

Ofcom broadcast bulletin

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Introduction

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

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

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

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

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

Standards cases

In Breach

Advertisements: Stevenage Borough Council

Hertbeat FM, from 19 April 2006 to 16 May 2006 inclusive, various times throughout each day

Introduction

A listener believed that three advertisements for Stevenage Borough Council were “pro-council”, possibly offering support to the ruling party, and inappropriate for broadcast during the pending period for the local elections (on 4 May 2006).

Two of the advertisements opened by saying:

“75% of you said you’re happy with Stevenage Borough Council services and 81% said you find their staff helpful.”

The other advertisement stated:

“Since Stevenage Borough Council’s new website went live in January, more than 82,000 people have logged on from Stevenage and all over the world.”

Each advertisement ended with the strapline: “Stevenage Borough Council – making access to Council services easier”, followed by a contact detail (telephone, textphone or web address).

Political advertising is prohibited under the terms of section 321 of the Communications Act 2003 (“the Act”) and by Section 2, Rule 15 of the BCAP Radio Advertising Standards Code (“the Code”)¹.

Section 1, Rule 4.6 of the BCAP Radio Advertising Standards Code requires certain categories of advertisements, which includes Council campaigns, to be approved for broadcast by the Radio Advertising Clearance Centre (RACC).

Section 2, Rule 15b of the Code requires that, “...no advertisement is directed towards any political end.”

Response

Hertbeat FM acknowledged that the advertisements “may be interpreted as political”. However, the broadcaster added that they were merely intended to form an awareness campaign for Council services, each providing listeners with an appropriate method of contacting the Council, and while the campaign had originally been booked to end on 16 April 2006, sign-off had been delayed. Since the bulk of

¹ Formerly Ofcom’s Advertising and Sponsorship Code, the Broadcasting Committee of Advertising Practice’s (BCAP) Radio Advertising Standards Code is now maintained and administered by BCAP and the Advertising Standards Authority (ASA) under the terms of the co-regulatory agreement between Ofcom and these two bodies. Although the political advertising rules reside in the BCAP Code (Section 2, Rule 15), Ofcom remains responsible for their enforcement.

the spots were scheduled after the election, the broadcaster believed, “any inference that this was a campaign for votes...is unjustified.”

The broadcaster admitted that human error had allowed the advertisements to be aired with neither the required RACC clearance nor in-house clearance. It apologised for the mistake, adding that new procedures had now been established for all advertising copy to be appropriately approved prior to broadcast.

Decision

The executive arm of local government may advertise on commercial radio. However, Section 2 Rule 15b requires that “no advertisement is directed towards any political end.” This reflects a requirement of the Communications Act 2003, Section 321(3), which states that ‘political end’ includes:

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

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

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

In Ofcom’s opinion the advertisements were directed towards a political end:

The survey results presented in two of the advertisements appeared to celebrate achievements of the elected Council and therefore support the incumbent ruling party. We considered that this promoted the interests of the current Council for political ends and was in breach of Section 2, Rule 15b of the Code. This was broadcast within the pending period of a local election (the pending period for the election began on 25 March 2006), and appeared to seek to influence the outcome of that election, also in breach of Section 2, Rule 15b of the Code.

The provision of Council services – in particular, access to that provision – is a matter of public controversy. The strapline, “Stevenage Borough Council – making access to council services easier”, was conjecture, in that it claimed both past and future improvement of access to the Council’s service provision. The latter appeared to us impossible to substantiate and was an attempt to seek to influence public opinion, in breach of Section 2, Rule 15b of the Code.

We noted the action taken by Hertbeat FM to ensure that appropriate copy clearance would be obtained for future advertising campaigns. However, irrespective of any delay, this campaign had always been scheduled for broadcast, and was broadcast, within the pending period of an election, when the broadcaster should have been particularly alert to the risk of an advertisement having ‘political ends’. Hertbeat FM’s failure to ensure that the advertisements were acceptable for broadcast breached Section 1, Rule 4.6 of the Code.

**Breach of Section 1 (Advertisements and Sponsorships) Rule 4.6 (Central Copy Clearance) of the BCAP Radio Advertising Standards Code;
Breach of Section 2 (General Categories) Rule 15b (Political, Industrial and Public Controversy) of BCAP Radio Advertising Standards Code**

Alan Brazil

talkSPORT, 19 June 2006, 09:30

Introduction

A listener complained that a presenter used the term “nips” when referring to the Japanese. The complainant thought that such language was inappropriate and offensive.

Response

talkSPORT accepted that the use of such a term was inappropriate and assured us that both the presenter and the producer had been spoken to about the incident to avoid any further repetition. In mitigation, the station pointed out that the word was not used in anger, or in a manner that would incite racial hatred, but was an unfortunate off-the-cuff remark that it nevertheless regretted.

Decision

Rule 2.3 of the Ofcom Broadcasting Code requires:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the ground of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.”

On this occasion during a light-hearted exchange, the presenters discussed a story about an escaped bear in Bulgaria who was being pursued by hunters. One presenter made reference to whale hunters and said: “These old nips are at it again”. His co-presenter made an attempt to address the inappropriateness of such a remark by saying: “That’s a bit harsh, remember they are at the games here” (a reference to the presenter’s presence at the World Cup).

While the broadcaster stressed that the remark was not intended to be deliberately inflammatory, we nevertheless considered that its use in this context was inappropriate. Presenters should be wary of using language that is generally regarded as derogatory.

Breach of Rule 2.3

John Doe

Sci Fi Channel, 23 May 2006, 14:00

Introduction

Sci Fi is a science fiction and general entertainment channel. John Doe is a drama series centred around a man suffering from memory loss who assists the police in solving crimes in unconventional ways. A viewer complained that this edition of the series was too violent to be shown before the 21:00 watershed.

Towards the end of this programme, the police search for a serial killer. The scene shows the programme's heroine held prisoner by the murderer and trying to escape by hiding in a wooden crate. Realising her hiding place, the murderer starts to attack the crate with a chainsaw. Eventually recaptured, the woman is tied upside down by her feet. As help arrives, her abductor is shot by the victim in a final struggle.

Response

Sci Fi Channel said that an error meant that this programme, which was intended for post-watershed broadcast, had been shown pre-watershed. The programme had not been marked as post-watershed in its database. Having reviewed the programme, it agreed that some elements required editing for future daytime versions. The broadcaster said that it would also provide information before transmission that the episode was about serial murderers and contained some violence.

The Sci Fi channel pointed out that it had a zero rating for child viewers. Its viewers tended to be older and expected a science fiction genre channel to show content and subject matter that was scary.

Decision

The Ofcom Broadcasting Code states:

Rule 1.3: Children must also be protected by appropriate scheduling from material that is unsuitable for them.

Rule 1.11: Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed or when children are particularly likely to be listening and must also be justified by the context.

Although the Sci Fi channel may have a zero child viewer rating and its regular viewers may be familiar with the type of content it shows, this programme was shown before the watershed. The intense content of the scenes - in which the woman was violently pursued and recaptured, prior to her shooting her abductor - were too violent and threatening for broadcast before the watershed on a free-to-air channel.

While we welcome the steps taken by the Sci Fi Channel, we are concerned by its apparent lack of awareness of the content of this programme, which was clearly unsuitable for the time of broadcast and the failure in pre-transmission compliance procedures.

Breach of Rules 1.3 and 1.11

Resolved

Christian O'Connell

Virgin Radio 21 and 22 June 2006, 08:45

Introduction

A listener complained that a record containing offensive language (“fucked up”) was played at breakfast time on two subsequent days. While the presenter apologised the first time, explaining that an unedited version had been played by accident, the same unedited track was played the following day. The complainant had been listening in her car with her children and thought the lyrics inappropriate.

