in it".

Channel 4 said that the nature and purpose of the programme was also discussed further with Mr Fellows on a number of occasions during filming:

- On 1 December 2006 Mr Fellows confirmed he understood the nature and purpose of the programme. After having met Mr Howell, in untransmitted footage, Mr Fellows stated:

"It was good to be able to tell someone independent especially someone like Jeff because he's a builder, about the problems we've had... felt like I've been banging my head against a brick wall because the people could only see their point of view, I could only see mine..."

I think if we can meet and get around a table, if Jeff's there we should be able to thrash things out and get the job done... I have quite a few reservations, I'd like the job to start afresh and not carry on in the way that brought it to a stop... so if we can thrash out the things that brought it to a stop, you know, the animosity and other bits and pieces, should be ok... It would be good to get it done because I don't want to leave a job unfinished... hopefully we can... so we can all get some closure...

I think if we didn't have Jeff we wouldn't be able to finish because... as a homeowner and builder with a lot of experience... he can steer the Fitzsimons and me towards satisfactory conclusion".

- On 5 December 2006 Mr Fellows and the Fitzsimons attended a meeting which was filmed and parts of which are included in the programme. During this meeting, both parties agreed they wanted to get the building finished, working with Mr Howell as mediator. At the beginning of this meeting, Mr Howell stated:

"Thank you all for coming along. I know this is difficult because you haven't seen much of each other for the past few weeks have you? But here we are all together. The point is to thrash this out and hopefully move on so we can get your work finished. Mike wants to get it finished as well, and get paid and come out of it smelling of roses. So hopefully with a bit of goodwill on each side we can sort something out.

So right, we've got to look at the future, we got to look at a way of moving the job forward. Obviously there are issues you've had with each other, that you've fallen out with each other. And I understand if you want to talk about those, which is why I asked you between you to draw up a list of the most salient points...".

- On 27 January 2007 the nature and purpose of the programme was discussed again when Mr Fellows recorded a statement for the purposes of the arbitration, Mr Fellows stated:

"I was contacted by Channel 4 who asked if I would be interested in them making a documentary, myself coming back onto the job with a mediator in place, which I felt would work because [the] relationship with the Fitzsimons had broken down prior to that after they sacked their architect...".

- It was also clear from a statement he made in the programme that Mr Fellows was aware of the purpose of the programme:

"I think people are too quick to blame builders all the time. It always seems to be the builder's fault. It's not always the builder's fault and there's two sides to every story".

Channel 4 accepted that Mr Fellows would have been told that the aim of the series was "to show the viewing public that not all builders were cowboys or rogue tradesmen and that clients could and did make builders' lives a misery" (or words to that effect), but said it was never the intention that the programme would only show one side of the story nor be biased in favour of one party.

Channel 4 said that both sides of the story were explored in the programme, which showed that the arbitrator found in favour of Mr Fellows.

In these circumstances, Channel 4 said that Mr Fellows gave informed consent for his participation in the programme and fully understood the nature and purpose of the programme.

- b) Channel 4 next responded to the complaint that Mr Fellows was portrayed unfairly in the programme.
 - i) Channel 4 first responded to Mr Fellows' complaint that the programme suggested he had priced the job and then realised that it was going to cost a lot more money once the building work started, rather than explaining that the variance in cost was a result of mistakes made by the architects.

Channel 4 said that the point made in the programme was that the two parties had fallen out. The homeowners were not prepared to pay any more money and the builder was not prepared to continue with the work until payment was made. Channel 4 considered that it was relevant to include a basic and accurate account of what brought the parties to the point of relationship breakdown and that the programme did so.

In this regard, Channel 4 said that it was evident in the programme that the parties' relationship had broken down due to a number of factors. The key point was that it had broken down and Mr Howell had to try and bring the parties together again and reach some kind of agreement to progress the job.

Channel 4 accepted that Mr Fellows gave more detail during filming about his views on the architects' drawings than was included in the programme. However, the focus of the programme was about trying to resolve existing problems in the relationship between the homeowners and their builder in an attempt to get the job back on track and completed.

In Channel 4's view, it was not that clear from Mr Fellows' and the Fitzsimons' discussions the extent to which the architects were responsible for the various costs issues that had arisen and therefore, while reference was made to the basis upon which Mr Fellows had submitted his quotation, both parties discussed a number of issues that they claimed had contributed to the stalemate. Channel 4 said that untransmitted footage showed Mr Howell questioned the initial quote by Mr Fellows as being "under-costed" and suggested he gave "a low quote to get the work" and that Mr Fellows did not appear to disagree with these statements.

Channel 4 said that, in addition to the pricing of the job, another ongoing issue that was causing problems between Mr Fellows and the Fitzsimons leading up to and in the arbitration was the question of payment of money.

Channel 4 said that in the programme Mr Fellows was shown stopping work again because of payments not being made by the Fitzsimons.

Channel 4 said that, given the complexities around the causes of the relationship breakdown, the fundamental issue was the fact that Mr Fellows' quotation was based on a site visit and the drawings, both points which were made in the programme in commentary and by Mr Fellows.

In Channel 4's view, in the context of the programme, it was fair to refer to the fact that the job appeared to be costing more than was quoted and include the factual basis upon which Mr Fellows had quoted for the work (i.e. site visit and drawings).

As regards Mr Fellows' complaint that he was left £20,000 in debt and no mention of this was made in the programme, Channel 4 said that the relevant point was that Mr Fellows claimed to have been left out of pocket from his involvement in the Fitzsimons' job. This was made clear in the programme and it was not necessary for the exact figure to be mentioned.

- ii) Channel 4 next responded to Mr Fellows' complaint that when the programme showed the arbitration hearing the narrator said incorrectly that Mr Fellows "could not bear to be in the same room as the clients and therefore refused to attend".

Channel 4 said that the director spoke to Mr Fellows about the arbitration hearing and was told that under no circumstances would he be in a room with the Fitzsimons and this was why he would not attend the arbitration. After the director had explained this to the executive producer, the executive producer emailed Mr Fitzsimons on 25 January 2007 reflecting the director's conversation with Mr Fellows stating:

"As Mike refuses to be in the same room as you and Jo for adjudication, he will present his account of events for Tony on video".

Channel 4 said the producers were not aware of any other reason for Mr Fellows not wanting to or not being able to attend the arbitration, although they were aware that there was a lot of animosity between the parties.

- c) Channel 4 next responded to Mr Fellows' complaint that footage of him was unfairly edited.
 - i) Channel 4 first responded to Mr Fellows' complaint that events were shown out of sequence, resulting in him being portrayed in a bad light.

Channel 4 said it was not clear what events Mr Fellows considered were shown out of sequence in the programme, but that Channel 4 did not accept that events were shown out of sequence to portray Mr Fellows in a bad light and considered that the programme was a fair and accurate reflection of the events.

- ii) Channel 4 next responded to Mr Fellows' complaint that his interview with Mr Howell did not appear at the start of the programme after Mr Howell's interview with the Fitzsimons, resulting in a "totally one-sided account" of events from the outset.

Channel 4 confirmed that Mr Fellows was interviewed by Mr Howell on one occasion and that this interview did not appear in the final programme. However, footage of other interviews with Mr Fellows was included in the programme and he expressed his views on a number of occasions, including the following examples:

- when Mr Fellows was introduced he stated that "*it's not always the builder's fault and there's two sides to every story*";

- at the meeting between him, the Fitzsimons and Mr Howell he explained the problems that he had faced with the original contract and that he was prepared to finish the job despite the problems;
- during the works, Mrs Fitzsimons confronted Mr Fellows about why he had not turned up to the house on time;
- during a subsequent discussion with Mr Fitzsimons about the mediated contract;
- at a second meeting between all the parties about the mediated contract; and
- during the arbitration.

Channel 4 said that both Mr Fellows' and the Fitzsimons' sides of the story were represented fairly and accurately in the context of the nature and purpose of the programme as a whole and the programme made clear that the arbitration was decided in Mr Fellows' favour, with the arbitrator explaining where the Fitzsimons had gone wrong.

- d) Channel 4 responded to Mr Fellows' complaint that relevant information was omitted from the programme.

As regards the complaint that the programme did not show that the Fitzsimons tried to have Mr Howell removed from the programme, Channel 4 did not accept that this had happened.

In response to the complaint that the programme did not show the Fitzsimons' true reaction to the arbitration finding, Channel 4 provided Ofcom with untransmitted footage of the conclusion of the arbitration hearing which it said showed the Fitzsimons were upset, but that they did not react in the extreme manner alleged by Mr Fellows, who was not present at the arbitration.

As regards the Fitzsimons' alleged threats to sue Channel 4 and the production company, Channel 4 said it was not aware of any such threats being made, but even if they were, it was unlikely that such threats would have been editorially relevant to the programme.

Decision

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

Mr Fellows' 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 the programme as broadcast, both parties' written submissions and supporting material.

- a) Ofcom first considered the complaint that Mr Fellows had been treated unfairly in the programme as broadcast in that he did not give informed consent for his participation.

Ofcom considered whether the programme makers' actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Ofcom Broadcasting Code (the "Code"). Ofcom also considered whether the programme makers were fair in their dealings with Mr Fellows as a potential contributor to the programme (as outlined in Practice 7.2). In particular, Ofcom considered whether Mr Fellows gave his "informed consent" to participate in the programme (as outlined in Practice 7.3).

Practice 7.3 sets out that in order for potential contributors to a programme to be able to make an informed decision about whether to take part, they should be given sufficient information about: the programme's nature and purpose; their likely contribution; any changes to the programme that might affect their decision to contribute; and the contractual rights and obligations of both parties. In assessing whether a contributor has given informed consent, Ofcom will look at information that was provided to the contributor prior to the recording of the contribution, any untransmitted footage and the programme itself.

Ofcom was provided with a consent form that had been signed by Mr Fellows. Ofcom noted that it contained the title of the programme. However, although this document did confirm Mr Fellows' agreement to participate in the programme Ofcom was not able to gain from it an understanding of the information that had been provided to Mr Fellows about the programme's nature and purpose (so as to secure his participation) as, according to the parties, such information had been provided verbally by the programme makers.

Ofcom was not provided with untransmitted recordings of the exact conversations that took place between the programme makers and Mr Fellows about the proposed programme's nature and purpose, however, it was provided with a recording of Mr Fellows describing on camera his understanding of the programme. This had been filmed on 27 January 2007 and in it Mr Fellows stated:

"I was contacted by Channel 4 who asked if I would be interested in them making a documentary, myself coming back onto the job with a mediator in place, which I felt would work because the relationship with the Fitzsimons had broken down prior to that after they sacked their architect."

In Ofcom's view, it was apparent from this description of the project that Mr Fellows understood that Mr Howell would attempt to mediate between the parties with a view to getting the job finished. Ofcom considered that this was a fair description of the programme as broadcast and therefore Mr Fellows had not been misled as to the programme's nature and purpose when he was asked to take part. Ofcom concluded that Mr Fellows gave his "informed consent" to participate in the programme and has not upheld this part of the complaint.

It should be noted that while Ofcom found that the programme makers did not mislead Mr Fellows as to the programme's nature and purpose, the programme as broadcast did result in unfairness to Mr Fellows for failing to take reasonable care that material facts had not been presented, omitted or disregarded in a way that was unfair to Mr Fellows (see decision heads b)i) and c)ii) below).

- b) Ofcom next considered the complaint that Mr Fellows had been treated unfairly in the programme as broadcast in that:
 - i) The programme wrongly suggested that he priced the job and then realised that it was going to cost a lot more money once the building work started, rather than explaining that the variance in cost was a result of mistakes by the architects. And that no mention was made in the programme that he had been left almost £20,000 in debt.

Ofcom took account of Practice 7.9 of the Code, which states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that was unfair to an individual or organisation.

Ofcom first considered the element of Mr Fellows' complaint that no mention was made in the programme that he had been left almost £20,000 in debt. Ofcom noted the following comment by Mr Fellows that was included in the programme:

"I have lost thousands and thousands of pounds because I stayed there longer than I should have done."

Ofcom also noted that during the course of the arbitration hearing Mr Fellows itemised the further money he was owed as a result of the failure of the mediated contract.

In the circumstances, Ofcom considered the programme made it clear that Mr Fellows was left significantly out of pocket as a result of the Fitzsimons' job, both before and after the mediation, and the fact that the sum of £20,000 was not referred to in the programme did not result in unfairness to Mr Fellows. Ofcom has not, therefore, upheld this part of Mr Fellows' complaint.

Ofcom then considered the element of Mr Fellows' complaint relating to the way he priced the job.

Ofcom noted that the voiceover in the programme stated:

"Mike agreed a fixed quote of £42,000 based on a site visit and architectural plans. But once he started on the job he realised it was going to cost a lot more and Jo and Julian weren't prepared to hand over any more cash."

In Ofcom's view, the clear inference arising from the explanation provided by the voiceover (and particularly in the context in which it appeared (see decision head c)ii) below)) was that Mr Fellows had quoted carelessly and the original contract had broken down as a result of that.

Ofcom noted the parties were agreed that Mr Fellows had explained to the programme makers that he had priced the job on a site visit and the architects' drawings.

Ofcom also noted from Channel 4's statement that the focus of the programme was on how to move forward (rather than on the details of the breakdown of the original contract). However, in Ofcom's view, even if the reasons for the breakdown of the original contact were not to be the focus of

the programme, it was still incumbent on the broadcaster to take into account relevant facts when providing a “basic and accurate” account of the dispute over the original contract.