Response

Virgin Radio apologised unreservedly for this error - it was “horrified and disappointed” that the unedited version of Green Day’s *‘Boulevard of Broken Dreams’* had been played during the breakfast show. Unfortunately, the CD version of the song had been selected, rather than the radio edit.

The broadcaster pointed out that this track had been played 943 times since its release and never before had it played the wrong version. In view of this incident more stringent measures had been put in place to ensure that this did not happen again.

Decision

The lyric was unacceptable for broadcast at breakfast time when children are likely to be in the audience. Although the presenter apologised profusely on the first occasion, the unedited version was played again the following day. However, in view of the station’s apology and assurance that further measures had been put in place to avoid such a repetition, we consider the matter resolved.

Resolved

The Mint

ITV Play, 11 April 2006, 00:30

Introduction

In a competition called *Treasure Island*, an aerial photograph of an island was divided into numbered squares. Viewers were invited to "Name a State in the USA." Each successful contestant was then invited to choose a numbered square, which revealed their prize. Each square revealed a prize of between £100 and £2,000.

A viewer complained that the last contestant had correctly identified Rhode Island as a US state but had been told that his answer was wrong.

Response

ITV said that the rejection of the contestant's answer was an unusual mistake by the presenter. Unfortunately, the contestant had hung up before the production team had been able to tell the presenter about her error. As the competitor had therefore been denied the opportunity to pick his prize, ITV Play's customer relations team had offered the contestant a £500 ex gratia payment, which had been accepted.

However, in response to this complaint, ITV had reviewed the programme and the action taken. As the contestant could have won up to £2,000, had his answer not been wrongly rejected, they decided to send the contestant a further £1,500.

Decision

We appreciate that presenters may occasionally make mistakes during live programming and, given the immediate action taken by the broadcaster's customer relations team, there did not appear to have been any intent to deny the contestant a prize. However, we welcome the broadcaster's subsequent action. The contestant could not have obtained a larger prize than the total amount he had finally been sent, which we consider resolves the matter.

Resolved

Australia's Next Top Model Trailer

Living TV, 20 and 21 May 2006, 16:50

Introduction

During the film *Captain Hook*, Living TV ran a trail for this series in which topless female models were seen together in a swimming pool.

Two viewers complained that these images and the phrase: "getting it on", should not have been shown during a film which attracted a child audience.

Response

Living TV said that the trailer had been viewed by its compliance team and certified as suitable for scheduling at anytime on Living TV, in the knowledge that the channel does not attract a large number of children during daytime.

The broadcaster said that it considered the promotion to be non-explicit. In its view the trail displayed women behaving in a foolish and flirtatious way, as opposed to frank and graphic images. Neither did the trailer contain any strong language or detailed sexual discussion. There was no nudity on screen as pixilation clearly covered all appropriate areas.

However in retrospect, Living TV acknowledged that this promotion was not best suited for transmission during a children's feature film. In future the broadcaster said that it would take into account the child audience of such films and apply a more restrictive policy to promotions scheduled around them.

Decision

Although the models' breasts were pixellated, the sexual tone of the content was not totally appropriate for broadcast during a children's film. However, we welcome Living TV's subsequent action and consider the matter resolved.

Resolved

Fairness and Privacy Cases

Upheld

Henry Hyams Solicitors on behalf of Mr M

ITV News, ITV1, 12 July 2005

Summary: Ofcom has upheld a complaint by Henry Hyam Solicitors on behalf of Mr M about a news item broadcast by ITV News on 12 July 2005.

Not Upheld

Mrs Kathleen and Mr William Blue

Unsolved, STV (formerly Grampian TV), 17 November 2005

Summary: Ofcom has not upheld a complaint by Mr and Mrs Blue about an edition of Unsolved, broadcast by STV (formerly Grampian Television) on 17 November 2005.

Complaint by Mr Philip Cochrane and Mrs Vicky Cochrane

The Cumberland Sausage Awards, CFM Radio, 31 December 2005

Summary: Ofcom has not upheld this complaint of unfair treatment in the broadcast of the programme. On 31 December 2005, CFM Radio broadcast 'The Cumberland Sausage Awards 2005'. Listeners were invited to vote for people nominated for awards in a number of categories. One category was entitled "Numpty of the Year" and Mr Philip Cochrane was one of four named nominees for this award.

Mr and Mrs Cochrane complained to Ofcom that they were treated unfairly in the programme as broadcast in that the programme stated, incorrectly, that Mr Cochrane had forgotten to apply for planning permission to open an ice rink and had subsequently had to sell his ice rink business on eBay. They claimed that the programme also incorrectly implied that he had closed his ice rink business.

Ofcom found as follows:

- a) The programme did not state nor imply that Mr Cochrane had "forgotten" to apply for planning permission. The presenter had, in fact, said that Mr Cochrane had "managed to set up an ice rink without planning permission". Ofcom was satisfied that this was an accurate and fair account. Ofcom found no unfairness to Mr and Mrs Cochrane in this respect.
- b) In Ofcom's view, the presenter's comment that Mr Cochrane had had to sell the ice rink on eBay would not have misled listeners in a way that was unfair to Mr and Mrs Cochrane. It was evident from two newspaper articles that Mr Cochrane had placed the ice rink facility on eBay with the intention of selling it at auction. In these circumstances, Ofcom found no unfairness to Mr and Mrs Cochrane in this respect.

- c) It was clear that the programme's presenter did not state that Mr Cochrane had closed his business. The presenter had said that Mr Cochrane had "managed to set up" an ice rink without getting planning permission beforehand and that he had sold it or tried to sell it. Ofcom, therefore, found no unfairness to Mr and Mrs Cochrane in this respect.

Introduction

On 31 December 2005, CFM Radio broadcast *The Cumberland Sausage Awards 2005*. This programme was a one-off version of *The Cumberland Sausage Show*, a weekly music-based programme interspersed with entertainment features. *The Cumberland Sausage Awards 2005* programme invited listeners to vote for people nominated for awards in a number of categories. One category was entitled "Numpty of the Year" and Mr Philip Cochrane was one of four named nominees for this award. In introducing Mr Cochrane's nomination, the programme's presenter alleged that Mr Cochrane had "managed to set up an ice rink [on his property] without planning permission" and that he "had to sell it [the ice rink] on eBay [the internet auction site]" as a result. Mr Cochrane was voted "Numpty of the Year" by the listeners. Mr Cochrane and his wife, Mrs Vicky Cochrane, are joint partners of Carlisle on Ice, the ice rink business referred to in the programme.

Mr and Mrs Cochrane complained to Ofcom that they were treated unfairly in the programme as broadcast.

The Complaint

Mr and Mrs Cochrane's case

In summary, Mr and Mrs Cochrane complained that:

- (a) The programme stated, incorrectly, that Mr Cochrane had forgotten to apply for planning permission to open the ice rink.
- (b) The programme stated, incorrectly, that Mr Cochrane had had to sell his ice rink business on eBay because he did not have planning permission.
- (c) The programme implied that Mr Cochrane had closed the ice rink business, when, in fact, he had not.

CFM's Case

In summary, CFM said that Mr Cochrane was a well known Carlisle businessman and his activities relating to his ice rink business had been well reported in the local media. Ten newspaper articles published between 6 July and 29 November 2005 had followed the fortunes of Mr Cochrane's venture. Six of the articles focused on the fact that the ice rink had opened in July 2005 without planning permission and had been subsequently refused retrospective planning permission by the Council. A further two articles focused on Mr Cochrane's attempt to sell the ice rink on the internet auction site, eBay. CFM said that the programme was a light-hearted retrospective on the highs and lows of the year and, specifically, the individuals and groups who contributed to those highs and lows. The award for "Numpty of the Year"

was satirical and poked fun at well known situations and people who had been in the news throughout the year.