Ofcom noted that Channel 4 was aware Mr Fellows blamed the architects’ drawings for the problems that had arisen with the original contract and its acknowledgement that he had given more detail during filming about his views on the architects’ drawings. However, Channel 4 maintained that while it was aware of Mr Fellows’ belief that the reasons for the under-quoting on the job were down to the architects’ drawings, it was not made clear to the programme makers (by the parties) the *extent* to which the architects were to blame for the various costs issues that had arisen.

Ofcom also noted Channel 4’s submission that there was an alternative explanation for the problems with the original contract, namely Mr Howell’s suggestion that Mr Fellows had “under-costed” and given a “low quote to get the work” which, Channel 4 said, Mr Fellows did not appear to dispute. Ofcom did not consider that Mr Fellows’ conduct during this meeting was such that it discounted the clear information provided to the programme makers by Mr Fellows about his firmly held view that the architects’ drawings were a significant and important reason why the job had been under-quoted, which had been provided prior to this meeting.

For the reasons set out above, in Ofcom’s view, in presenting its account of the breakdown of the original contract, Channel 4 did not take reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that resulted in unfairness to Mr Fellows. Ofcom considered that by omitting information relating to Mr Fellows’ belief that the architects’ drawings had been a significant reason for the costing issues, viewers were clearly led to understand that Mr Fellows’ incompetence alone was the cause of this particular problem. This was not the information that had been provided to the programme makers and resulted in unfairness to Mr Fellows. Accordingly, Ofcom has upheld this part of Mr Fellows’ complaint.

- ii) Ofcom next considered Mr Fellows’ complaint that when the programme showed the arbitration hearing the narrator said incorrectly that Mr Fellows “could not bear to be in the same room as the clients and therefore refused to attend”.

Ofcom had particular regard to Practice 7.9 of the Code.

Ofcom noted that the programme stated:

“Mike has refused to be in the same room as Jo and Julian and in accordance with the law has chosen to submit a video statement instead.”

Ofcom noted that there were conflicting accounts of the conversation in which Mr Fellows gave his reasons for not attending. In the absence of a recording of the conversation itself, Ofcom was not able to determine the contents of this conversation.

However, Ofcom considered the programme as broadcast and whether viewers were likely to have gained an unfair impression of Mr Fellows as a result of the statement that was broadcast. Ofcom considered that, on balance, given the clear dispute between the parties and the tensions

involved at that stage, the broadcast statement was unlikely to have resulted in unfairness to Mr Fellows. Ofcom has not, therefore, upheld this part of Mr Fellows' complaint.

- c) Ofcom next considered Mr Fellows' complaint that he had been treated unfairly in the programme as broadcast by unfair editing in that:

- i) Events were shown out of sequence, resulting in him being portrayed in a bad light.

Mr Fellows did not identify to Ofcom which parts of the programme he believed had been presented out of sequence. In the absence of this information Ofcom found no grounds on which to base a complaint of unfair treatment. In the circumstances, Ofcom has not upheld this element of the complaint.

- ii) Mr Fellows was interviewed by Mr Howell, but this interview did not appear at the start of the programme after Mr Howell's interview with the Fitzsimons, resulting in "a totally one-sided account" of events from the outset.

Ofcom took account of Practice 7.6 of the Code, which states that contributions must be edited fairly, and Practice 7.9.

Ofcom recognised that the editing of a programme is ultimately an editorial matter for a broadcaster, provided the broadcaster complies with its obligation to ensure that the programme as broadcast does not result in unfairness to an individual or organisation.

Ofcom noted that at the beginning of the programme the scene was set and impressions created by the Fitzsimons giving their side of the story about the problems encountered over the original contract and Mr Fellows' complaint was that he had not been given a similar opportunity.

Ofcom noted that the programme started off with a voiceover, illustrated with footage of the half finished extension:

"In leafy Balcombe, Sussex, the Fitzsimons have embarked on a major renovation of their dream home. Their builder should have completed the job in 12 weeks: seven months on he's walked off the job leaving it half finished."

Mrs Fitzsimons, with reference to Mr Fellows, then said:

"He's horrible, he just messes with our heads and our lives and, you know, our money."

Over footage of the half finished extension and garden with puddles of standing water, debris and unplastered walls, the voiceover said:

"The Fitzsimons' dream turned into a nightmare. After paying a builder £45,000 – this is their kitchen, this is their luxurious wet room...and this is their landscaped garden."

Mr Fitzsimons then said:

"The main reason for him not finishing the job or getting even past half way is because he ran out of money...our money that we gave him."

There was then a voiceover and a statement from Mrs Fitzsimons about the stress and strain the situation had put them under.

The programme then switched to Mr Fellows and, over footage of him working on another job, said:

"Meet the Fitzsimons' builder, Mike Fellows. He's currently hard at work on another job. Not surprisingly, he's got a different view of why things went wrong."

Mr Fellows then said:

"I think people are too quick to blame builders all the time. It always seems to be the builders fault. It's not always the builders fault and that there's two sides to every story."

The voiceover then explained the nature of the dispute over the original contract as set out in decision head b)i) above, which Ofcom had already found materially misstated the nature of the problems with the original contract and was unfair to Mr Fellows.

Finally, there was a further quote from Mr Fellows:

"We had no choice at all but to leave the build. It got to the stage that I was unable to pay sub-contractors. They were getting fed up. They were reluctant to come back, and rightly so. And so it put me in a predicament where we just couldn't carry on."

In Ofcom's view, the Fitzsimons were given an opportunity to explain their position in relation to the original contract, the difficulties they had encountered and the effect it had upon them, but Mr Fellows was not. The way this part of the programme was presented and Mr Fellows was introduced, unfairly suggested that in contrast to the Fitzsimons who had lost their money and were anxious and stressed, he was unaffected and making money on another job. In addition, the two quotes of his included at this stage of the programme did not explain his side of the story to viewers, or what he had done with the Fitzsimons' money.

In Ofcom's view, the overall impression created by the opening part of the programme was that Mr Fellows had run off with the Fitzsimons money leaving the job unfinished, that they were out of pocket and Mr Fellows was getting on with other remunerative work.

Ofcom noted that this was not, in fact, the case. Mr Fellows had provided a fixed price quote of £42,000. It had become apparent to the parties that the job was going to cost a lot more than that to complete (another £18,500 to completion, according to the mediated contract). All of the £45,000 the Fitzsimons had paid had already been used on the job and, as the Fitzsimons were unwilling to pay any more money, Mr Fellows had spent *"thousands"* of pounds of his own money trying to finish the job. When he could no longer

afford to fund the job himself, he left to earn money elsewhere. The only one out of pocket at that stage was Mr Fellows.

Ofcom noted Channel 4's position that although Mr Howell's initial interview with Mr Fellows did not appear in the final programme, this did not result in a "totally one-sided" account of what happened as Mr Fellows' views were included in the programme on six occasions

In Ofcom's view, this part of Mr Fellows' complaint was that his problems with the original contract were not explained fairly at the beginning of the programme after the Fitzsimons had their say. Ofcom noted that of the six occasions where Channel 4 said Mr Fellows had expressed his views in the programme, only the first two related to Mr Fellows talking about the problems with the original contract, the others related to issues with the mediated contract and did not therefore assist Ofcom's consideration of this head of the complaint.

The first quote referred to by Channel 4 was:

"It's not always the builder's fault and there's two sides to every story."

The second quote referred to by Channel 4 was:

"Alright, OK. But I've got, you can't seem to see the problems that I've had and the financial costs that I've borne. We can sit and talk about everything that's gone on before and how you mistrust me and think that I'm dishonest, but do you want to move forward and get it done?"

In Ofcom's view, neither of these two statements actually explained Mr Fellows' problems with the original contract and, combined with the fact, as referred to in decision head b)i) above, that material facts were unfairly omitted from the voiceover, Ofcom considered that Channel 4 had not taken reasonable care to ensure that facts were not presented, disregarded or omitted in a way that resulted in unfairness to Mr Fellows. Accordingly, Ofcom has upheld this part of the complaint.

- d) Finally, Ofcom considered Mr Fellows' complaint that he was treated unfairly in the programme as broadcast in that relevant information was omitted from the programme, namely that the programme did not show that the Fitzsimons: tried to have Mr Howell removed from the programme; went "ballistic" and "hysterical" when the arbitrator found in Mr Fellows' favour; and issued threats to sue Channel 4 and the programme maker.

Ofcom had particular regard to Practice 7.9 of the Code.

In respect of the way in which the Fitzsimons reacted at the conclusion of the arbitration, Ofcom had regard to the untransmitted material supplied by Channel 4. Ofcom noted from this material that while the Fitzsimons were clearly upset and distressed at hearing the decision, they could not reasonably be described as behaving in the manner suggested by the complainant. Ofcom considered that the programme makers' editing of the meeting fairly reflected the Fitzsimons' response and resulted in no unfairness to Mr Fellows.

Ofcom next considered the complaint that the programme failed to reflect the fact that the Fitzsimons had tried to have Mr Howell removed from the programme

and issued threats to sue Channel 4 and the programme maker. In considering this complaint Ofcom noted that there was a conflict of evidence between the parties as to whether either of these events occurred. There was also no untransmitted material to provide further information on the alleged events.

Notwithstanding the above, Ofcom considered that even if the alleged events had occurred in the way put forward by Mr Fellows, the omission of these events from the programme as broadcast, would not have resulted in unfairness to Mr Fellows.

In Ofcom's view decisions about what to include in a programme and about the editing of a programme are editorial matters for the broadcaster, provided the broadcaster complies with its obligation to ensure that the programme does not result in unfairness to an individual or organisation. In Ofcom's opinion, the alleged events were not of such importance (especially as regards Mr Fellows' contribution to the programme) that their omission was capable of materially affecting viewers' understanding of Mr Fellows in an unfair way. Therefore, Ofcom has not upheld this part of Mr Fellows' complaint.

Accordingly Ofcom has upheld parts of Mr Fellows' complaint of unfair treatment in the programme as broadcast

Not Upheld

Complaint by Mr Jon Olive on his own behalf and on behalf of Mrs Helen Olive (his Wife)

Grand Designs, Channel 4, 4 February 2009

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

This edition followed Mr Chris Ostwald's project to build a watermill house. Mr Jon Olive and Mrs Helen Olive lived on the neighbouring property. The programme chronicled the opposition of the neighbours to Mr Ostwald's project and the various stages of council involvement, from rejection of the initial plans through to approval of an amended planning application.

Mr and Mrs Olive did not take part in the programme, nor were they named.

Mr Olive complained to Ofcom that he and his wife were treated unfairly in the programme and that their privacy was unwarrantably infringed in both the making and the broadcast of the programme.

In summary Ofcom found the following:

- It was not incumbent on the programme makers to provide the complainants with an opportunity to contribute to the programme or to explain their absence from the programme. The programme presented matters fairly.
- Mr and Mrs Olive were not filmed during the making of the programme. Also, the programme as broadcast did not disclose any information that would reveal the location of Mr and Mrs Olive's property that was not already on the public domain. Ofcom therefore found that their privacy was not infringed in either the making or broadcast of the programme.

Introduction

On 4 February 2009, Channel 4 broadcast an edition of *Grand Designs*, a series that features unusual architectural house-building projects.

This edition followed Mr Chris Ostwald's project to build a watermill house ("the project"). Mr Jon Olive and Mrs Helen Olive were neighbours to the project. The programme explained that in May 2006, the project site was visited by a Council Planning Officer following a complaint about the height of the construction. The programme's presenter, Kevin McCloud said that neighbours of Mr Ostwald had made the complaint. Mr Ostwald stated in the programme that he had previously asked a planning officer to establish the level he could build to. The programme stated that, in order to "*pacify the neighbours*" a compromise had to be sought.

At a meeting with the local council in June 2006, Mr Ostwald negotiated changes which formed part of a new planning application. In October 2006, Mr Ostwald was told by the council that his new application had to be referred to the planning committee. The committee hearing, at which the application was unanimously approved, was shown on the programme. However, after receiving a letter from the

neighbours' solicitors which threatened legal action against the approval, the council decided to reconsider the whole application. In March 2008, the planning committee reconvened and again approved Mr Ostwald's application, and he was then able to complete the project.

Mr and Mrs Olive did not take part in the programme, nor were they named.

Mr Olive complained to Ofcom that he and his wife were treated unfairly in the programme and that their privacy had been unwarrantably infringed in both the making and the broadcast of the programme.

The Complaint

Mr Olive's case

In summary, Mr Olive complained that he and his wife were unfairly treated in the programme as broadcast in that:

- a) Their actions as neighbours of the project were unfairly portrayed, as a result of the omission and glossing over of details, the inclusion of uncorrected factual inaccuracies and the general tone of the programme. In particular, Mr and Mrs Olive said that:
 - i) No explanation was provided as to why Mr and Mrs Olive did not appear on the programme, despite the fact that they were unable to comment due to legal reasons, as the council was under investigation.
 - ii) The scene showing the visit of the Planning Officer to the project site gave the impression that Mr and Mrs Olive's complaint had been made immediately prior to the visit, when in fact Mr and Mrs Olive complained to the council over one month previously.
 - iii) Kevin McCloud made false representations regarding the difference in height resulting in the breach of planning permission; he guessed at three feet whereas the actual figure was two metres.
 - iv) After a meeting with the council on 25 July 2006, Mr Ostwald claimed changes had to be made to the planning permission, "*in order to pacify the neighbours*". This assertion passed unchallenged.
 - v) The programme failed to explain why Mr and Mrs Olive threatened legal action against the council. As the programme makers were aware, the threat was made after a planning officer had allegedly falsely presented information to the planning committee.
 - vi) Towards the end of the programme, Kevin McCloud made the comment "*hindrance from neighbours and planners*", contributing to a negative view of Mr and Mrs Olive's actions in the mind of the viewer.
 - vii) The programme made no reference to the proximity of the project to Mr and Mrs Olive's property and the camera angles and computer generated animation used were misleading.