In response to Mr and Mrs Cochrane's specific heads of complaint, CFM said that:

- (a) The programme's presenter did not state that Mr Cochrane had forgotten to apply for planning permission. In fact, the presenter said that Mr Cochrane had "managed to set up the ice rink without planning permission". To the best of CFM's knowledge, the ice rink was opened in July 2005 without having first received planning permission. Retrospective planning permission was applied for by Mr Cochrane but it was refused at a Council meeting on 30 September 2005.
- (b) The presenter said that Mr Cochrane had not obtained planning permission for the ice rink business and "had to sell it on eBay". CFM said that it was widely reported in the local media that Mr Cochrane had placed the ice rink on eBay for a reserve price of £108,000. Mr Cochrane had described the ice rink as "This superb money earner is all you will need for the next 10 years at £35,000 per month hire charge or up to £10,000 per week hiring to councils and shopping arcades or in a fixed location". He was also quoted in a local newspaper as saying "the ice rink is going" and that he "had two other possibilities to take the rink off his hands". Given the news reports and his own comments about the sale or disposal of the ice rink, CFM said that in these circumstances the statement made by the presenter on air was neither incorrect nor unfair.
- (c) None of the programme's presenters made the implication that Mr Cochrane had gone out of business. One of the presenters specifically highlighted, in the present tense, that Mr Cochrane "[is] actually quite a good businessman". However, CFM said that despite his usual good business sense, the Council held the view Mr Cochrane was trading unlawfully and had recommended that a Planning Enforcement Order be issued which would lead to the closure of the ice rink. Mr Cochrane had, so far, failed to provide the Council with the information required to allow it to enforce the Planning Enforcement Order. CFM said that the presenters did not state or imply that Mr Cochrane had gone out of business and, given the refusal of planning permission and publicity associated with the sale of the rink, the station did not "believe that it was unreasonable to assume that the ice rink was still trading".

CFM regretted any upset the programme caused to Mr Cochrane and his family, but maintained that it treated him fairly. As a result of the extensive coverage in the local media about the ice rink, CFM believed that Mr Cochrane, and his business ventures, were legitimate subjects of satire. Despite the very public pitfalls he had experienced with this project, the presenter clearly stated that he was a good businessman.

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment in programmes included in such services. Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

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

freedom of expression. Ofcom recognises that (subject to the provisions of the Ofcom Broadcasting Code) broadcasters can quite properly comment and take particular viewpoints on the subjects of broadcast programmes. However, it is essential, not only to the parties directly concerned but also to listeners and viewers, that such comments should be accurate in all material respects so as not to cause unfairness. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent targeted only at cases in which action is needed.

This case was considered by Ofcom's Executive Fairness Group.

- (a) Ofcom first considered Mr and Mrs Cochrane's complaint that the programme's presenter said, incorrectly, that Mr Cochrane had forgotten to apply for planning permission for the ice rink.

Broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. However, Ofcom was also aware of the broadcaster's right (subject to the provisions of Ofcom's Broadcasting Code) to comment and take particular viewpoints on the subjects of broadcast programmes.

By examining a recording of the programme and reading the transcript of it, it was clear the programme's presenter did not state that Mr Cochrane had "forgotten" to apply for planning permission. The presenter had, in fact, said that Mr Cochrane had "managed to set up an ice rink without planning permission". Ofcom was satisfied that this explanation of how the ice rink came into being was an accurate and fair account. The presenter's comments did not expressly, or implicitly, make the suggestion that Mr Cochrane had "forgotten" to apply for planning permission. Ofcom therefore found no unfairness to Mr and Mrs Cochrane in this respect.

- (b) Ofcom considered Mr and Mrs Cochrane's complaint that the programme, incorrectly, stated that Mr Cochrane had had to sell his ice rink business on eBay because he did not have planning permission.

Ofcom examined the recording of the programme and the transcript of it. Ofcom accepted that the programme's presenter had said that Mr Cochrane "had to sell" the ice rink. However, Ofcom noted that in two articles reported in the News & Star, a local newspaper, and published on 26 and 29 November 2005 (provided to Ofcom by the broadcaster), it was reported that Mr Cochrane had placed the ice rink on eBay and that he was quoted as having "two other possibilities to take". The articles also quoted him as saying that the "ice rink was going" and that if anyone from the Carlisle area tried "to buy it, they [would] not get a look in".

In Ofcom's view, the presenter's comment that Mr Cochrane had had to sell the ice rink on eBay would not have misled listeners in a way that created unfairness to Mr and Mrs Cochrane. It was evident from the newspaper articles that Mr Cochrane had placed the ice rink facility on eBay with the intention of selling it at auction and that he had considered other options if it did not sell. In these circumstances, Ofcom found no unfairness to Mr and Mrs Cochrane in this respect.

- (c) Ofcom considered Mr and Mrs Cochrane's complaint that the programme implied

that Mr Cochrane had gone out of business, when, in fact, he had not.

Broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. However, Ofcom was also aware of the broadcaster's right (subject to the provisions of Ofcom's Broadcasting Code) to comment and take particular viewpoints on the subjects of broadcast programmes.

By examining a recording of the programme and reading the transcript of it, it was clear that the programme's presenter did not state that Mr Cochrane had closed his business. It was clear from what the presenter had said that Mr Cochrane had "managed to set up" an ice rink without getting planning permission beforehand and that he had sold it or tried to sell it. Ofcom was satisfied that this explanation of how the ice rink came into being and what had happened since retrospective planning permission was refused was accurate and fair. The presenter's comments did not imply that Mr Cochrane had closed his business as a whole. Ofcom, therefore, found no unfairness to Mr and Mrs Cochrane in this respect.

Ofcom also considered that the tone and manner of the programme was in a format that was well-established on CFM and listeners would have been familiar with its satirical content and style. Taking into account the publicity of Mr Cochrane's ice rink business in the local press, the format of the programme, and that the presenters' comments were intended to be humorous in dealing with people with local celebrity status, Ofcom considered that in this context, the comments made in the programme were not unfair to Mr and Mrs Cochrane.

Accordingly, the complaint of unfair treatment in the broadcast of the programme was not upheld.

Complaint Mr Kian Lucas

The Late Night Zoo, 96.6 TFM, 4 and 5 January 2006

Summary: Ofcom has not upheld this complaint of unfair treatment from Mr Kian Lucas. Mr Lucas phoned in to this edition of the Late Night Zoo and made a joke that started “I kidnapped a chicken”. Mr Lucas call was ended by the presenters who believed the complainant had told a joke about kidnapping a child.

Later a friend of Mr Lucas rang the station to say that Mr Lucas felt very bad about upsetting the presenter. The presenter said it was inappropriate to try and make a joke about it on radio when there had been recent cases of child abduction and rape, and that the presenter would kill anyone who came near his kids in the way Mr Lucas had been intending by his joke. .

Mr Lucas complained the presenters’ interpretation of his joke as one about raping children had been unfair and that the presenters should have informed themselves of the correct meaning of the word “chicken” before broadcasting unfair damaging comments about him. Mr Lucas said the correct meaning of the word “chicken” was an inexperienced, young homosexual male.

Ofcom found as follows:

- a) Ofcom had regard for both the Oxford English dictionary and Robert Scott gay slang dictionary and noted that there are a number of meanings of the word “chicken”. Ofcom found that the presenter’s interpretation of Mr Lucas’ joke as “I kidnapped a child” was reasonable because “chicken” can be used to describe “a child”;
- b) It was fair for the presenters to maintain their understanding that Mr Lucas had made a joke about kidnapping of child, given there was no indication that their interpretation of Mr Lucas’ joke was different from that which Mr Lucas had intended. Ofcom appreciated that the comments made by the presenters in response to the joke were distressing for the complainant. However in Ofcom’s opinion, listeners were likely to have understood that the presenters were expressing disapproval of Mr Lucas because they understood he had made a joke about kidnapping a child, not because Mr Lucas was the type of person who would kidnap and abuse a child. Ofcom did not believe that the presenter’s comments about the inappropriateness of the joke resulted in unfairness to Mr Lucas.

Introduction

The Late Night Zoo is an entertainment radio programme broadcast from 22:00 – 01:00 for Stockton and surrounding areas in the North East.

On 4 January 2006 the programme received a phone in call from Mr Lucas who initially described himself as a transvestite but later corrected this and said he was a drag queen. Mr Lucas explained that he was cold because he was standing outside a KFC restaurant after he had had “a bit of chicken”. This comment led into a ‘joke’ by Mr Lucas that started “I kidnapped a chicken the other week...”.

The call was ended and the presenter Mr Gary Philipson said “We’re not having any of that...that’s just outrageous. We’re not in for that sort of thing especially in the light of what’s been going on around the UK...I’m not one for cutting folk off but if you’re

going to come on and just try to be sleazy, I'm not interested".

Approximately 90 minutes later the programme received a call from a friend of Mr Lucas named Liz. Liz had phoned-in to explain that Mr Lucas felt very bad about upsetting the presenter. In response Mr Philipson said that saying 'sorry' didn't count as it was inappropriate and filthy for Mr Lucas to make jokes about kidnapping children. Mr Philipson said "I'd batter him if I saw him because it's absolutely disgraceful". Mr Philipson went on to say that he had children himself and if anyone came at his children in the way that Mr Lucas had been intending [by his joke], he would kill them.

Mr Kian Lucas complained that he had been treated unfairly in the programme as broadcast.

The Complaint

Mr Lucas' case

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

- a) The programme makers falsely claimed that he had made a joke about kidnapping children. Mr Lucas said that "chicken" was a gay term used to describe an inexperienced, young homosexual male and the joke, which was cut off, was "*I kidnapped a chicken. My friend said, how old was he*".
- b) The programme makers should have informed themselves of the correct meaning of "chicken" before making such damaging comments. Mr Lucas said that the programme makers had over an hour between his initial call and his friend's call, which was ample time to confirm the correct meaning of "chicken".

Emap's case

Emap, the broadcast licensee responsible for 96.6 TFM responded to the complaint as follows:

- a) In relation to the presenter's interpretation of the word "chicken" Emap said that according to the Robert Scott's Gay Slang Dictionary, (now maintained by the ODPS at www.odps.org) the term means "any boy under the age of consent". During the programme, the presenter's technical operator recognised the term and the connotation it has with under age sex and immediately alerted the presenter. It was at this point that the presenter dumped the call, and justifiably commented about not wishing to let the programme degenerate into sleaze.
- b) Emap said that Mr Lucas was a regular caller to the programme and the presenters had always been supportive of him. While it acknowledged that it was unfortunate when a good relationship between a presenter and a listener deteriorates in such a fashion, Emap believed the presenter was rightly justified in condemning Mr Lucas' comments about kidnapping a youngster. Emap acknowledged that the comments were intended as a joke but considered them clearly inappropriate, at any time but especially so, following the recent reports about child abduction and abuse, both locally and elsewhere in the UK. Emap said that in hindsight the programme maker's remarks about "battering" and "killing" were ill-judged. However, Emap explained that these comments had been made in haste when Mr Lucas' friend resurrected the topic that the presenter had

previously terminated in a reasonable and appropriate manner. Emap said the complainant realised the joke and its implications were unacceptable, as Mr Lucas expressed concern to his friend Liz, and sent the presenter a letter of apology and gifts following the broadcast of the programme.

Decision

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

- a) Mr Lucas complained that the programme maker's interpretation of his 'joke' was unfair. In considering this complaint, Ofcom had regard for the recording and transcript of the programme, and definitions of the word "chicken" taken The Oxford English Dictionary and The Robert Scott's Gay Slang Dictionary:

Oxford Dictionary definitions:

"a young bird"; "a child"; "a young inexperienced person"

The Robert Scott's Dictionary definitions:

"any boy under the age of consent"; "Teenager, boyish, adolescent juvenile"; "Young gays/ lesbians"

The 'joke' as told by Mr Lucas was:

"I kidnapped a chicken the other week right...and I told my mate I had a nice cock"

Ofcom appreciated that the word "chicken" has a number of meanings and given the variety of definitions for the word Ofcom sought to establish whether the presenter's meaning of the word had been reasonable. In reaching a decision Ofcom noted that there is a clear association between the word chicken and youth, further the Oxford Dictionary provides "a child" as one definition of the word. In the light of this, Ofcom found that the presenter's interpretation of Mr Lucas' 'joke' as "I kidnapped a child" was reasonable because "chicken" can be used to describe "a child". In Ofcom's view, based on this understanding of the 'joke', the presenter's decision to end the call was appropriate. In relation to this complaint, Ofcom found the presenter's interpretation of Mr Lucas' joke had been fair.

- b) Mr Lucas complained that the presenter should have informed themselves of the correct meaning of "chicken" before making damaging comments about him. Mr Lucas said that the presenter had over an hour between his initial call and his friend's call, which was ample time to confirm the correct meaning of "chicken".

Ofcom was required to determine if it was unreasonable for the presenter to maintain their understanding that Mr Lucas' had made a joke about kidnapping a child, and whether the presenter's comments during the phone conversation with

Liz resulted in unfairness to Mr Lucas.

Ofcom noted that there was no indication given to the presenter that his interpretation of the word “chicken” had been different from the one intended by Mr Lucas. In particular, Ofcom had regard for the fact that Mr Lucas’ friend Liz had not phoned the programme to correct the presenter’s understanding of Mr Lucas’ joke, but had simply wished to apologise on behalf of Mr Lucas for upsetting the presenter:

Liz: “I think Mr Lucas upset you...Mr Lucas has been on the phone to us tonight and he said that he feels really really bad about it.”

In Ofcom’s view, Liz’s phone call was likely to have reinforced the presenter’s understanding of Mr Lucas’ joke. Given that there was no indication that the presenter’s interpretation of the joke was different from the meaning that Mr Lucas had intended to convey, Ofcom found that it was fair for the presenter to maintain his understanding that Mr Lucas had made a joke about kidnapping of child.

Ofcom secondly considered the nature of the comments made by the presenter during his phone conversation with Liz. Ofcom agreed with the broadcaster that the comments relating to the presenter “battering” Mr Lucas for making the joke, and “killing” anyone who came near the presenter’s children in the way Mr Lucas had been intending, were ill-judged. Ofcom also appreciated that the comments were distressing for Mr Lucas’ to hear. However in Ofcom’s opinion, listeners were likely to have understood that the presenter was expressing disapproval of Mr Lucas because the presenter had understood that Mr Lucas had made a joke about kidnapping a child, not because Mr Lucas was the type of person who would kidnap a child. In the light of Ofcom’s finding that the presenter’s understanding of Mr Lucas’ joke was fair, Ofcom did not believe that the presenter’s comments about the inappropriateness of the joke resulted in unfairness to Mr Lucas.

Accordingly Ofcom has not upheld Mr Lucas’ complaint of unfair treatment.

Complaint by Mr Martin Payne

Rogue Traders, BBC1, 15 September 2005

Summary: Ofcom has not upheld this complaint of unwarranted infringement of privacy. This edition of *Rogue Traders*, a series in which secret filming is used to expose tradesmen and tradeswomen who allegedly contravened professional rules and standards, focused on those who carried out gas boiler repairs and installations. Mr Martin Payne was one of two tradesmen secretly filmed carrying out repairs to a gas boiler.