In summary, Mr Olive complained that his privacy and that of his wife had been unwarrantably infringed in the making of the programme in that:

- b) The programme makers filmed their property and Mr and Mrs Olive at their property on 4 July 2006. No consent was given for such filming, save for close-up shots of a council surveyor measuring a wall which Mr and Mrs Olive had agreed to.

In summary, Mr Olive complained that his privacy and that of his wife had been unwarrantably infringed in the programme as broadcast in that:

- c) The programme gave enough information to enable the easy discovery of the exact location of Mr and Mrs Olive's property and identities via a simple internet search. This was despite the fact that Mr Olive had written to the programme makers expressly asking for his property not to be filmed and that no information in whatever form should be divulged either on the programme or to any third party that might identify him or his wife or the location of their property. The programme makers had responded by expressly stating that they had adhered to these conditions.

Channel 4's case

In summary, Channel 4 responded to Mr Olive's complaint of unfair treatment as follows:

- a) In relation to the complaint that their actions as neighbours of the project were unfairly portrayed in the programme, Channel 4 said that:
 - i) Channel 4 said that there was no obligation for the programme makers to offer Mr and Mrs Olive an opportunity to: contribute to the programme, state in the programme that they did not wish to participate in the programme; or to state their reasons why they made that decision. Channel 4 said that the programme makers had considered that, editorially, it would be interesting to include the views of Mr and Mrs Olive in the programme and offered them an opportunity to contribute to the programme (which they declined). However, it argued, the programme included no material which compelled them to afford Mr and Mrs Olive a "right of reply". Channel 4 said that each statement made in the programme in respect of Mr and Mrs Olive was accurate, already reported on the public record and presented in an impartial manner. Channel 4 also said that the programme made it clear that Mr and Mrs Olive's complaint to the Council had been perfectly reasonable and legitimate. It said that whilst the outcome of the planning application in 2008 was not in complete favour of Mr and Mrs Olive, the programme did not suggest that their complaint was unreasonable. Channel 4 said that the programme showed how the Council only provided final approval of the 2008 plans upon Mr Ostwald making substantial modifications to his plans in accordance with their recommendations.
 - ii) Channel 4 said that the programme makers had confirmed to it that the visit to Mr Ostwald's property by the council planning officer occurred as depicted in the programme and was indeed unannounced. It said the programme presented this accurately and in no way misled viewers. Channel 4 said Mr Ostwald's comments revealed that "somebody" had made a complaint and that the Council were "now" investigating it. Channel 4 said that Mr Ostwald made no reference whatsoever to when the complaint was made. Channel 4 said that it did not accept that any viewer could reasonably consider that a council planning officer visited Mr Ostwald's property immediately upon receipt of a complaint. Channel 4 argued that the visit by the council planning officer was presented in a completely fair and accurate manner and did not leave an impression that Mr Olive's complaint to the council was made immediately prior to the planning officer's visiting Mr Ostwald's property.

- iii) Channel 4 said Mr McCloud made no false representation in relation to the difference of height of the planned build and the actual build resulting in the breach of planning permission. Channel 4 stated that he had made an estimate based on a figure set out in a public document. Channel 4 said the figure of "2 metres" cited by Mr and Mrs Olive in their complaint has never been accepted by the council. Channel 4 argued that, in any event, no unfairness could possibly arise to them from the inclusion of this statement in the programme, given that the difference in height and the actual figure was no longer an issue for the council. Channel 4 said that in 2008 the council had approved Mr Ostwald's build and plans without requiring him to lower the height of the build. Channel 4 said that the figure, which represented the difference between the height recorded on the 2002 and 2003 plans and the actual build, was based on one of two competing figures - 0.9 metres and 0.4 metres - documented in the 2006 Committee Site Visit Report. Channel 4 said that these figures were the figures available at the time Mr McCloud made the statement referred to above. Channel 4 said that his statement therefore was accurate and based on a fact which was a matter of public record and publicly available at the time he made it. Channel 4 said that the figure was later corrected by the council to be 0.4 metres however that correction occurred almost three months after Mr McCloud made his comment in the programme. Channel 4 said that Mr and Mrs Olive state in their complaint that the "actual figure was 2 metres" and during the planning process they suggested the figure was 1.8 metres. Channel 4 said that neither of these two figures were accepted by the council and that the council rejected them, confirming that the figure of 0.4 metres was correct. Channel 4 said that the crucial point was that the issue of height ceased to be pertinent on 19 March 2008 when the Council decided 12-2 in Mr Ostwald's favour to approve his 2008 plans. Channel 4 said that the council made no recommendations for Mr Ostwald to lower the roof of the build. Therefore, Channel 4 argued, the actual difference in height specified in the programme was not of material concern.
- iv) Channel 4 said that this statement was made prior to the meeting with the council on 25 July 2006, not after that meeting as Mr and Mrs Olive stated in their complaint. It said, Mr Ostwald's statement was in fact made on 14 July 2006 after receiving a visit from a representative of the council, Mr John Cotton. Channel 4 said that, in any event, it was clear throughout the planning process that the modifications which Mr Ostwald made to his build and to his plans prior to them being finally approved by the council were for the benefit of Mr and Mrs Olive only.
- v) Channel 4 said that Mr Ostwald had made his statement referring to Mr and Mrs Olive threatening the council with legal proceedings at his property on 7 November 2006, almost one month after the 2006 Planning Committee decided to approve Mr Ostwald's build. Channel 4 said that Mr Ostwald's statement was one of fact evidenced by his understanding of his discussion with the council. Channel 4 also said that given the programme showed Mr Ostwald making this statement after the 2006 Planning Committee decided to approve his plans, it would have been reasonably clear to viewers watching the programme that Mr and Mrs Olive had threatened the council with legal action because they were not broadly satisfied with the Committee's decision, particularly in approving the height of the build. Furthermore Channel 4 said that the specific reasons why Mr and Mrs Olive were not satisfied with the 2006 Planning Committee's decision, seemed immaterial and irrelevant to the programme.

Channel 4 said that the editorial focus of the programme related to the obstacles Mr Ostwald had to overcome undertaking his project. Therefore, Channel 4, said that editorially, all that viewers needed to know was that the council had been threatened with legal action which resulted in the suspension of the Committee's decision which was a clear obstacle to Mr Ostwald's build. Channel 4 stated that the basis of the underlying threat of legal proceedings against the council included allegations that "a planning officer had falsely presented information to the planning committee" in the course of the assessment and decision making, that Mr Ostwald had misled the Planning Committee and that this falsely presented information led to the 2006 Planning Committee's decision to approve the 2006 plans. Channel 4 said that the programme makers decided not to include these allegations in the programme because the issues at the heart of these allegations were complex, seemed difficult to verify and did not fall within the format of a 48 minute factual entertainment programme such as *Grand Designs*. Channel 4 said the format does not enable such complex allegations to be investigated with forensic vigour and with the detail that may be required.

- vi) Channel 4 said Mr McCloud's statement, that Mr Ostwald had experienced "*hindrance from neighbours and planners*" was a prospective statement in direct reference to the fact that Mr Ostwald was nearing the completion of his build. Channel 4 said that this statement was fair and based on the factual circumstances surrounding the build, most importantly that the council had approved the plans and the build. Channel 4 said that the statement was not directed specifically towards Mr and Mrs Olive or to their actions in making a complaint. Nor, Channel 4 said, was the comment directed at any other particular person or organisation. Instead the comment emphasised the fact that the council had approved the build and plans and that Mr Ostwald was able to then complete his build without any further obstacles. Channel 4 said that the statement did not contribute to a negative view of Mr and Mrs Olive particularly when viewed in the context of the programme as a whole. Channel 4 said that, in any event, the impression the viewer was left with was that the difficulties which Mr Ostwald faced had been largely due to his initial failure to build it in accordance with the original plans authorised by the council.
- vii) Channel 4 said that there was no unfairness to Mr and Mrs Olive from the way in which the camera angles and computer generated images ("CGI") were presented in the programme. It said that the camera angles and CGI used in the programme followed the format of the *Grand Designs* series and were, in all material respects, in compliance with Mr and Mrs Olive's clear requests to the programme makers not to film their property. Channel 4 said that, given that the programme had made it clear that the proximity of the respective properties was an issue, it could not reasonably be concluded that the use of camera angles and CGI in the programme misled viewers to believe that the respective properties were not reasonably proximate.

In summary, Channel 4 responded to the complaint of infringement of privacy in the making of the programme as follows:

- b) Channel 4 said that the programme makers had confirmed to it that Mr and Mrs Olive were never filmed by them at their property and that therefore they must be mistaken. Channel 4 said the programme makers were clear that they did not film Mr and Mrs Olive at or on their property nor did they film the property itself.

In summary, Channel 4 responded to the complaint of infringement of privacy in the programme as broadcast as follows:

- c) Channel 4 said that Mr and Mrs Olive did not have a legitimate expectation of privacy in the disclosure of their names and address in the programme as this information was already in the public domain. It also said that, in any event, the programme included no identifying information which revealed their names or address or any sensitive and private information. Channel 4 said that all shots of their property included in the programme were minor, contained no private information and were only filmed from Mr Ostwald's property in circumstances where filming them was unavoidable. Channel 4 said that the programme makers did not provide Mr and Mrs Olive with the undertaking they refer to in their complaint. Furthermore, Channel 4 said that the planning committee meetings that Mr Olive had participated in were held in public and provided to the public via a live webcast which was recorded and accessible on the council's website archive.

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 and Mrs Olive's complaint was considered by Ofcom's Executive Fairness Group ("The Group"). In reaching its decision, the Group carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, both parties' written submissions and their supporting materials.

Fairness

- a) Ofcom first considered the complaint that Mr and Mrs Olive's actions as neighbours of the project were unfairly portrayed, as a result of the omission and glossing over of details, the inclusion of uncorrected factual inaccuracies and the general tone of the programme.

In the context of this head of complaint, Ofcom noted that Rule 7.1 of Ofcom's Broadcasting Code ("the Code") provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. In considering this part of the complaint, the Group took account of, in particular, Practices 7.9, 7.11, 7.12 and 7.13 of the Code. Practice 7.9 of the Code states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Practice 7.11 of the Code 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. Practice 7.12 of the Code sets out that where a person approached to contribute to a programme chooses to make no comment or refuses to appear in a broadcast, the broadcast should make clear that the individual concerned has chosen not to appear and should give their explanation if it would be unfair not to do so. Practice 7.13 of the Code states that, where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

In making a decision on this head of complaint, Ofcom considered in turn each of the seven allegations specified by Mr Olive in his complaint.

- i) Ofcom considered the complaint that no explanation was provided as to why Mr and Mrs Olive did not appear on the programme.

In Ofcom's view programme makers would only normally be required to explain someone's absence from a programme in circumstances where, in the interests of fairness, that person would have been expected to contribute. For example, where a programme contained significant allegations about that person which would normally necessitate providing them with an opportunity to respond to those allegations.

In this case, the programme did not identify the complainants and did not make any allegations of wrongdoing, incompetence or any other significant allegation about them. The focus of the programme was on the building project and the various problems with its progress. While the programme referred to the "*neighbours*", this was incidental and would not in itself have identified the complainants. In Ofcom's view, it was not incumbent on the programme makers, in the interest of fairness, to provide the complainants with an opportunity to respond, or otherwise contribute, to the programme. Similarly, Ofcom does not consider that viewers would have expected the complainants to appear and therefore their absence from the programme was unlikely to have materially altered viewers' perceptions of them in a way that was unfair.

In the circumstances, Ofcom concluded that no unfairness resulted from the programme's omission of an explanation as to why Mr and Mrs Olive were unable to comment in the programme.

- ii) Ofcom next considered the complaint that the scene showing the visit of the planning officer left the impression that Mr and Mrs Olive's complaint had been made immediately prior to the visit when in fact it was made over one month previously.

Ofcom did not consider that the programme's presentation of this matter would be likely to lead viewers to believe that Mr and Mrs Olive's complaint had been made immediately prior to the visit of the planning officer. In any event, Ofcom took the view that the timing of the complaint was not in itself pertinent to the narrative of the programme. The programme fairly represented that a complaint had been made and that as a result the council planning officer had inspected the site and this had affected the progress of the build. Ofcom was satisfied that the programme did not portray the visit of the planning officer in a way that was either misleading or unfair to Mr and Mrs Olive.

Ofcom considered that the programme makers took appropriate care to satisfy themselves that the programme represented the visit as it happened and fairly.

- iii) Ofcom considered the complaint that Mr McCloud made false representations regarding the difference in height of Mr Ostwald's building resulting in the breach of planning permission. Ofcom noted the following comments made by Mr McCloud in the programme:

"you've got to drop this building what 3 ft, perhaps?"

"[...] Which is about roughly, look, it's about roughly the length of that, yeah?"

Ofcom took the view that the comments made by Mr McCloud made were clearly estimations on the height of the structure and not intended to be accurate dimensions.

It also considered that, although Mr McCloud estimated a lower height to the one provided by Mr and Mrs Olive, he still suggested that the difference in height was substantial. Ofcom noted the following comment made by Mr McCloud:

"I mean that....Ooh blimey, that's a sizeable chunk isn't it, to remove?"

Ofcom was therefore satisfied that the programme did not suggest the difference in height of the building, which resulted in a breach of planning permission, was trivial nor did it suggest that the complainants' concerns about the height of the building were unfounded or unreasonable. Indeed, Ofcom considered that this representation, though possibly inaccurate, vindicated the complainant's argument rather than downplayed it. Ofcom concluded that Mr McCloud's comments had not been presented in such a way as to lead to unfairness to Mr and Mrs Olive.

- iv) Ofcom considered the complaint that the programme did not challenge Mr Ostwald's claim that changes were made to the planning permission *"in order to pacify the neighbours"*.

Ofcom examined the context in which the assertion was made in the programme. Ofcom noted that Mr Ostwald was discussing what changes were being proposed to his build having had discussions with the council, who were acting on a complaint made by *"a neighbour"*. Ofcom also noted that Mr Ostwald was making changes to his original plan in order to find agreement between the parties, one of which was Mr and Mrs Olive. Ofcom considered that Mr Ostwald's comment, which was clearly presented to viewers as his own understanding of the events, did not result in unfairness to Mr and Mrs Olive.

- v) Ofcom considered the complaint that the programme failed to explain why Mr and Mrs Olive had threatened legal action against the council.

Ofcom noted the nature and purpose of the programme which focussed on the architecture, construction and progress of the build itself. While the programme makers were required to present this matter in a manner that was

not unfair to the complainants, they were not required to present, in detail, all facts relating to the subject. Nevertheless, in Ofcom's view it would have been clear to viewers that Mr and Mrs Olive had threatened the council with legal proceedings because they were unhappy with the Council's decision, particularly in approving the height of the build. Ofcom concluded that the omission of specific detailed reference to the reasons behind the threatened legal action did not lead to unfairness to Mr and Mrs Olive.

- vi) Ofcom considered the complaint that Mr McCloud's comment that Mr Ostwald had experienced "*hindrance from neighbours and planners*" contributed to a negative view of Mr and Mrs Olive's actions.

Ofcom noted that the programme focused on the shortcomings of Mr Ostwald's legal preparation for gaining planning permission rather than on his neighbours and their actions. Ofcom also took the view that it would have been clear to viewers that Mr McCloud was not providing a detailed explanation of the planning dispute but instead was providing a general comment based on his opinion of the progress and approach of Mr Ostwald's building project. Ofcom noted that this comment was made within this context and Ofcom was not persuaded that Mr McCloud's comment was likely to materially affect viewers' understanding of the situation that Mr Ostwald was in regarding his project. We concluded that the inclusion of the comment complained of did not reflect unfairly on Mr and Mrs Olive and therefore did not cause unfairness to them in the programme.

- vii) Ofcom considered the complaint that the programme made no reference to the proximity of the Mr Ostwald's property to Mr and Mrs Olive's property and the camera angles and computer generated animation used were misleading.

In relation to the complaint that the programme made no reference to the proximity of the two properties, Ofcom noted that Mr and Mrs Olive were referred to in the programme as "*neighbours*". Ofcom considered that this term would have clearly signalled to viewers the relative proximity between their property and the featured build. In relation to the complaint about the use of camera angles, Ofcom took the view, having examined the footage in the programme, that the programme's use of camera angles was designed to focus on the featured project and not the distance between the two properties. Ofcom also considered the use of computer generated animations and felt it would have been clear to viewers that the images were an artist's representation for the purpose of television, in the same style as other animations featured in the series, and would not be regarded as an accurate reflection of the surrounding areas of the project. Having taken these factors into account, Ofcom was satisfied that the programme's overall depiction of the proximity of Mr Ostwald's property to Mr and Mrs Olive's property did not result in unfairness to them in the programme.

Privacy

Ofcom then considered Mr and Mrs Olive's complaint of unwarranted infringement of privacy in the making of the programme.

- b) Ofcom considered the complaint that the programme makers filmed Mr and Mrs Olive's property and them at their property on 4 July 2006.

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. Rule 8.1 the Code states that any infringement of privacy in programmes or in connection with obtaining material included in programmes, must be warranted. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted? (Rule 8.1 of the Code). Ofcom also had regard to Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with the person's consent or be otherwise warranted.

Ofcom first considered whether the complainants had a legitimate expectation of privacy. Ordinarily, in the absence of consent to be filmed, and depending on the nature of the events being filmed, people might legitimately expect privacy when in and around their home.

However, in this case there was some doubt that the complainants had actually been filmed in on the date and in the manner suggested.

Ofcom noted that the account given by Channel 4 to Mr and Mrs Olive before their complaint to Ofcom (which suggested they were filmed on 4 July 2006) and the Channel 4 statement to Ofcom (which suggested they were not filmed) differed regarding what was filmed on 4 July 2006, and so requested clarification from Channel 4 on this point. The broadcaster stated that the complainants were not filmed on this date and that the discrepancy in their accounts was due to human error. Ofcom also requested all unedited footage taken by the programme makers on that day. After thorough examination Ofcom found no footage of Mr and Mrs Olive at their property. Ofcom did find footage of a council surveyor measuring a wall of the complainants' property, and noted this was most likely the footage agreed to by them.

Ofcom therefore concluded that, as the complainants were not in fact filmed, no expectation of privacy arose and there had been no infringement of privacy. There was therefore no need to go on to consider whether any infringement in the making of the broadcast was warranted.

Ofcom finally considered Mr and Mrs Olive's complaint of unwarranted infringement of their privacy in the programme as broadcast.

- c) Ofcom considered the complaint that the programme gave enough information to enable the easy discovery of the exact location of Mr and Mrs Olive's property and identities via a simple internet search.

In considering this complaint Ofcom took into account Practice 8.2 of the Code, which states that information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted.

Ofcom first considered whether Mr and Mrs Olive had a legitimate expectation of privacy regarding the information and images in the programme that related to the location of their home. In doing so, Ofcom assessed the extent to which the information would have disclosed the location of their home.

Ofcom noted that Mr and Mrs Olive were not named in the programme, nor was their address given.

Footage of the immediate area surrounding the project, the view of the countryside, the naming of the area - i.e. The Chiltern Hills, South Oxfordshire - and fleeting glimpses of parts of Mr and Mrs Olive's home were included, however Ofcom concluded that such information would have been difficult for the programme makers to hide given the proximity of the two properties and would also have been unlikely to have revealed the location of their home.

Ofcom also noted Mr Olive's participation in the planning permission application before South Oxfordshire council in 2006 and 2008, during which the location of their home would have been revealed included appearing at hearings which took place in open court. These hearings were filmed and archived on the council's website and therefore available to the public.

Taking into consideration the factors above, it is Ofcom's view that Mr and Mrs Olive did not have a legitimate expectation of privacy with respect to the information and images included in the programme.

Having found no legitimate expectation of privacy, Ofcom found that Mr and Mrs Olive's privacy was not infringed in the programme as broadcast. It was not therefore necessary for Ofcom to further consider whether any infringement of privacy was warranted.

Accordingly, Ofcom has not upheld Mr Olive's complaints of unfair treatment and unwarranted infringement of privacy in the making and broadcast of the programme

Not Upheld

Complaint by Mr Dean Miles

In the Line of Fire, ITV1, 17 February 2009

Summary: Ofcom has not upheld the complaint made by Mr Dean Miles of unfair treatment in the programme as broadcast. Also, Ofcom has not upheld the complaint made by Mr Dean Miles on behalf of himself and his family of unwarranted infringement of privacy in the making and broadcast of the programme.

An edition of *In the Line of Fire* followed the Specialist Firearms Unit of the London Metropolitan Police pursuing Mr Dean Miles, who was suspected of committing a violent crime. Footage was shown of a police briefing held in preparation for Mr Miles' imminent arrest. The briefing included a description of Mr Miles and his previous convictions and CCTV footage of the incident.

The programme then showed the police officers travelling to the Miles' family home and Mr Miles' subsequent arrest.

Mr Miles complained to Ofcom that he was treated unfairly and that his privacy and that of his family was unwarrantably infringed in the making and broadcast of the programme.

In summary Ofcom found the following:

- That the violent nature of Mr Miles' offence, which involved an imitation firearm, was presented fairly in the programme.
- Ofcom found that his previous convictions were directly relevant to the offence covered in the programme and that their inclusion was justified.
- Ofcom also found that because of Mr Miles' actions, for which he was ultimately convicted, neither he nor his family had a legitimate expectation of privacy over the footage of his arrest.
- Ofcom finally found that because Mr Miles' convictions were a matter of public record, the broadcaster was not required to seek the consent of Mr Miles or his family before broadcasting details of them.

Introduction

On 17 February 2009, ITV1 broadcast an edition of its reality series *In the Line of Fire*, which followed the Specialist Firearms Unit, CO19 of the London Metropolitan Police ("the Unit") carrying out their duties throughout the city.

This edition followed the Unit investigating crime and pursuing suspects. One such suspect was Mr Dean Miles. Footage was shown of a police briefing held in preparation for Mr Miles' imminent arrest which the Unit were to carry out. The briefing included a description of Mr Miles and his previous convictions. At this point the voiceover said:

"the suspect, Dean Miles, is a dangerous man."

CCTV footage of the incident in question was played in the briefing. It showed Mr Miles entering a shop along with two youths, waving what appeared to be a handgun and physically attacking the shopkeeper. It was alleged that Mr Miles had attacked the shopkeeper because he refused to sell his son (Jack Miles) a cigarette lighter.

The programme then showed the police officers travelling to the Miles' family home and Mr Miles' subsequent arrest. The officers searched the house and found an imitation firearm thought to be the weapon used in the attack.

Mr Miles pleaded guilty to the charges of grievous bodily harm and possession of an imitation firearm. He was sentenced to two years in prison.

Mr Miles complained to Ofcom that he was treated unfairly and that his privacy and that of his family was unwarrantably infringed in the making and broadcast of the programme.

The Complaint

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

- a) The programme portrayed Mr Miles as a "gun toting thug attacking innocent shopkeepers". It failed to mention that, after Jack Miles was refused the sale of a cigarette lighter, the shopkeepers assaulted him.
- b) The programme detailed his previous convictions the most recent of which were committed in 1983. These convictions were irrelevant to the incident in question. Furthermore, the programme failed to mention how Mr Miles' life had changed since.

In summary, Mr Miles complained that he and his family's privacy had been unwarrantably infringed in the making of the programme in that:

- c) No consent was by Mr Miles given to the filming of the arrest.
- d) No consent was given by Mr Miles or his family to the filming of the property on which the arrest took place.

In summary, Mr Miles complained that his privacy and that of his family had been unwarrantably infringed in the broadcast of the programme in that:

- e) Details of Mr Miles' convictions were broadcast without their consent.

ITV's case

In summary, ITV responded to Mr Miles' complaint of unfair treatment as follows:

- a) In relation to Mr Miles' complaint that the programme portrayed him as a "gun toting thug attacking innocent shopkeepers", and that the programme unfairly failed to mention that after Jack Miles was refused the sale of a cigarette lighter the shopkeepers assaulted him, ITV responded as follows:

ITV said the programme showed CCTV footage of Mr Miles clearly carrying out a violent attack on a shopkeeper and threatening him with what turned out to be a realistic imitation handgun.

ITV noted that in Mr Miles' complaint he refers to using a "plastic toy pistol" which appeared to seek to downplay the serious nature of the offence that he committed, and to which he pleaded guilty. ITV said that the programme made clear that the imitation firearm used in the attack was realistic and the victim could not have known that the gun was only an imitation weapon at the time. ITV said that Mr Miles admitted elsewhere in his complaint that this was a deliberate "attempt to terrorize". Likewise, it said, the police could not assume the weapon was not genuine prior to his arrest, especially given that Mr Miles had an extensive previous history of possessing illegal firearms.

ITV said that the programme did not use the expression "gun toting thug" at any time, but if viewers were left with the impression of Mr Miles as a "gun toting thug attacking innocent shopkeepers"; that was a fair impression, based on the facts of the case.

ITV said that there was no evidence whatsoever to support the claim that the shopkeepers concerned ever assaulted Jack Miles. It said this serious accusation flies in the face of the outcome of the case, namely that Mr Miles pleaded guilty to a serious assault, whilst the shopkeepers were treated throughout as the innocent victims of Dean Miles.

ITV said the CCTV footage taken from the shop's camera shown to the programme producers by police (which the producers chose not to include in the final transmitted programme) clearly showed the first incident referred to above involving Jack Miles and the shopkeeper and said there was absolutely no evidence whatsoever of the shopkeeper behaving in a violent or aggressive manner. ITV said he was only seen trying to protect himself and avoid confrontation.

ITV said, after the initial incident the CCTV footage further showed that Dean Miles followed his son into the shop armed with a handgun and violently threatened and assaulted the shopkeeper, inflicting a broken nose.

ITV accepted that Dean Miles may have been under the impression that his son had been assaulted by the shopkeeper following his son's telephone call after the first incident. ITV said that had he had any cause to believe his son's story, he could have called the police to investigate the incident.

The broadcaster said that no charge was brought or considered against the shopkeeper in relation to this allegation.

ITV said it was satisfied that there was a strong public interest in broadcasting the footage of Mr Miles' violent offence and subsequent arrest, given the grave public concern about violent crime and in particular gun crime.

ITV said that, having considered all the relevant facts, the programme was entirely fair in its presentation of the run of events. ITV said it was regrettable that Mr Miles has chosen to impugn the shopkeeper's innocence further in his complaint to Ofcom, having already pleaded guilty to an assault.

- b) In relation to Mr Miles' complaint that the programme detailed his previous convictions, the most recent of which were committed in 1983, and that these convictions were irrelevant to the incident in question and that the programme failed to mention how Mr Miles' life had changed since ITV responded as follows:

ITV did not accept the claim that Mr Miles' previous convictions were "irrelevant" to the incident. ITV argued they were directly relevant both in relation to the incident portrayed and in the context of the programme as a whole.