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

Ofcom found as follows:

- a) Ofcom was persuaded that the programme had fairly portrayed Mr Payne as having been repairing and installing gas boilers despite not being a CORGI registered engineer and without being accompanied by a CORGI registered engineer.
- b) Ofcom was satisfied that the BBC fairly presented that: CORGI and the Health and Safety Executive (“HSE”) had concerns over Mr Payne’s behaviour; Prohibition and Enforcement Notices had been issued by the HSE against Mr Payne (confirming that he had been illegally carrying out gas work and that complaints about his conduct had been made); and that Mr Payne claimed that he was unaware that the Prohibition Notice had been issued against him.
- c) The programme’s focus, in Ofcom’s view, was that Mr Payne was unlawfully interrupting gas supplies and so it was not unfair for the programme not to have included reference to all occasions when Mr Payne visited a particular property where he was carrying out work or that he had contacted the householder and been told the boiler was working.
- d) In the circumstances of this particular case, Ofcom considered that it was legitimate to obtain and broadcast excerpts of a secretly recorded telephone conversation between Mr Payne and a programme maker. The BBC reasonably believed Mr Payne was engaging in dangerous and illegal behaviour. Exposing this type of behaviour was in the public interest. Furthermore, Ofcom noted that the programme limited the excerpts of the secretly recorded telephone conversation broadcast to his broken promise to arrive shortly, and the background sound to one of his subsequent calls, thereby minimising any potential intrusion. Ofcom considered that in the particular circumstances of this case, it was certainly warranted to include the brief recording. It was legitimate of the BBC to expose what it saw as Mr Payne’s propensity for falsehoods and untruths in his dealings with customers. This warranted the recording and broadcast of the material.

The complaints of unfair treatment and unwarranted infringement of privacy were not upheld.

Introduction

On 15 September 2005, the BBC broadcast on BBC1 an edition of *Rogue Traders*, a

series in which secret filming is used to expose workmen or workwomen and tradesmen and tradeswomen who are, allegedly, contravening professional rules and standards. This edition focused on those who carried out gas boiler repairs and installations. Mr Martin Payne was one of two tradesmen secretly filmed carrying out repairs to a gas boiler. It also included footage of Mr Payne being confronted about both the quality of his workmanship and that he had interrupted the gas supply without being CORGI² registered. The programme included former customers of Mr Payne recounting their experiences of his apparently inferior and in some cases hazardous workmanship.

The programme's commentary introduced Mr Payne as "Martin Powers" of KGT Plumbing & Heating. Ms Caroline Huxtable, a former customer of Mr Payne, was interviewed about his standard of workmanship. She explained that he had not completed the installation of a new boiler and had left it in a hazardous condition. Ms Huxtable said that she had contacted CORGI about her concerns and she was told that "Mr Powers" [Mr Payne] was not CORGI registered. The programme went on to state that "in 2003 the Health & Safety Executive ("the HSE") issued a prohibition notice against "Mr Powers" [Mr Payne] after he had fitted three boilers incompetently".

"Mr Powers" was identified by the programme as Martin Payne of Swanley Plumbing and Heating of Kent. Mr Neil Morrow was interviewed about the work carried out for him by Mr Payne. Mr Morrow explained that Mr Payne had installed a gas boiler for him. The presenter told Mr Morrow that Mr Payne was not CORGI registered.

Another customer, Victor Howe, who had had a boiler installed, was interviewed. He had, according to the programme, employed "Martin" of B & H Plumbing and Heating Engineers of Brighton.

In a situation set up by the programme makers in Tunbridge Wells, Mr Payne, who according to the programme was running Swanley Heating and Plumbing, was called to fix a boiler that had been purposely tampered with by the programme's expert adviser. Mr Payne was heard on the telephone agreeing to attend, however Mr Payne failed to turn up.

In a second situation set up in a house, specifically equipped for the purpose of secretly filming, Mr Payne was shown working on a boiler and interrupting the gas supply. The expert commented upon his work. Mr Payne was shown charging the customer, "Anna", who in reality was a member of the production team, for installing two thermostats. The commentary explained he had not installed any new parts.

Mr Payne told "Anna" that he was CORGI registered. Later he told the undercover presenter that he and his two engineers were registered. When confronted by the programme's presenter towards the end of the programme, Mr Payne was shown apologising for breaking the law and saying that he was going for CORGI registration. He said he always had engineers come back "to do the gas".

The programme's commentary stated that Mr Payne claimed that he did not know about a Health and Safety Executive (HSE) Prohibition Notice issued against him until told about it by the programme makers, because he wasn't living at the address it was sent to and that he had sold B & H Plumbing and Heating Engineers. Mr Payne was also shown agreeing not to touch any boiler again.

² CORGI is the Council for Registered Gas Installers. It is illegal for gas installation or gas maintenance work to be carried out by anyone other than a CORGI registered installer.

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

The Complaint

Mr Payne' case

In summary, Mr Payne complained that:

- (a) He was presented in the programme as having carried out the work for Ms Huxtable on his own when, in fact, he had been accompanied by a CORGI registered engineer. Also Ms Huxtable failed to mention that Mr Payne had left her part of the fee due to him, in order for her to employ someone else to complete the work that he had left unfinished.
- (b) He was unaware that a HSE Prohibition Notice had been issued against him and that he had not received any notice at his address. Mr Payne said that he had passed to the programme makers confirmation from CORGI and the HSE that they had received no complaints against him and that the infringement demonstrated in the programme was minor. This was not taken into account.
- (c) Although Mr Howe was not shown a CORGI registration card, the programme failed to mention that Mr Payne had worked with a qualified engineer to install the boiler. Mr Howe also made no complaint about the work carried out.
- (d) The programme failed to mention the fact that with regard to the house where he had been secretly filmed that Mr Payne had contacted the householder a couple of days after fixing her boiler and was told that it was working. The programme also did not mention that after being notified that the boiler was not working again, he attended the property again and fixed the boiler.
- (e) Although he did not attend the first situation set up by the programme makers in Tunbridge Wells, Mr Payne's conversation with the caller was broadcast and his name was mentioned. This unwarrantably infringed his privacy in both the making and the broadcast of the programme.

The BBC's case

In summary, the BBC responded that:

- (a) Ms Huxtable confirmed that Mr Payne was accompanied by another individual when he carried out the work. However, she was present throughout the work and never saw anyone who looked like a qualified engineer. Ms Huxtable was adamant that his much younger colleague was there solely in a junior capacity, his duties confined to fetching, carrying and the like. The BBC said that it was CORGI's standard practice at the time for qualified fitters to leave customers with documentation such as benchmark certificates or logbooks including details of who had done the installation for future reference. Had Mr Payne's companion been properly qualified he might have been expected to do this, but he did not. Ms Huxtable told the programme makers that she believed Mr Payne to be qualified, as that is what he had told her. It was only later, when she spoke to CORGI, that she found he was not qualified.

The BBC said that it noted from Mr Payne's complaint that he admitted that it was he who had left the work at Ms Huxtable's house unfinished, thereby confirming that he sometimes told customers that his name was Martin Power, rather than Martin Payne.

The BBC also said that the boiler was left in a dangerous state.

The BBC said that Ms Huxtable was also clear that Mr Payne did not leave any money or rebate any part of his fee for the work he had not done. Mr Payne had given an array of excuses for failing to return, such as claiming he now lived "in Spain". Eventually Ms Huxtable retained a competent plumber to finish the work at significant expense.

- (b) The HSE had issued two enforcement notices against Mr Payne. It issued an "Immediate Prohibition Notice" against "Martin Power" on 25 November 2003. The BBC believed that the HSE were, at the time unaware that "Martin Power" was in fact the same person as the Martin Payne it had issued an Improvement Notice against on 8 July 2003.

Mr Payne's claim to know nothing about the Prohibition Notice was made absolutely clear in the programme. When Mr Payne was confronted by the programme's presenter he was heard to say "I've never had one served on me whatsoever". The programme's commentary also repeated that "Martin says he didn't know about the prohibition notice until we told him". However, as the Prohibition Notice itself made clear, it was issued in Mr Payne's alternative name, Power, and he told the programme, before transmission, that he had established it was sent to the "fake" address he had used in Hemel Hempstead, 40 Wilkinson Way. Although the version of the notice on the HSE website carried the address he claimed as his own in Hemel Hempstead, 27 Wilkinson Way, the programme makers accepted his account and broadcast, twice, his claim not to have received it without making any further comment. Irrespective of whether he knew about the notice, Mr Payne was breaking the law by working on gas when he was not qualified to do so.

The BBC said that the HSE had drawn its attention to the published text of the Prohibition Notices. They referred to three separate properties and state that the defects found in the properties suggested "incompetence". The Improvement Notice stated that prosecution for non-compliance would be a serious consideration if further defects were reported. The BBC said that the language of the notices did not suggest that the HSE regarded the infractions as "relatively minor".

Although Mr Payne maintained that any offence he had committed was trivial, CORGI have not only assured the BBC that he deserved rather more than a "slap on the hand", but had made that quite clear to him too. Immediately after being secretly filmed and then confronted by the programme makers, Mr Payne telephoned a Technical Support Officer at CORGI, who confirmed to the BBC in a letter dated 6 December 2005 that he had made it clear to Mr Payne that he had undertaken gas work illegally and that it was a serious offence to do so. The BBC said that this demonstrated that at least one senior figure at CORGI disputed Mr Payne's account. The programme makers' communications with CORGI demonstrated that it regarded Mr Payne as working "illegally and dangerously". Similarly, the Enforcement Notices from the HSE left no doubt as to its own views.

- (c) Mr Howe told the programme makers that he had never seen anyone other than the individual who introduced himself simply as “Martin”, that is Mr Payne, work on the installation of his boiler. Although Mr Howe was not present for the whole time it took the work to be carried out, he did not see or hear anything that suggested that another person had been in his house. However, Mr Howe was present for the whole of the day when the old boiler was taken out, suggesting that Mr Payne had interrupted the gas flow on his own, which was against the law for anyone other than a CORGI registered engineer. The BBC said that if Mr Payne did ask a CORGI registered engineer to come to the house, it appeared strange that he chose not to do so when taking the old boiler out. The programme did not say Mr Howe was unhappy with the quality of Mr Payne’s work. In fact it said nothing at all about Mr Payne or his work other than that he fitted the boiler illegally. Mr Howe had in fact complained to his local Trading Standards department because the work was so badly done. The programme did refer to the fact that Mr Howe regretted not asking to see Mr Payne’s CORGI registration card. Mr Payne was not CORGI registered, so it was entirely accurate, and therefore not unfair, to say the boiler was fitted illegally.
- (d) The BBC said that the problem with the boiler at the house where Mr Payne was secretly filmed was created artificially by the programme’s expert and what happened when Mr Payne arrived was seen in the programme. Mr Payne claimed that he had replaced two thermostats for £150 when, in fact, he had not. Mr Payne later admitted to the programme makers that he had not replaced the thermostats and offered to repay the money charged. He had also assured “Anna” (a member of the production team posing as a customer) that he was CORGI registered but that he did not have his card with him. Later he denied to the BBC ever having been asked for his card. Later that day Mr Payne telephoned the house and was told by the genuine householder, who was not part of the BBC production team that the boiler was now working. However, with two irrefutable examples of Mr Payne’s lying captured on film, the programme makers felt it had sufficient grounds to investigate him further, even though he had fixed the boiler.

The programme’s expert set a new fault and Mr Payne was called out for a second time. He failed to keep the first appointment. When he eventually arrived the following morning, he decided that the system was “clogged up”, and so poured de-scaler into the system. As was shown in the programme, the “fault” (a detached wire) was rather different to being “clogged up”. The BBC said that contrary to Mr Payne’s assertion in his complaint, he did not fix the fault and makes no reference to his failure to turn up for the original appointment. Following more calls to him, Mr Payne decided to recommend installing a new boiler. Although it was accepted that the programme did not make explicit the fact that Mr Payne had visited the house three times rather than twice, there was no unfairness to Mr Payne in not referring to the second visit (even though it included a further demonstration of his incompetence).

- (e) The programme makers’ first contact with Mr Payne followed reports and complaints that he was incompetent and dishonest. It was imperative that the allegations against him were put to the test and, as the material in the programme shows, he failed it. The BBC said that it was a crucial piece of journalism that let viewers make their own judgement about Mr Payne rather than simply rely on what dissatisfied customers had said. It was therefore essential to include the recording of the telephone call as it was the first hard evidence of Mr Payne’s lack of professionalism, and all the problems his customers have suffered arose from it.

The programme-makers had called Mr Payne out because he ran a local company, Swanley Plumbing and Heating, and the programme had learned of several complaints, including one from Mr Morrow, about it. Mr Payne was clearly heard in the programme assuring the “householder” that he would be there in “ten, fifteen minutes”. When he failed to keep his appointment, the programme makers called him and were told that he was ten minutes away. Three hours later, when he had still not arrived, a further call (the one used in the programme) made clear that he was at the bingo.

The BBC said that it accepted that broadcasting this kind of recording may be an infringement of privacy. The programme limited the excerpts broadcast to his broken promise to arrive shortly, and the background sound to one of his subsequent calls, thereby minimising any potential intrusion. Even if this was an infringement of Mr Payne’s privacy, the BBC said that it was warranted. There was a pattern of falsehoods and untruths in all the programme makers’ dealings with the complainant and this section of the programme graphically illustrated the problem.

Decision

Ofcom’s statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment in programmes included in such services. Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness, if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

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

This case was considered by Ofcom’s Executive Fairness Group. The Group’s decision is set out below.

- (a) Ofcom first considered Mr Payne’s complaint that he was presented in the programme as having carried out the work for Ms Huxtable alone when, in fact, he had been accompanied by a CORGI registered engineer. Mr Payne also said that Ms Huxtable had failed to mention that he had left her part of the fee due to him in order for her to employ someone else to complete the work he had left unfinished.

Broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

In considering this complaint, Ofcom took the view that there was no indication that suggested that Ms Huxtable’s account in the programme was unreliable.

It was clear from the programme and the untransmitted material that Mr Payne had himself claimed to customers in similar situations to that experienced by Ms Huxtable that he was CORGI registered when, in fact, he was not. It was therefore reasonable for the BBC to approach Mr Payne’s word as unreliable.

Ofcom noted that Mr Payne had not offered any corroborating evidence to show that the person who accompanied him was CORGI registered. Ofcom had not been provided with his name or CORGI credentials or personal testimony.

Also, it is noted that if Mr Payne's colleague had been a CORGI registered engineer, it was more than likely that after installing a new boiler he would have left with Ms Huxtable documentation that would have detailed who had installed the boiler for future reference. This was standard practice expected by CORGI of its qualified engineers at the time the work was carried out at Ms Huxtable's property.

Furthermore, CORGI had inspected the boiler and confirmed that it was in a potentially dangerous state.

In these circumstances, Ofcom is persuaded by: Ms Huxtable's account to the BBC that she believed Mr Payne to have been CORGI registered engineer because he had told her that he was and that he was accompanied by a much younger junior assistant for fetching and carrying; the lack of documentation left after the boiler was fitted; the failure of Mr Payne to supply any supporting evidence to the contrary; and that a CORGI inspection had shown the boiler to be in a potentially dangerous state that Mr Payne had not been accompanied by a CORGI engineer.