ITV said that at a time when the operations of CO19 are under intense public and political scrutiny, the two part documentary series *In the Line of Fire* sought to explore the tactics they deploy when dealing with armed criminals. ITV said that understanding how CO19 use police intelligence and details of previous criminal convictions to carry out detailed risk assessments when planning armed operations is an essential theme of these documentaries. ITV said that without conveying a proper sense of how CO19 use such information, the audience would have been left with an inaccurate and unbalanced view of CO19's work. ITV said that it was in this context that the programme makers believed it was wholly appropriate to include references to Dean Miles' previous convictions for firearms offences. ITV argued this was key information that underlay the decisions that CO19 took in relation to the tactics used for his arrest.

ITV understood Dean Miles' previous convictions for firearms offences include:

- 1974: illegal possession of a firearm
- 1975: illegal possession of a firearm
- 1983: conviction for Manslaughter whilst in possession of a firearm

ITV said these previous offences formed an essential part of the Risk Assessment and Safety Briefing carried out by the Metropolitan Police on 26 November 2007, shown in the programme. ITV said the risk assessment was carried out not only for the benefit of the officers from CO19, but for the unarmed police officers, members of The London Ambulance service and also for any members of the public who might potentially have been caught up in the operation. ITV said the programme included details from this risk assessment to make clear the potential threat to everyone involved in the operation. ITV argued that failing to include the facts of Mr Miles' serious previous convictions for violence and possession of firearms would have misled the audience about why the police acted as they did, both in terms of the extensive resources deployed and the tactics used.

ITV said that given the serious nature of Mr Miles' previous conviction in 1983, it would never be considered as "spent" under the Rehabilitation of Offenders Act. ITV said that given the nature of Mr Miles' most recent conviction, it was not unfair to refer to those previous convictions to set the offence in context. ITV said there was no obligation as a matter of fairness to refer to how (as Mr Miles claims in his complaint) his "life has changed since 1983". ITV said the commentary and the comments of the officers included in the programme reflected the clear evidence from the CCTV and eyewitnesses that Mr Miles remained a dangerous and violent man and that the officers were treating him with extreme caution when going to arrest him.

In summary, ITV responded to Mr Miles' and his family's complaint that their privacy was unwarrantably infringed in the making of the programme as follows:

- c) In relation to the complaint that Mr Miles gave no consent to his arrest being filmed ITV responded as follows:

ITV said Mr Miles was arrested at his home and that the film crew did not enter his home but stayed at a distance down the street and recorded the shouted exchanges between him and the arresting officers, and also filmed him being frogmarched down

the street and taken to the waiting police vehicle. ITV said it did not require Mr Miles' consent to film him in the street during his arrest. ITV argued that in the context of the public nature of the arrest, and the nature of the serious offences he had committed, Mr Miles' had no reasonable expectation of privacy in these circumstances.

- d) In relation to Mr Miles' and his family's complaint that no consent was given to the filming of the property on which the arrest took place ITV responded as follows:

ITV reiterated that the programme makers filmed the arrest of Dean Miles from a public thoroughfare and did not enter the family home. ITV said the film crew recorded the raid at a discreet distance from the house and did not seek to film the other members of the Miles family. ITV said the programme took reasonable steps to protect the privacy of the Miles family.

ITV said the programme purposely did not include the full address of the Miles family or refer to the specific street or the part of London the family lived in. ITV said the raid was carried out in the early hours of the morning in dimly lit conditions, and the footage was carefully edited not to dwell on the Miles' house. ITV argued that only those people who knew the Miles family already or people who lived in the immediate area would have identified the neighbourhood from watching the programme. ITV said that in any event, neighbours of the Miles family could have witnessed for themselves at the time, and may well have been aware of it prior to the programme being shown.

ITV said that the programme did not include any names, details or images of the Miles family other than Mr Miles, and obscured Jack Miles' image and identity in the CCTV footage. ITV said the programme stated that Dean Miles' son had a fight with the shopkeeper, which was essential for viewers to understand the background of events that led Mr Miles to carry out a serious criminal offence.

ITV argued that the programme makers could not have reasonably been expected to seek the owner's consent to film the exterior of the family home prior to the arrest operation on 26 November 2007, as it would have alerted the suspect of his impending arrest. Furthermore, they said the family had no reasonable expectation of privacy such that required the programme makers to seek or obtain their consent to film the arrest of Mr Miles.

In summary, ITV responded to Mr Miles' and his family's complaint of unwarranted infringement of privacy in the programme as broadcast as follows:

- e) In relation to the complaint that details of Mr Miles' convictions were broadcast without their consent, ITV responded as follows:

ITV said the programme did not require the consent of the family to broadcast details of Mr Miles' criminal record. ITV stated details are a matter of public record, and neither Mr Miles nor his family had any reasonable expectation of privacy in relation to this information.

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

Ofcom first considered Mr Miles' complaint of unfair treatment.

- a) Ofcom first considered the complaint that Mr Miles was portrayed as a "gun toting thug attacking innocent shopkeepers" and that the programme unfairly failed to mention that after Jack Miles was refused the sale of a cigarette lighter the shopkeepers assaulted him.

In the context of this head of complaint, and head b) below, Ofcom noted that Rule 7.1 of Ofcom's Broadcasting Code ("the Code") provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. In considering this part of the complaint, the Executive Fairness Group took account of, in particular, Practice 7.9 of the Code, which states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom noted that Mr Miles was convicted of the offence shown in the programme. The offence involved a physical assault on a shopkeeper and the waving of an imitation firearm. Ofcom therefore noted the obvious violent and threatening nature of the offence. Ofcom also took the view that because relatively clear CCTV footage of the offence was shown, there was little room left for the viewer to arrive at an unfair or inaccurate conclusion about Mr Miles or the nature of the offence. Ofcom also found no evidence to support Mr Miles' claim that his son had been assaulted by the shopkeeper after he was refused the sale of a cigarette lighter and noted that no charges had been brought against the shopkeeper. Ofcom concluded that the facts of Mr Miles' offence were treated and portrayed with reasonable care by the broadcaster. Consequently, Ofcom found that Mr Miles suffered no unfairness.

- b) Ofcom then considered Mr Miles' complaint that the programme detailed his previous convictions, the most recent of which were committed in 1983. These convictions, he complained, were irrelevant to the incident in question. Furthermore, the programme failed to mention how Mr Miles' life had changed since.

Ofcom took the view that Mr Miles' 1983 manslaughter conviction was directly relevant to the offence covered in the programme as they were both violent and dangerous in nature. Ofcom also noted that the 1983 manslaughter conviction was detailed within the context of a CO19 Risk Assessment and Safety Briefing during which the threat Mr Miles might pose to police in the forthcoming arrest

was discussed. In such a context, Ofcom felt the disclosure of the conviction was relevant and justified. Ofcom also found that in this context the programme was not required to detail Mr Miles' current life circumstances, regardless of how they had changed, as the focus of the programme was on Mr Miles' offence and his criminal character, not his general lifestyle. Ofcom was therefore again satisfied that the broadcaster had taken reasonable care in presenting the material facts in a way that did not result in unfairness on Mr Miles.

Ofcom next considered Mr Miles' and his family's complaint of unwarranted infringement of privacy in the making of the programme.

- c) Ofcom considered the complaint that Mr Miles had not given consent to his arrest or his property being filmed whilst the arrest took place.

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, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted? (Rule 8.1 of the Code). Ofcom also had regard to Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with the person's consent or be otherwise warranted.

In considering whether Mr Miles had a legitimate expectation of privacy, Ofcom took into account factors such as the fact that a police arrest was being filmed, in a public place, and in an undisguised manner. Ofcom noted that these circumstances and the fact that he had committed the offence for which he was subsequently convicted served to diminish Mr Miles' legitimate expectation of privacy.

Ofcom therefore concluded that Mr Miles did not have a legitimate expectation of privacy in circumstances where he was filmed, in public, being arrested for an offence for which he was subsequently convicted. Having found no legitimate expectation of privacy, Ofcom found that Mr Miles' privacy was not infringed in the making of the programme. It was not therefore necessary for Ofcom to further consider whether any infringement of privacy was warranted.

Ofcom concluded that there had been no infringement of privacy in the making of the programme by the filming of the arrest or by the filming of Mr Miles' property whilst the arrest took place.

Ofcom finally considered the complaint that Mr Miles' and his family's privacy was unwarrantably infringed in the broadcast of the programme.

- d) Ofcom considered the complaint that Mr Miles' convictions were broadcast without his or his family's consent.

In considering this complaint Ofcom took into account 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.

Ofcom noted that Mr Miles' convictions were a matter of public record and their inclusion in the programme was directly relevant to it as they were detailed within the context of a CO19 Risk Assessment and Safety Briefing (as noted under

head b of the decision) and provided background information on the reasons for the CO19 operation.

Ofcom took the view that neither Mr Miles nor his family had a legitimate expectation of privacy as regards this information. Having found no legitimate expectation of privacy, Ofcom found that neither Mr Miles' nor his family's privacy were infringed in the broadcast of the programme. It was not therefore necessary for Ofcom to further consider whether any infringement of privacy was warranted.

Accordingly, Ofcom has not upheld Mr Miles' complaint that he was treated unfairly in the programme as broadcast. Also, Ofcom has not upheld Mr Miles' complaint made on his own behalf and on behalf of his family that their privacy was unwarrantably infringed in both the making and broadcast of the programme

Not Upheld

Complaint by Ms Elizabeth Hipson made on her behalf by Bannatyne, Kirkwood, France & Co. Solicitors

Trisha Goddard, Five, 4 June 2007

Summary: Ofcom has not upheld this complaint of unfair treatment made by Ms Elizabeth Hipson.

On 4 June 2007, Five broadcast an episode of *Trisha Goddard* which included an item entitled “*I’m No Thief*”. Ms Elizabeth Hipson contributed to this part of the programme in which the results of a polygraph test she had taken were revealed. Ms Hipson had denied stealing a valuable watch belonging to her uncle, but the polygraph results showed “deception indicated” in respect of the relevant polygraph test questions. Ms Hipson continued to protest her innocence and complained to Ofcom that she had been unfairly treated in the programme because Trisha Goddard stated that the polygraph examiners were “*one of the world’s top, leading lie detector experts*”, leading viewers to conclude the polygraph results were irrefutable.

In summary Ofcom found that as the claim that the polygraph examiners were “*one of the world’s top, leading lie detector experts*” was just one of a number of factors of relevance in the programme as to the reliability of the polygraph results, that claim on its own, right or wrong, would not have resulted in unfairness to Ms Hipson.

Introduction

On 4 June 2007, Five broadcast an episode of *Trisha Goddard*, a chat show programme hosted by Trisha Goddard. The complainant, Ms Elizabeth Hipson (referred to in the programme as “Betty”), participated in one of the features entitled “*I’m No Thief*”.

The item related to a valuable watch that had belonged to Ms Hipson’s uncle, which several of Ms Hipson’s relatives believed she had stolen. Ms Hipson was shown in the programme as broadcast repeatedly denying the allegation of theft. Ms Hipson also underwent a polygraph test arranged by the programme to prove her innocence. When revealing the results of the polygraph test, which was undertaken by the programme’s polygraph examiners, Mr Cargill and Ms Penner, Trisha Goddard stated that the polygraph test had revealed that Ms Hipson was lying when she denied knowing the whereabouts of the missing watch; claimed to have no involvement in the theft of the missing watch; and finally, when she claimed not to have taken the missing watch. Following these results and Ms Hipson’s further denials of the allegations, Trisha Goddard stated:

“We double tested it... this has been checked and checked. This is the country’s...one of the world’s top, leading lie detector experts...but these are world experts, I trust them, a lot of people trust them, police forces trust them... Your responses were some of the highest they’ve seen – they were so high, they weren’t even slight and yes, they took into account everything else...Cargill and Penner are lie detector experts. Their particular qualification nationally and internationally is theft. That is their particular expertise. These were some of the strongest reactions they saw.”

At the end of the programme, Trisha Goddard stated over the programme's end credits:

"Since this programme was recorded, Betty has voluntarily undergone a second polygraph test which indicated she was telling the truth. Opinion within the family is still divided and the watch has not been found."

Ms Hipson complained that she was treated unfairly in the programme as broadcast.

The Complaint

Ms Hipson's case

In summary, Ms Hipson complained that she was treated unfairly in that Mr Cargill and Ms Penner were described by Trisha Goddard as the "world's top, leading lie detector experts" and, therefore, viewers were led to conclude that the results of their polygraph test on Ms Hipson were irrefutable. Further, that the nature of Mr Cargill's and Ms Penner's qualifications were not indicated in the programme.

Ms Hipson also submitted a letter dated 29 January 2008 from the polygraph examiner who had carried out the second polygraph test (as referred to in the end credits announcement). The letter indicated that the polygraph examiner disagreed with the descriptions of Mr Cargill and Ms Penner as "world's leading lie detector experts" and their experience with police forces.

Five's case

In summary, Five first responded to Ms Hipson's complaint by setting out some background information.

Five said that Ms Hipson contacted the programme makers with a view to appearing on the programme, and was featured at her own request. Ms Hipson signed a pre-test release and agreement for polygraph interview and examination as provided by the NSDSC Group Limited ("NADAC"), the company which conducted the polygraph test. The form confirmed that Ms Hipson submitted to the polygraph test:

"voluntarily, without duress, coercion, threats or promise of reward or immunity".

Five said that after Ms Hipson learnt that she had failed the polygraph test conducted by Mr Cargill and Ms Penner (during the programme recording), her solicitors, Bannatyne, Kirkwood, France & Co. ("BKF"), wrote to Five enclosing the results of a second polygraph test undertaken by Ms Hipson which apparently indicated no deception in the matter of the stolen watch. BKF's letter asked what steps would be taken to clarify this on the programme.

Five said that even though the programme had already been delivered and scheduled for transmission, Five contacted the programme makers on 1 June 2008 to inform them of the development and, as a consequence, the end credits announcement, voiced by Trisha Goddard, was then added.

Five said that the material facts were thus represented fairly and accurately on-air, both as required by Ofcom's Broadcasting Code (the "Code") and as requested by BKF. Given the very short notice afforded to Five before transmission and the fact that the programme had already been delivered, Five considered this was the only practicable solution in the circumstances.

Five then responded to the complaint that unfairness resulted from the weight given in the programme to the qualifications of the polygraph examiners, Mr Cargill and Ms Penner, and the indication given within the programme that they were the world's leading experts and that they had worked with the police.

Five said that the principal polygraph examiner in this instance was Mr Cargill of NADAC. Five said that it is notoriously difficult to establish pre-eminence in such a practice, but that:

- Mr Cargill was Chairman of the British Polygraph Association at the time he conducted the polygraph test for the programme;
- Mr Cargill was one of the world's leading experts in the field;
- Mr Cargill had been approved by the Home Office to work on several high-profile investigations;
- Mr Cargill had also worked with State police forces in Miami and Boca Raton;
- Mr Cargill's company had recently been retained by G4S (formerly Securicor and Group 4); and
- Mr Cargill had contributed to a report on polygraph screening for the Metropolitan Police force.

Five also provided Ofcom with Mr Cargill's résumé.

In response to the complaint that Mr Cargill's and Ms Penner's qualifications were not indicated in the programme, Five said that it would be impracticable in every programme to run through all of Mr Cargill's qualifications, but that Five was satisfied that he was, as described by Trisha Goddard, one of the world's leading lie detector experts, with particular experience in detecting theft.

Five then responded to the complaint that Ms Hipson was treated unfairly in that the polygraph results were presented as irrefutable.

Five disagreed that the polygraph results were presented as irrefutable and said that: Before the polygraph results were even announced, a statement from Mr Cargill was read out on-air which expressly stated:

"We can only determine if a person is being truthful or deceptive to the questions asked. The circumstances as to why they are taking the test are a whole different issue."

In an additional statement read out directly before the polygraph results were opened, Mr Cargill added:

"Betty said that she would be badly hurt if found deceptive. She even said or used words like "murdered" or "tortured". This would automatically affect the polygraph result."

After the polygraph results had been read out, referring to the examiners, Trisha Goddard said:

"... they also thought it strange about the threats. The way you reacted to those threats was extraordinary."

The polygraph results were only read out after Ms Hipson had had every opportunity to put her case in advance.

The caption displayed on-screen throughout read:

"I didn't steal that £38K watch. Lie detect me for the truth."

Ms Hipson was also given free rein to explain her version of events and to clear up any misunderstanding there may have been.

Ms Hipson was given full benefit of the doubt and was presented in an entirely fair and non-judgemental manner.

In general, Five said that the comments exchanged with Ms Hipson's family members (including reference to an "insurance job" and differing valuations of the missing watch) suggested there was more to the dispute than just the apportionment of blame.

Finally, at the end of the item, and entirely in Ms Hipson's defence, Trisha Goddard suggested to her accusers the possibility that Ms Hipson may have known something about the watch's disappearance but had subconsciously repressed the memory. In other words, if she was, for example, a kleptomaniac, there existed the possibility that she did not deliberately or consciously steal the watch, but took it or hid it nevertheless. Five said that Trisha Goddard suggested that Ms Hipson should undergo psychotherapy or hypnosis, and ended the item by saying:

"Until she has done that, Ian, I would ask for you to keep an open mind, because you don't know. It could be some form of kleptomania, and she's doing something she doesn't even know she can do and blocking it out."

Five said that Trisha Goddard, having given Ms Hipson the benefit of the doubt, then sent her off with a trained counsellor and the offer of any help she may need.

It was repeatedly stated throughout the item that any number of extraneous factors could influence the polygraph result.

Five said that while Trisha Goddard stood by the accuracy of the polygraph test, she did emphasise that it was not irrefutable proof of anything other than the indication of deception in answering the precise questions put to the subject.

Ms Hipson's second statement

This consisted of a letter from BKF dated 1 August 2008 making various submissions about the experience and qualifications of Mr Cargill.

Five's second statement

This consisted of a letter from Mr Cargill dated 5 August 2008 clarifying a number of issues about his experience and qualifications.

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 Hipson'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 the programme as broadcast and both parties' written submissions.

Ofcom considered Ms Hipson's complaint that she was treated unfairly in that Mr Cargill and Ms Penner were described by Trisha Goddard as the "*world's top, leading lie detector experts*" and, therefore, viewers were led to conclude that the results of their polygraph test on Ms Hipson were irrefutable. Further, that the nature of Mr Cargill's and Ms Penner's qualifications were not indicated in the programme.

In considering this complaint, Ofcom took account of Rule 7.1 of the Code which states:

"Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes."

Ofcom also took account of Practice 7.9 of the Code which states:

"Before broadcasting a factual programme, including programmes examining past events, broadcasters should have taken 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; and anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute."

Ofcom noted that, immediately after the polygraph results were read out on the programme and while Ms Hipson continued to deny any involvement, Trisha Goddard said:

"These are the country's, one of the world's top, leading lie detector experts. I don't want to have to stand here and read this, I feel sick to my stomach, but these are world experts, I trust them, a lot of people trust them, police forces trust them..."

"Cargill and Penner are lie detector experts, their particular qualifications nationally and internationally is theft, that is their particular expertise..."

Ofcom noted that Ms Hipson took issue with the programme's description of Mr Cargill and Ms Penner as "*one of the world's top, leading lie detector experts*". Ofcom also noted Five's statement that "it is notoriously difficult to establish pre-eminence in such a practice" and the various submissions from both parties in respect of the experience and expertise of Mr Cargill and Ms Penner. However, as Ofcom is not a fact-finding tribunal it considered it was not possible, and in this case unnecessary, for it to reach a finding as to the level of experience and expertise of Mr Cargill and Ms Penner, other than to note that they are both qualified polygraph examiners.

Ofcom was required to consider whether the programme makers took reasonable care not to present one factor, the level of experience and expertise of Mr Cargill and Ms Penner as stated in the programme, in a way that resulted in unfairness to Ms Hipson by causing viewers to conclude that the polygraph results were irrefutable.

Having viewed the programme and considered the transcript, Ofcom noted a number of factors, including the stated level of experience and expertise of Mr Cargill and Ms Penner and those set out below, that it considered would have been material to viewers' perception of the veracity of the polygraph results.

- Ms Hipson voluntarily undertook the programme's polygraph test in the hope that it would prove that her denials of the theft of the watch were true.
- Before the polygraph results were revealed, Ms Hipson was given an opportunity to provide a comprehensive denial of the theft allegation.
- Mr Cargill's statement read by Trisha Goddard before the polygraph results were revealed:

"Betty said that she would be badly hurt if found deceptive, she even said, or used words like murdered or tortured, now this would automatically affect the polygraph results."

- The polygraph results found Ms Hipson to be deceptive in her answers to all three relevant questions asked in the polygraph test.
- After the polygraph results were revealed, Ms Hipson continued to deny any involvement.
- Finally, when the results of the polygraph test Ms Hipson voluntarily undertook after the programme was recorded apparently showed her responses to the relevant questions to be not deceptive, the statement read by Trisha Goddard over the end credits:

"Since this programme was recorded, Betty has voluntarily undergone a second polygraph test which indicated she was telling the truth. Opinion within the family is still divided and the watch has not been found."

In the circumstances, in Ofcom's view, there were many factors which would have been material to viewers' conclusions as to the veracity of the polygraph results and it would be unrealistic to conclude that any one factor, such as the experience and expertise of the polygraph examiners, would have been determinative.

While Ofcom noted the disagreement between the parties as to whether it was correct to describe Mr Cargill as "*one of the world's top, leading lie detector experts*", in Ofcom's view that claim, on its own, would not have been conclusive in the minds of viewers. As a result, Ofcom concluded that neither the claims made in the programme about the experience and expertise of Mr Cargill, right or wrong, nor the omission from the programme of further details of the qualifications of Mr Cargill and

Ms Penner would have resulted in unfairness to Ms Hipson. Ofcom was therefore satisfied that Five had taken reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Ms Hipson.

Accordingly Ofcom has not upheld Ms Hipson's complaint of unfair treatment in the programme as broadcast

Not Upheld

Complaint by Mr S

Breakout, BBC1 Northern Ireland, 28 October 2008

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

This programme examined the mass prison escape from HMP Maze ("the Maze Prison") near Belfast in 1983. It described how the prisoners planned and executed the escape and included contributions from a former prison officer and three former prisoners who were leading figures in the escape. One of the former prisoners, Mr Bobby Storey, gave an account of his recapture by the prison authorities shortly after the escape.

The complainant, Mr S, was a prison officer at the Maze Prison at the time of the escape and was involved in the recapture of Mr Storey. Although Mr S was not named or referred to in the programme, archive footage of him guarding a prison turnstile was included.

Mr S complained to Ofcom that he was unfairly treated in the programme and that this privacy was unwarrantably infringed in the programme as broadcast.

Ofcom found as follows:

- Ofcom considered that the programme did not portray Mr S or the events in which he was involved in a way that was either misleading or unfair to him. Ofcom considered that the broadcaster took appropriate care to satisfy itself that the programme presented Mr Storey's account of his recapture fairly.
- Ofcom considered that any expectation of privacy that Mr S had was diminished, because he was neither named nor identified, other than by the inclusion of archive news footage of him carrying out his public-facing duties as a prison officer, and because that footage was already in the public domain. Ofcom was satisfied that Mr S did not have a legitimate expectation of privacy in the inclusions of the archive footage of him in the programme and that his privacy was not unwarrantably infringed in the programme as broadcast.

Introduction

On 28 October 2008, BBC1 Northern Ireland broadcast *Breakout*, which examined the mass prison escape made in 1983 by 38 members of the Irish Republican Army from HMP Maze ("the Maze Prison") near Belfast.

The programme described how the prisoners had planned and executed the escape and it included contributions from a former prison officer and three former prisoners who were leading figures in the escape. One of the former prisoners, Mr Bobby Storey, was found hiding along a river bank shortly after the escape and recaptured. In the programme, he described his treatment by the prison authorities:

"They took us out of the water...this was all under gun point. Then they stripped us naked, marched us up to a jeep and then brought us back round to the jail.

They dragged us out by the feet from the van, dragged us in, and kicked us into the punishment cells."

The programme also used dramatic reconstructions of the escape and the recapture of some of the prisoners. It also included archive footage of the Maze Prison and prison officers going about their duties.

Mr S was a prison officer at the Maze Prison at the time of the escape and was one of the prison officers involved in recapturing Mr Storey. Archive footage of the Maze Prison used in the programme included brief footage of Mr S guarding a prison turnstile.

Mr S complained to Ofcom that he was treated unfairly in the programme and that his privacy had been unwarrantably infringed in the programme as broadcast.

The Complaint

Mr S's case

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

- a) He was portrayed unfairly in the programme as being involved in mistreating the recaptured prisoners.

Mr S said that he had been one of the prison officers who recaptured Mr Storey and the other prisoners found hiding along the riverbank. He said that the prisoners were not mistreated in the way described by Mr Storey.

In summary, Mr S complained that his privacy was unwarrantably infringed in the programme as broadcast in that:

- b) Footage of him while on duty as a prison officer was included in the programme and that no attempt was made by the programme makers to hide his identity.

The BBC's case

In summary, the BBC responded to the complaint of unfair treatment in the programme as broadcast as follows:

- a) The BBC said that Mr S's complaint of unfairness arose from the inclusion of archive footage of him in the programme and was dependent on the probability of viewers establishing a link between the unnamed images of him, as he looked 25 years ago, and the account by Mr Storey of his recapture. The BBC said that Mr Storey's account of the recapture appeared much later in the programme and the accompanying pictures consisted of a reconstruction using actors. It said that there was nothing in the programme's commentary or Mr Storey's account that gave any clue to the identity of the prison officers whom he described as having "stripped" the recaptured prisoners, "dragged" them from a van by their feet and "kicked" them into the punishment cells. The BBC said that it did not believe therefore, that the programme suggested any link between the archive footage of Mr S and the account given later in the programme by Mr Storey.

In summary, the BBC responded to the complaint of unwarranted infringement of privacy in the programme as broadcast as follows:

- b) The BBC said that all the archive footage included in the programme was sourced from reputable news archives, such as the BBC and ITN, and that it had no reason to believe that the material had not been properly cleared for use at the time and the necessary consents obtained. The BBC said that the identities of some individuals featured had been disguised in the archive footage and all the archive footage was included in the same format as the original. The footage of Mr S was sourced from the archive as "Prison Officer" and it was used in the programme in that context, as an incidental shot forming part of a visual backdrop to Mr Storey's description of the physical layout and daily routine of life in the prison. The BBC said that it did not, therefore, believe that Mr S's privacy was infringed by the re-use of this piece of footage, in the context of describing an average day at the prison at the time of the escape.

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.

Mr S'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 along with a transcript of it and written submissions from both parties. In its considerations, Ofcom took account of Ofcom's Broadcasting Code ("the Code").

Unfairness

- a) Ofcom first considered Mr S's complaint that he was treated unfairly in the programme in that it portrayed him unfairly as being involved in mistreating the recaptured prisoners.

Ofcom had particular regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Code, and whether it had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to an individual or organisation (as outlined in Practice 7.9 of the Code).