Ofcom also considered Mr Payne's complaint that Ms Huxtable had failed to mention that he had left her part of the fee due to him in order for her to employ someone else to complete the work he had left unfinished. The BBC argued that no money had been left.

As set out above, given the evidence concerning his behaviour, Mr Payne's account (including this suggestion that he had left money for the job to be completed – contrary to Ms Huxtable's account) can reasonably be considered to be unreliable. There is no reason to doubt Ms Huxtable's account which is supported by the fact that CORGI found the boiler to be in a dangerous state.

In any event Ofcom took the view that this element of Mr Payne's complaint was not relevant to whether or not the programme was unfair to him. The relevant point as far as the programme was concerned was that Mr Payne had been repairing and installing gas boilers without being CORGI registered. The issue as to whether or not he had paid back to Ms Huxtable part of the fee he had charged her was not relevant to the focus of the story which was that he had fitted the boiler without being qualified to do so. Ofcom found that it was not unfair for the programme to have focused on the unlawful nature of Mr Payne's work and the potentially dangerous state the boiler was left in.

- (b) Ofcom considered Mr Payne's complaint that he was unaware that a Prohibition Notice had been issued against him and that he had not received any such notice at his address. Mr Payne also said that he had passed onto the programme makers confirmation from CORGI and the HSE that they had received no complaints against him and that the infringement demonstrated in the programme was minor. Mr Payne complained that this was not taken into account.

Ofcom considered that Mr Payne's claim that he was unaware of the Prohibition Notice had been issued against him was accurately presented and made sufficiently clear in the programme. It noted that when Mr Payne was confronted

by the programme's presenter, he clearly stated that he had "never had one served on me". Also, the programme's commentary said that Mr Payne had said that "he didn't know about the Prohibition Notice until we [the programme makers] told him because he wasn't living at the address it was sent to".

Ofcom also examined the letters submitted by Mr Payne which he had received from HSE and CORGI and the submissions sent by the broadcaster in relation to the position taken by the two bodies regarding Mr Payne's conduct. In the letter sent to the BBC from CORGI on 6 December 2005, Ofcom noted that the BBC were advised by the Technical Support Manager who had dealt with an enquiry from Mr Payne that he had informed him that to carry out work involving the interruption of the gas supply without being qualified was not only illegal but was a serious offence. This could lead to a criminal prosecution by the HSE. Also, in an email of 22 September 2005 sent from CORGI to the programme makers after broadcast of the programme, CORGI said that following the evidence the programme makers had submitted to the HSE that "Martin Power [Mr Payne] will be investigated and stop[ped from] working illegally and dangerously".

Ofcom was satisfied that neither CORGI nor HSE considered Mr Payne's conduct as minor and that the BBC demonstrated that both organisations had concerns over his behaviour. Also, the issue of the Prohibition and Enforcement Notices confirmed that Mr Payne had been illegally carrying out gas work and that complaints about his conduct had been made. Ofcom found that the programme was not unfair to Mr Payne in these respects.

- (c) Ofcom considered Mr Payne's complaint that, although Mr Howe was not shown a CORGI registration card, he had worked with a qualified engineer to install the boiler. Also Mr Payne complained that the programme did not mention that Mr Howe made no complaint about the work carried out.

In these circumstances, Ofcom examined all the relevant material available to it in order to determine whether or not, on the basis of that material, that the programme-makers had dealt with Mr Payne in a manner which was consistent with their obligation to avoid unfairness to him.

Broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. In considering this complaint, Ofcom took the view that there was no reason for it to doubt the account given by Mr Howe to the programme makers when researching for the programme that he had been present when Mr Payne had, apparently, interrupted the gas flow on his own when removing the old boiler.

It was clear from the programme and the untransmitted material that Mr Payne had given the impression to customers in similar situations to that experienced by Mr Howe that he was CORGI registered when, in fact, he was not. It was therefore reasonable for the BBC to approach Mr Payne's word as unreliable.

Ofcom noted that Mr Howe had not been present throughout the time the work was undertaken, but he had been in the house when Mr Payne had interrupted the gas supply to remove the old boiler.

Also, it was noted that Mr Payne had not offered any corroborating evidence to show that he was accompanied by a CORGI registered engineer when removing the old boiler and installing the boiler.

Further if Mr Payne had been accompanied by a CORGI registered engineer, it was more than likely that after installing a new boiler he would have left with Mr Howe documentation that would have detailed who had installed the boiler for future reference. As already mentioned in (a) above, this was standard practice expected by CORGI of its qualified engineers.

In these circumstances, Ofcom is persuaded by Mr Howe's account to the BBC that he was present when Mr Payne apparently interrupted the gas supply to remove the old boiler and saw no other engineer; the lack of documentation left after the boiler was fitted; and, the failure of Mr Payne to supply any supporting evidence to the contrary that he was not working with a qualified CORGI engineer when he removed Mr Howe's boiler.

Ofcom also considered Mr Payne's complaint that the programme had failed to mention that Mr Howe had made no complaint about the work that was done.

Ofcom took the view that this element of Mr Payne's complaint was not relevant to whether or not the programme was unfair to him. The relevant point as far as the programme was concerned was that Mr Payne had been repairing and installing gas boilers without being CORGI registered. The issue as to whether or not Mr Howe had been satisfied with his work was not relevant to the focus of the story which was that he had apparently interrupted the gas supply on his own to remove the old boiler without being qualified to do so. Ofcom found that it was not unfair for the programme to have focused on the unlawful nature of Mr Payne's work rather than the customer's opinion as to the quality of his work. In any event, Ofcom was aware that Mr Howe had complained to his local Trading Standards department about the poor quality of Mr Payne's work.

Taking the factors detailed above into account, Ofcom found that it was not unfair to Mr Payne for the programme to have presented Mr Howe's account as being accurate and not to refer to the quality of the work done by Mr Payne.

- (d) Ofcom considered Mr Payne's complaint that the programme failed to mention that he had contacted the genuine householder a couple of days after fixing the boiler and was told that it was working. He also complained that the programme failed to mention that after being notified that the boiler was not working again, he attended the property again and fixed it.

Ofcom considered that the focus of the series was to identify and show evidence of the malpractices of workmen and tradesmen who employ unethical and dangerous methods. The programme's focus, in Ofcom's view, was that Mr Payne was unlawfully interrupting gas supplies and so it was not unfair for the programme not to have included reference to all three occasions when Mr Payne visited the property or that he had contacted the householder and been told the boiler was working.

- (e) Ofcom considered Mr Payne's complaint that although he did not attend the first situation set up by the programme makers, Mr Payne's conversation with the caller was recorded and subsequently broadcast and his name was mentioned. Mr Payne complained that this unwarrantably infringed his privacy in both the making and the broadcast of the programme.

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?

In this case, Ofcom considered that obtaining and broadcasting of secretly recorded telephone conversation between Mr Payne and the programme makers infringed his privacy in both the making and broadcast of the programme. Ofcom went on to consider whether or not the infringements were warranted.

The use of secretly recorded footage should only be considered where it is necessary to the credibility of a story. In the circumstances of this particular case, Ofcom considered that it was legitimate to obtain and broadcast the secretly recorded telephone conversation and that that the infringement was warranted. The BBC reasonably believed Mr Payne was engaging in dangerous and illegal behaviour. Exposing this type of behaviour was in the public interest. Furthermore, Ofcom noted that the programme limited the excerpts of the secretly recorded telephone conversation broadcast to his broken promise to arrive shortly, and the background sound to one of his subsequent calls, thereby minimising any potential intrusion. Ofcom considered that in the particular circumstances of this case, it was certainly warranted to include the brief recording. It was legitimate of the BBC to expose what it saw as Mr Payne's propensity for falsehoods and untruths in his dealings with customers. This warranted the recording and broadcast of the material.