Ofcom noted the account given by Mr Storey in the programme that related to his recapture by the police and prison authorities:

"They took us out of the water...this was all under gun point. Then they stripped us naked, marched us up to a jeep and then brought us back round to the jail. They dragged us out by the feet from the van, dragged us in, and kicked us into the punishment cells."

Ofcom considered whether or not the broadcaster had taken reasonable care to satisfy itself that material facts were presented fairly in the programme. In doing so, Ofcom first examined the contextual basis for the account given in the programme by Mr Storey of his recapture and subsequent treatment by the prison authorities. It then considered whether the programme's presentation of his account could have resulted in unfairness to Mr S.

Ofcom noted that the programme documented the escape of 38 prisoners from the Maze Prison and was largely told from the perspective of the escapees. It included testimonies from former prisoners involved in the escape and a former prison officer. Mr Storey, as one of the leading figures in the escape, gave his account of his involvement in the escape and subsequent recapture.

Ofcom noted that Mr Storey's account of his recapture contained a graphic description of the rough handling he had allegedly received at the hands of the prison authorities. However, it considered the programme made clear that the account given by Mr Storey was his own personal recollection of the events as he experienced them at the time of his recapture. In Ofcom's view, Mr Storey's account was not presented in the programme as forming part of its factual narrative or as a serious allegation of wrongdoing or other significant allegation about the conduct of the prison officers who recaptured him.

In these circumstances, Ofcom went on to consider whether or not this presentation in the programme of Mr Storey's account of his recapture resulted in unfairness to Mr S. Again, Ofcom examined Mr Storey's account (as set out above). Despite the emotive language used by Mr Storey, Ofcom was satisfied that his comments would not have materially affected viewers' understanding of his recapture in a way that was unfair to Mr S. It considered that in the context of a programme that included the personal testimonies of a number of contributors who had been involved in the escape and in the recapturing of the prisoners, viewers would have understood that Mr Storey's account was his own personal testimony and that it was not intended to be a factual depiction of his recapture.

Taking all the factors referred to above into account, Ofcom was satisfied that the programme did not portray Mr S or the events in which he was involved in a way that was either misleading or unfair to him. Ofcom considered that the broadcaster took appropriate care to satisfy itself that it presented Mr Storey's account of his recapture fairly in the programme.

Ofcom, therefore, found no unfairness to Mr S in this regard.

Privacy

- b) 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)

Ofcom first considered whether or not Mr S had a legitimate expectation of privacy in relation to the image of him featured in the archive footage included in the programme. The Code explains that "legitimate expectations of privacy will vary to the place and the nature of the information, activity or condition in

question the extent to which it is in the public domain (if at all) and where the individual concerned is already in the public eye".

Ofcom noted that the programme used archive footage of a number of prison officers at the Maze Prison going about their duties. The images of Mr S guarding a turnstile accompanied the programme's description of the daily routine of the coming and going of visitors to the prison.

Ofcom recognised that there may well be circumstances in which the disclosure of information relating to a prison officer carrying out his or his duties may be understood to be sensitive and may therefore attract an expectation of privacy.

However, in the circumstances of this particular case, Ofcom considered that the footage of Mr S guarding the turnstile did not reveal any conduct or action that was of a personal or sensitive nature. Moreover, Ofcom took the view that Mr S, when employed as a prison officer, was a public servant and, in relation to this particular footage, was engaged in a public-facing role in guarding the turnstile. Ofcom noted that Mr S was neither named nor referred to specifically in the programme. Ofcom also noted that the archive footage of Mr S included in the programme was at least 25 years old. It also noted that: the footage appeared not to have been taken covertly; the quality of it was relatively poor; and its inclusion in the programme was brief and incidental. These factors, in Ofcom's view, limited the extent to which Mr S would have been identifiable from its inclusion in the programme broadcast. Furthermore, Ofcom noted that the archive footage included in the programme had been obtained from BBC and ITN news archives and that the images, including those of Mr S, were already in the public domain. It considered that any expectation of privacy that Mr S might have had was therefore further diminished by the fact that the information included in the programme (namely the images of him featured in the archive footage) was already in the public domain.

Taking all the factors referred to above into account, Ofcom was satisfied that Mr S did not have a legitimate expectation of privacy in the images of him contained in archive footage included in the programme.

Having concluded that Mr S did not have a legitimate expectation of privacy in this regard, Ofcom found that his privacy was not infringed in the programme as broadcast. It was therefore not necessary for Ofcom to further consider whether any infringement of privacy was warranted or not.

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

Not Upheld

Complaint by Ms Sonja Earl on her own behalf and on behalf of Mr Wolfgang Armstrong (deceased) *Spotlight, BBC1 (South West), 12 January 2009*

Summary: Ofcom has not upheld this complaint of unfair treatment made by Ms Sonja Earl on her own behalf and on behalf of her brother, Mr Wolfgang Armstrong.

Spotlight, BBC1's regional news programme for the South West region, broadcast a news item about a railway accident at Hayle railway station in Cornwall. The report explained that Mr Wolfgang Armstrong was killed in the accident after jumping down from the station platform. The report included witness reports and a claim that Mr Armstrong had been drunk at the time of the accident. Ms Sonja Earl was the sister of Mr Armstrong.

In summary Ofcom found that it was not unfair for the programme's reporter to claim that witnesses had described Mr Armstrong as drunk at the time of his tragic accident on a railway line. Ofcom concluded that the report made clear the details it was presenting were based on eye-witness accounts, and found that the information included in the report had since been verified.

Introduction

On 12 January 2009, BBC1 broadcast an edition of its evening regional news programme, *Spotlight Southwest*, which included a report on the accidental death of Mr Wolfgang Armstrong at Hayle railway station in Cornwall on 11 January 2009. The report was broadcast at 18:30 and repeated again, unedited, at 22:30.

The report included interview footage of an eye witness and a police officer involved in the investigation. In describing the incident, on the basis of witness accounts and information provided by the police, the programme's reporter stated:

"The victim, who witnesses say was drunk, was hit by a high speed train..."

The accompanying footage also included a close up shot of a discarded beer can on a railway track.

Ms Sonja Earl, Mr Armstrong's sister, complained to Ofcom on her own behalf and on behalf of her brother that they were treated unfairly in the programme.

The Complaint

Ms Earl's case

In summary, Ms Earl complained on her own behalf and on behalf of Mr Armstrong that they were treated unfairly in the programme as broadcast in that:

The report unfairly insinuated that that Mr Armstrong was drunk at the time of the accident, without any foundation or facts to support this.

In particular, Ms Earl said that the reporter referred to eye witnesses who said that it appeared that Mr Armstrong had been drinking and the image of a discarded beer

can was focused upon. She said that no other media coverage of her brother's accident referred to him having been drinking.

The BBC's case

In summary and in response to the complaint of unfair treatment, the BBC said that the report was broadcast the day after Mr Armstrong's death, and that his name had been given to the programme makers by the British Transport Police. A Senior Broadcast Journalist with many years' experience was deployed to report on the incident. He compiled a brief and factual report for the early evening news bulletin in which he described as precisely and comprehensively as possible the events leading up to this accident. The video footage was gathered where the incident happened, in its aftermath, and included several shots of the railway line and platform, as well as a lager can lying on the track.

The BBC said that by talking to the police and other sources, the reporter was able to establish that Mr Armstrong had been drinking heavily before he crossed the railway line. The BBC also provided the results of the Coroner's Inquest into Mr Armstrong's death, which indicated that his blood/alcohol level was high.

The BBC said that the result of the Coroner's Inquest into Mr Armstrong's death in March 2009 confirmed the witness accounts. The Inquest heard that Mr Armstrong's blood/alcohol level was 258mg/100ml (the legal limit for driving being 80mg/100ml) and that this level of alcohol would have had a "detrimental effect on his motor and cognitive function".

The BBC said that in Cornwall, there were particular sensitivities surrounding rail accidents because there had been several instances of deaths at level crossings in the county in recent years. These accidents had led to increased public concern, and there was a significant campaign underway to improve railway safety.

In this context, the BBC said that it believed that there was a strong public interest justification in ensuring that people were given the most accurate information possible about the circumstances and causes of railway accidents and that the detailed reporting of them played a vital role in preventing future accidents. The omission of facts about the cause of an accident could have left the public in doubt about the safety of the railway station and the competence of the train operator concerned, and could have alarmed other travellers. The BBC said that it believed it was justified in including comprehensive information about the circumstances of the accident, which resulted in considerable disruption: the closure of the railway line between London and Penzance affected a significant number of rail passengers. The BBC stressed that it was important not to give the impression that there was any question of safety at the station, or that the accident cast doubt on the safety standards of the train operator.

The BBC said that it regretted the distress caused to Mr Armstrong's family by the report. However, it maintained that it was important for the report to clarify that Mr Armstrong's death had been accidental.

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.

Ms Earl's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, the Executive Fairness Group carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and written submissions from both parties. In its considerations, Ofcom took account of Ofcom's Broadcasting Code ("the Code").

Ofcom considered the complaint that the programme as broadcast unfairly insinuated that that Mr Armstrong was drunk at the time of the accident, without any foundation or facts to support this.

In considering this part of the complaint Ofcom took account of Rule 7.1 of the Code which provides that broadcasters must avoid unjust or unfair treatment of individuals in programmes. Ofcom also took account of Practice 7.9 of the Code, which provides 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.

The report included an explanation of the build-up to the accident, when Mr Armstrong had jumped down onto the railway tracks, and an eye-witness account of Mr Armstrong's attempts to climb back onto the platform. Ofcom considered that it was important for the news report to offer some analysis of Mr Armstrong's actions and to help clarify that his death was a tragic accident. The issue of Mr Armstrong being drunk or not therefore represented a material fact in explaining his behaviour preceding his untimely death.

Ofcom also noted the wider context of the report, as raised by the BBC in its submissions: that there were particular sensitivities to rail accidents in Cornwall because there have been several incidents of deaths at level crossings in the county in recent years, which have led to increased public concern. Ofcom was satisfied by the BBC's argument that, for this reason, it was important not to give the impression that there was any question of safety at the station, or that the accident cast doubt on the safety standards of the train operator.

Ofcom next considered whether reasonable steps had been taken to ensure that the report presented this matter in a manner that was fair. The report stated that:

"The victim, who witnesses say was drunk, was hit by a high speed train..."

Ofcom noted the BBC's statement that the reporter had established that Mr Armstrong had been drinking heavily before he crossed the railway line by talking to the police and other sources. Ofcom was satisfied that the report made clear that the report was relying on eye witnesses' recollections suggesting that Mr Armstrong had been drunk at the time of accident. Ofcom considered that it was legitimate for the report to present eye witness accounts in this way and, in Ofcom's view, the

programme makers had taken care to ensure that the circumstances of the accident were presented fairly. Ofcom also noted that the result of the Coroner's Inquest into Mr Armstrong's death, provided by the BBC, confirmed the witness accounts.

Ofcom therefore found there was no unfairness to Ms Earl or her brother, Mr Armstrong.

Accordingly Ofcom has not upheld Ms Earl's complaint on her own behalf and on behalf of, Mr Armstrong (deceased) of unfair treatment in the broadcast of the programme

Other Programmes Not in Breach

Up to 8 September 2009

Programme	Transmission Date	Channel	Category	Number of Complaints
"Plug Me In" music video	29/05/2009	Channel AKA	Sex/Nudity	1
6-0-6	29/08/2009	BBC Radio 5 Live	Generally Accepted Standards	10
9/11: 102 Minutes that Changed America (trailer)	02/09/2009	Channel 4	Violence	1
Advertising minutage	06/09/2009	ITV1	Advertising	1
Alan Carr: Chatty Man	16/08/2009	Channel 4	Generally Accepted Standards	2
Alan Carr: Chatty Man	18/08/2009	E4	Generally Accepted Standards	1
Alesha Dixon's Top 20 Bootyshakers	18/08/2009	Channel 4	Sex/Nudity	1
Amber Sound	14/08/2009	Amber Sound	Crime (incite/encourage)	1
Babel	15/08/2009	Channel 4	Sex/Nudity	1
Babestation	26/08/2009	Smile TV	Sex/Nudity	1
Bang Babes	25/07/2009	Tease Me	Sex/Nudity	1
Bang Goes the Theory	24/08/2009	BBC 1	Dangerous Behaviour	1
Bang Goes the Theory	17/08/2009	BBC 1	Offensive Language	1
BBC News	29/07/2009	BBC News Channel	Offensive Language	1
Benefit Busters	27/08/2009	Channel 4	Animal Welfare	3
Benefit Busters	20/08/2009	Channel 4	Generally Accepted Standards	1
Big Brother 10	01/09/2009	Channel 4	Due Impartiality/Bias	1
Big Brother 10	21/08/2009	Channel 4	Due Impartiality/Bias	1
Big Brother 10	15/08/2009	Channel 4	Generally Accepted Standards	3
Big Brother 10	25/08/2009	Channel 4	Generally Accepted Standards	1
Big Brother 10	31/08/2009	Channel 4	Generally Accepted Standards	5
Big Brother 10	24/08/2009	Channel 4	Offensive Language	1
Big Brother 10	28/08/2009	Channel 4	Offensive Language	1
Big Brother 10	18/08/2009	Channel 4	Sex/Nudity	1
Big Brother 10	15/08/2009	Channel 4	Violence	2
Big Brother 10	21/08/2009	Channel 4	Violence	1
Big Brother's Big Mouth	21/08/2009	E4	Violence	1
Big Brother's Little Brother	24/08/2009	E4	Due Impartiality/Bias	1
Big Brother's Little Brother	06/09/2009	Channel 4	Generally Accepted Standards	1
Big Brother's Little Brother	20/08/2009	E4	Generally Accepted Standards	1
Breakfast	25/08/2009	BBC 1	Due Impartiality/Bias	1
Breakfast Show	19/08/2009	Jack FM	Sex/Nudity	1
BRfm (Blaenau Gwent)	29/08/2009	BRfm (Blaenau Gwent)	Offensive Language	1
BRMB Breakfast	06/08/2009	BRMB (Birmingham)	Generally Accepted Standards	1
Bus Pass Bullfighter	21/08/2009	Channel 4	Animal Welfare	6
Carpet Right sponsorship of House	25/08/2009	Sky One	Generally Accepted Standards	1
Channel 4 News	26/08/2009	Channel 4	Generally Accepted Standards	1
Channel 4 News	02/09/2009	Channel 4	Generally Accepted Standards	1