Accordingly, the complaints of unfair treatment and unwarranted infringement of privacy in both the making and broadcast of the programme were not upheld.

Other programmes not in breach/out of remit

5 July – 18 July 2006

Programme	Trans Date	Channel	Category	No of compla
1 Leicester Square	30/04/2006	MTV	Animal welfare	1
1-0 to the Arsenal	05/05/2006	RAJ TV	Undue prominence	1
30 Minutes	07/07/2006	Channel 4	Generally accepted standards	2
8 Out of 10 Cats	07/07/2006	Channel 4	Offensive language	1
94.9 Morley FM - RSL	04/07/2006	94.9 Morley FM – RSL	Generally accepted standards	1
Airline	29/06/2006	ITV2	Offensive language	1
Alan Brazil Sports Breakfast	27/06/2006	Talksport	Generally accepted standards	1
Alan Brazil Sports Breakfast	29/06/2006	Talksport	Generally accepted standards	1
Alex Dyke Show	14/07/2006	Isle of Wight Radio	Generally accepted standards	1
Bad Girls	13/07/2006	ITV1	Religious offence	1
BBC News	06/07/2006	BBC1	Generally accepted standards	1
BBC News	12/07/2006	BBC1	Due Impartiality/Bias	1
Big Brother 7	22/05/2006	Channel 4	Generally accepted standards	3
Big Brother 7	11/06/2006	Channel 4	Generally accepted standards	1
Big Brother 7	16/06/2006	Channel 4	Generally accepted standards	1
Big Brother 7	20/06/2006	Channel 4	Sex/Nudity	1
Big Brother 7	18/06/2006	Channel 4	Sex/Nudity	1
Big Brother 7	03/07/2006	Channel 4	Offensive language	3
Big Brother 7	01/07/2006	Channel 4	Sex/Nudity	1
Big Brother 7	07/07/2006	Channel 4	Sex/Nudity	1
Big Brother 7	06/07/2006	Channel 4	Offensive language	1
Big Brother 7	09/07/2006	Channel 4	Generally accepted standards	2
Big Brother 7	12/07/2006	Channel 4	Generally accepted standards	3
Big Brother 7	14/07/2006	Channel 4	Other	2
Big Brother's Big Mouth	08/06/2006	E4	Sex/Nudity	2
Big Brother's Big Mouth	29/06/2006	E4	Generally accepted standards	1
Bratz	11/03/2006	CITV	Undue prominence	1
Breakfast	29/06/2006	BBC1	Generally accepted standards	1
Breakfast	02/07/2006	BBC1	Generally accepted standards	2
CBBC	05/07/2006	BBC1	Offensive language	1
Celebrity Tudor Wedding	06/07/2006	Five	Generally accepted standards	1

Central News	02/06/2006	ITV1	Undue prominence	1
Central News	30/06/2006	ITV	Generally accepted standards	1
Channel 4 News	04/07/2006	Channel 4	Due Impartiality/Bias	1
Coronation Street	29/05/2006	ITV1	Inaccuracy/Misleading	1
Coronation Street	11/07/2006	ITV1	Dangerous behaviour	1
CSI: NY	08/07/2006	Five	Generally accepted standards	1
Deadwood	03/07/2006	Sky News	Generally accepted standards	1
Eastenders	10/07/2006	BBC1	Sex/Nudity	1
From Here to Maternity	24/06/2006	Discovery	Inaccuracy/Misleading	1
FTN - Quiz Night Live	06/06/2006	FTN	Competitions	1
FTN - Quiz Night Live	28/06/2006	FTN	Competitions	1
GMTV	21/06/2006	ITV1	Due Impartiality/Bias	2
GMTV	11/07/2006	ITV1	Animal welfare	1
Hollyoaks	30/05/2006	Channel 4	Violence	2
ITV News	13/06/2006	ITV1	Due Impartiality/Bias	1
ITV News	14/06/2006	ITV1	Violence	1
ITV News	15/06/2006	ITV1	Inaccuracy/Misleading	1
James O'Brien	01/06/2006	LBC97.3	Generally accepted standards	2
James O'Brien	27/04/2006	LBC97.3	Generally accepted standards	1
Kirstie and Phil: Where Best to Invest	23/04/2006	Channel 4	Inaccuracy/Misleading	2
LBC Programme	09/06/2006	LBC97.3	Exorcism/Occult	1
London Tonight	04/07/2006	ITV1	Inaccuracy/Misleading	1
Love Island	11/07/2006	ITV1	Generally accepted standards	1
Midsomer Murders	22/04/2006	ITV1	Violence	3
Mike Parry	28/05/2006	Talksport	Generally accepted standards	2
Mike Parry	02/07/2006	Talksport	Generally accepted standards	1
Mindshock: Sex on the Brain	09/07/2006	Channel 4	Sex/Nudity	2
Modern Toss	11/07/2006	Channel 4	Offensive language	1
My Parents Are Aliens	21/06/2006	CITV	Animal welfare	1
Newsnight	04/07/2006	BBC2	Crime Incitement	3
Nick Ferrari	03/07/2006	LBC97.3	Inaccuracy/Misleading	1
Nighty Night	04/05/2006	BBC2	Generally accepted standards	1
Quiz Call	01/07/2006	Quiz Call	Competitions	1
Quiz Call	08/07/2006	Five	Competitions	3
Quizmania	01/07/2006	ITV1	Undue prominence	1
Ramsay's F Word	21/06/2006	Channel 4	Offensive language	1
Ramsay's F Word	28/06/2006	Channel 4	Generally accepted standards	3
Ramsay's F Word	03/07/2006	Channel 4	Offensive language	1
Ramsay's F Word	05/07/2006	Channel 4	Offensive language	2
Sky News	13/06/2006	Sky News	Due Impartiality/Bias	1
Spitting Image	29/06/2006	ITV1	Offensive language	1
Steve Allen Show	27/06/2006	LBC97.3	Generally accepted standards	1

Tax the Fat	06/06/2006	More4	Generally accepted standards	1
Tax the Fat	04/07/2006	More4	Generally accepted standards	1
The Chris Moyles Show	18/05/2006	BBC Radio 1	Generally accepted standards	4
The Chris Moyles Show	04/07/2006	BBC Radio 1	Generally accepted standards	1
The Jeremy Kyle Show	04/07/2006	ITV1	Generally accepted standards	1
The Jon Gaunt Show	29/06/2006	Talksport	Offensive language	1
The Mint	05/07/2006	ITV1	Competitions	1
The Mint	11/07/2006	ITV1	Competitions	1
The Simpsons	26/06/2006	Sky One	Sex/Nudity	1
The Simpsons	01/07/2006	Sky One	Violence	1
Three Minute Wonder	03/07/2006	Channel 4	Sex/Nudity	
Three Minute Wonder	13/07/2006	Channel 4	Sex/Nudity	2
Totally Spies	10/07/2006	Jetix	Generally accepted standards	1
Unreported World	23/06/2006	Channel 4	Violence	1
Up Pompeii	29/04/2006	ITV1	Scheduling	3
UTV Live at Six	26/05/2006	ITV1	Inaccuracy/Misleading	1
War of the World	03/07/2006	Channel 4	Generally accepted standards	1
When Heather Met the McCartneys	02/06/2006	Five	Generally accepted standards	1
World Cup 2006	01/07/2006	ITV1	Generally accepted standards	1
World Cup 2006	10/06/2006	ITV1	Generally accepted standards	1
World Cup 2006	05/07/2006	BBC1	Generally accepted standards	2
World Cup 2006	09/07/2006	BBC1	Generally accepted standards	1
World Cuppa	15/06/2006	ITV4	Generally accepted standards	1
WWE - Experience	21/05/2006	Sky One	Violence	1