Channel 4 News	01/09/2009	Channel 4	Violence	1
Chris Moyles	18/08/2009	BBC Radio 1	Generally Accepted Standards	1
Come Dine with Me	18/08/2009	Channel 4	Generally Accepted Standards	3
Come Dine with Me	25/08/2009	Channel 4	Generally Accepted Standards	1
Come Dine with Me	28/08/2009	Channel 4	Generally Accepted Standards	1
Come Dine with Me	26/08/2009	Channel 4	Sex/Nudity	1
Coronation Street	24/08/2009	ITV1 London	Animal Welfare	1
Coronation Street	07/09/2009	ITV1 Central	Dangerous Behaviour	1
Coronation Street	04/09/2009	ITV1	Offensive Language	1
Coronation Street	21/08/2009	ITV1 London	Offensive Language	1
CSI: Miami	25/08/2009	Five	Suicide/Self Harm	1
Derrent Brown: The Events (trailer)	04/09/2009	Channel 4	Dangerous Behaviour	1
Desperate Romantics	18/08/2009	BBC 2	Sex/Nudity	1
Dispatches (trailer)	04/09/2009	Channel 4	Offensive Language	1
Doctors	20/08/2009	BBC 1	Generally Accepted Standards	1
Dolce Vito - Dream Restaurant	20/08/2009	Channel 4	Inaccuracy/Misleading	1
EastEnders	18/08/2009	BBC 1	Generally Accepted Standards	1
EastEnders	24/08/2009	BBC 1	Generally Accepted Standards	1
EastEnders	31/08/2009	BBC 1	Generally Accepted Standards	1
EastEnders	21/08/2009	BBC 1	Generally Accepted Standards	1
EastEnders	03/09/2009	BBC 1	Violence	9
EastEnders Omnibus	23/08/2009	BBC 1	Generally Accepted Standards	1
Economy Gastronomy	02/09/2009	BBC 2	Offensive Language	1
Five News	24/08/2009	five	Substance Abuse	2
Five On Demand Promo	n/a	Five	Inaccuracy/Misleading	1
George Galloway	08/08/2009	Talksport	Generally Accepted Standards	1
George Galloway	01/08/2009	Talksport	Religious Offence	1
Globo Loco	06/09/2009	CITV	Generally Accepted Standards	1
GMTV	20/08/2009	ITV1 London	Crime (incite/encourage)	2
GMTV	19/08/2009	ITV1 London	Due Impartiality/Bias	1
GMTV	n/a	ITV Scotland	Generally Accepted Standards	1
Goal!	31/08/2009	BBC 1	Sex/Nudity	1
Golden Balls	24/08/2009	ITV1 London	Generally Accepted Standards	1
Golf	16/08/2009	Sky Sports 1	Generally Accepted Standards	1
Gordon Ramsay's F Word	20/08/2009	More4	Offensive Language	1
Gunrush	23/08/2009	ITV1 London	Advertising	1
Hollyoaks	02/09/2009	E4	Offensive Language	1
Hollyoaks	03/09/2009	Channel 4	Violence	1
I Guess That's Why They Call It The News	28/08/2009	BBC Radio 4	Generally Accepted Standards	1
Inspector George Gently	28/08/2009	BBC 1	Substance Abuse	1
It'll Be Alright on the Night	05/09/2009	ITV1	Generally Accepted Standards	1
Itunes 2009 Live	31/07/2009	ITV2	Offensive Language	1
ITV News	31/08/2009	ITV1	Animal Welfare	3

ITV News	30/08/2009	ITV1	Generally Accepted Standards	1
Jamie's American Road Trip (trailer)	24/08/2009	Channel 4	Generally Accepted Standards	1
Jeremy Kyle	30/08/2009	Talksport	Offensive Language	1
Jez Welham	27/08/2009	Kiss 100	Offensive Language	1
Jimmy Carr in Concert	22/08/2009	Channel 4	Generally Accepted Standards	1
Jimmy Carr in Concert	22/08/2009	Channel 4	Generally Accepted Standards	7
Kick Off	01/09/2009	Talksport	Generally Accepted Standards	1
Kidnap Ronnie Biggs	29/08/2009	More4	Generally Accepted Standards	1
Lewis	30/08/2009	ITV1	Advertising	1
Lily Allen "The Fear"	03/09/2009	Kiss 100	Offensive Language	1
Little Playdates	24/08/2009	Baby First TV	Dangerous Behaviour	1
Live at the Apollo	06/08/2009	Dave	Generally Accepted Standards	1
London Tonight	02/09/2009	ITV1 London	Inaccuracy/Misleading	1
Malcolm in the Middle	01/09/2009	Sky1	Offensive Language	1
Match of the Day 2	23/08/2009	BBC 2	Generally Accepted Standards	1
Medical Investigation	21/08/2009	Five	Generally Accepted Standards	1
Midsomer Murders	05/08/2009	ITV1	Sex/Nudity	1
Mock the Week	03/09/2009	BBC 2	Generally Accepted Standards	1
News	21/08/2009	BBC News Channel	Generally Accepted Standards	1
News at Ten	17/08/2009	ITV1	Generally Accepted Standards	1
Nick Ferrari	19/08/2009	LBC 97.3FM	Crime (incite/encourage)	1
Nick Ferrari	21/08/2009	LBC 97.3FM	Generally Accepted Standards	1
Nick Ferrari	24/08/2009	LBC 97.3FM	Generally Accepted Standards	1
Nip and Tuck: My Big Decision	13/08/2009	BBC 3	Generally Accepted Standards	1
North West Tonight	18/08/2009	BBC1 (North West)	Generally Accepted Standards	1
On Tour With The Queen	24/08/2009	Channel 4	Inaccuracy/Misleading	1
Pete Pinnington	22/08/2009	Wire 107.2FM	Generally Accepted Standards	1
Police, Camera, Action!	20/08/2009	ITV4	Due Impartiality/Bias	1
Premier League Football	29/08/2009	Sky Sports 1	Generally Accepted Standards	4
Psychic Interactive	05/08/2009	Psychic TV	Religious Offence	1
QI	04/09/2009	BBC 2	Religious Offence	1
Quiz Call	16/08/2009	Five	Use of Premium Rate Numbers	1
Radio City 96.7	12/08/2009	Radio City 96.7	Competitions	1
Radio Hartlepool		Radio Hartlepool	Commercial References	1
Renault sponsorship	05/09/2009	More4	Crime (incite/encourage)	1
Ricky Gervais: Fame	22/08/2009	E4	Generally Accepted Standards	1
River City	11/08/2009	BBC 1 Scotland	Sex/Nudity	1
Rosemary and Thyme	01/09/2009	ITV1	Offensive Language	1
Sarah Silverman: Jesus Is Magic	03/09/2009	Channel 4	Generally Accepted Standards	1
Sarah Silverman: Jesus Is Magic	03/09/2009	Channel 4	Religious Offence	2
Saturday Kitchen	22/08/2009	BBC1	Inaccuracy/Misleading	1
Scottie McClue	n/a	L107 FM	Sponsorship	1

Send in the Dogs	11/08/2009	ITV1	Animal Welfare	1
Sex: The Revolution	11/08/2009	Yesterday	Sex/Nudity	2
Sex: The Revolution	12/08/2009	Yesterday	Sex/Nudity	1
Sex: The Revolution	23/08/2009	Yesterday	Sex/Nudity	1
Sex: The Revolution (trailer)	13/08/2009	Alibi	Sex/Nudity	1
Shooting Stars	26/08/2009	BBC 2	Generally Accepted Standards	1
Silerville	05/08/2009	BBC 1	Generally Accepted Standards	1
Silerville	19/08/2009	BBC 1	Generally Accepted Standards	1
Single Handed	16/08/2009	ITV1	Offensive Language	1
Skins	26/08/2009	Channel 4	Generally Accepted Standards	1
Sky News	29/08/2009	Sky News	Due Impartiality/Bias	1
Sky News	18/08/2009	Sky News	Generally Accepted Standards	3
Sky News	30/08/2009	Sky News	Inaccuracy/Misleading	1
Sky Sports News	25/08/2009	Sky Sports News	Religious Offence	1
Sky Sports promo	03/09/2009	Sky One	Crime (incite/encourage)	1
Soccer A.M.	29/08/2009	Sky1	Generally Accepted Standards	1
Stand Up Month promotion	15/08/2009	Yesterday	Sex/Nudity	1
Street Crime UK	13/08/2009	Bravo	Inaccuracy/Misleading	1
Sunrise	01/09/2009	Sky News	Generally Accepted Standards	1
Sunrise Radio	14/08/2009	Sunrise Radio	Generally Accepted Standards	1
T In the Park (trailer)	n/a	STV	Inaccuracy/Misleading	1
The Big Deal	30/08/2009	Big Deal	Offensive Language	1
The Big Food Fight (trailer)	31/08/2009	Channel 4	Animal Welfare	1
The Bill	03/09/2009	ITV1	Advertising	1
The Crystal Maze	02/09/2009	Challenge	Offensive Language	1
The Cube	22/08/2009	ITV1 London	Competitions	1
The Duchess on the Estate	18/08/2009	ITV1	Inaccuracy/Misleading	1
The Fixer	01/09/2009	ITV1	Crime (incite/encourage)	1
The Funny Side of Animals	20/08/2009	BBC 2	Generally Accepted Standards	1
The Gadget Show	24/08/2009	Five	Generally Accepted Standards	1
The Hairy Bikers' Food Tour Of Britain	25/08/2009	BBC 2	Animal Welfare	1
The Jeremy Kyle Show	19/08/2009	ITV2	Generally Accepted Standards	1
The Jerry Springer Show	10/08/2009	Living 2	Generally Accepted Standards	1
The Kevin Bishop Show	18/08/2009	Channel 4	Generally Accepted Standards	2
The Kevin Bishop Show	28/08/2009	Channel 4	Generally Accepted Standards	7
The Kevin Bishop Show	04/09/2009	Channel 4	Generally Accepted Standards	17
The Mask	06/09/2009	Five	Advertising	1
The One Show	20/08/2009	BBC1	Generally Accepted Standards	7
The One Show	20/07/2009	BBC1	Inaccuracy/Misleading	1
The Pad	06/08/2009	Adult Channel	Sex/Nudity	1
The Rat Pack	20/08/2009	BBC 1	Animal Welfare	1
The Rat Pack	27/08/2009	BBC 1	Animal Welfare	1
The Rat Pack	16/08/2009	BBC 1	Offensive Language	1
The Rat Pack	16/08/2009	BBC 1	Religious Offence	1

The Scandalous Adventures of Lord Byron	27/07/2009	Channel 4	Generally Accepted Standards	1
The Scandalous Adventures of Lord Byron	27/08/2009	Channel 4	Offensive Language	1
The Weakest Link	07/09/2009	BBC 1	Generally Accepted Standards	1
The Wright Stuff	27/08/2009	Five	Due Impartiality/Bias	1
The Wright Stuff	02/09/2009	Five	Generally Accepted Standards	1
The X Factor	29/08/2009	ITV1	Advertising	1
The X Factor	29/08/2009	ITV1	Generally Accepted Standards	3
The X Factor	05/09/2009	ITV1	Generally Accepted Standards	3
The Xtra Factor	22/08/2009	ITV2	Generally Accepted Standards	1
The Xtra Factor	23/08/2009	ITV2	Generally Accepted Standards	1
The Xtra Factor	30/08/2009	ITV2	Harm/Food	1
This Morning	03/09/2009	ITV1	Inaccuracy/Misleading	1
This Morning	02/09/2009	ITV1	Offensive Language	1
Titanic (trailer)	30/08/2009	Five	Generally Accepted Standards	1
TNT Show	20/08/2009	Channel 4	Generally Accepted Standards	1
TNT Show	27/08/2009	Channel 4	Generally Accepted Standards	2
Tony Horne In The Morning	15/06/2009	Metro Radio	Generally Accepted Standards	1
Tuesday	21/08/2009	ITV4	Offensive Language	1
Voice in the Wilderness	10/07/2009	Genesis	Generally Accepted Standards	1
What Katie Did Next	03/09/2009	ITV2	Dangerous Behaviour	1
What Katie Did Next	27/08/2009	ITV2	Generally Accepted Standards	1
Who Rules the Roost?	03/09/2009	Really	Sex/Nudity	1
You Have Been Watching	18/08/2009	Channel 4	Due Impartiality/Bias	1
You Have Been Watching	25/08/2009	Channel 4	Generally Accepted Standards	1
You Have Been Watching	18/08/2009	Channel 4	Religious Offence	5
You Have Been Watching	20/08/2009	Channel 4	Religious Offence	1
You Have Been Watching	19/08/2009	E4	Religious Offence	1
Young, Sexy and...Cookin'	23/08/2009	E4	Sex/Nudity	1
You're Nicked	07/08/2009	Five	Generally Accepted Standards	1