

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

Resolved

LBC Programme

LBC 97.3, 20 February 2006, 09:00

Introduction

During the news at 09:00 there was a promotion for DHL. This consisted of the statement “By 9, by 12, by DHL” broadcast between the news headlines and the full news stories.

A listener complained that this promotion suggested the news was sponsored. The Broadcasting Code prohibits the sponsorship of news.

Response

LBC explained that the promotion was a ‘blipvert’ (a short advertisement), not a sponsorship credit. The advertisement was scheduled at 09:00 and 12:00 between 20-24 February.

LBC considered the potential regulatory issues closely before beginning the campaign. To ensure the advertisements complied with the Code it revised the news bulletin format. Rather than simply placing the ‘blipverts’ within the news stories, it separated the bulletin headlines from the detailed content. It also insisted that the news jingle, which would normally fade gently, would disappear totally before the beginning of the advertising message. LBC considered that the change in voice, style and subject matter as the content moved from editorial to advertising, coupled with the disappearance of the jingle and the inclusion of the advertiser’s name, made it clear to listeners that this was an advertising message.

LBC pointed out that advertisements in news bulletins have been commonplace for some years across UK radio stations under the ‘newslink’ scheme. Such advertisements are incorporated within the context of bulletins, not separated out. To LBC’s knowledge, advertisements under the scheme had not raised regulatory issues or any appreciable listener concern.

LBC did not believe the advertisement could be mistaken for sponsorship because all sponsored output is required to include clearly both the name of the sponsored item and the sponsor. This communication did not. It considered its listeners were intelligent enough to distinguish editorial from advertising of this nature.

LBC acknowledged that the approach was unusual but considered it was not, per se, against the rules. However, it noted that this particular advertisement had caused some concern and gave an assurance that it would not be repeated. In addition, LBC said that in future it would avoid including copy in advertisements which relates to the timing of news bulletins and would add in a ‘sting’ before and after the advertisement to provide an additional form of separation from the news bulletin.

Decision

One of the aims of the rules governing broadcast sponsorship is that a distinction between advertising and sponsorship is maintained. On radio this distinction is ensured by the rules that require sponsorship to be clearly identified and credits to be short branding statements.

While we agree that listeners are likely to recognise this message as some form of commercial communication and acknowledge that there was no clear identification of a sponsorship arrangement, we are concerned that the message implied a commercial relationship between the news and DHL. The brevity of this standalone advertisement, its apparent lack of separation from editorial content, its branding rather than selling message and the connection between the times mentioned in the message and the time of the news bulletin created the impression that the news was sponsored.

We welcome the steps proposed by LBC intended to ensure that future campaigns comply with the Broadcasting Code. The Code requires programming, sponsorship and advertisements to be distinct and separate from one another. Because the integrity of news content is paramount, it is particularly important that any advertising placed around news output is transparent and clearly separated from editorial content - in particular, it should be easy to distinguish from sponsorship.

In this case, in view of LBC's assurance that the advertisement will not be repeated, we consider the complaint resolved.

Resolved

Bridget Jones trailers

BBC1, 24 December 2005, 18:25

Introduction

This trailer for the *Bridget Jones* film followed the end of the Christmas Eve film: *Harry Potter and the Philosopher's Stone*. The trailer opened with a scene from the *Bridget Jones* film in which she answers the telephone whilst in bed and saying: "Bridget Jones, wanton sex goddess with a very bad man between her thighs".

A viewer considered that the direct sexual reference made in the trailer was inappropriate for the time it was scheduled, particularly given that it followed *Harry Potter and the Philosopher's Stone*, which would have attracted a large child audience.

Response

The BBC said there were always difficult decisions to be made when trailing post-watershed programmes in pre-watershed programme junctions. In such cases there was a need to make sure it gave viewers enough information about what they could expect to see in the full programme/film whilst guarding against over-explicitness in the trailer.

The decision to include the trailer after *Harry Potter and the Philosopher's Stone* was not taken without careful thought. The schedulers were aware that the film would attract a large audience of children but also knew the next programme, *Strictly Come Dancing*, would appeal mainly to over-45s.

In the event, the under-15 audience halved between the end of the film and the start of *Strictly Come Dancing* and there were very few complaints received. However, the under-15 audience still remained considerable (14% of the audience). With hindsight, the BBC accepted that the trailer's sexual allusions were over-explicit for the junction and for the time of the evening.

In the event of any further showings of the film, the trailer would be re-edited to tone down the sexual content.

Decision

Although not explicit, the tone of the trailer was overtly sexual and inappropriate for that particular junction. We welcome the BBC's assurance that the trailer will be re-edited should the film be broadcast in the future.

Resolved

Dark Dreamers

The Horror Channel, 13 April 2006, 12:30

Introduction

A viewer was concerned that the programme, which consisted of interviews with horror writers, included the word “fuck” three times. He thought that this was unsuitable for the time of broadcast.

Response

The Horror Channel acknowledged that it was unacceptable for this programme to be transmitted pre-watershed due to its strong language. The broadcaster apologised for any offence caused to viewers.

It explained that the series was reformatted during the transition period when the Horror Channel was taken over by Zone Vision. During the compliance process, a number of episodes from this series were flagged as being unsuitable for daytime, but unfortunately this was not one of these episodes and the scheduler was therefore unaware that this was unsuitable for daytime.

Since the incident occurred, the company responsible for reformatting and compliance had been replaced. A new compliance procedure had been put in place with this edition flagged as being suitable post 21:00 only, to be accompanied by a warning about strong language.

Decision

The repeated use of the word “fuck” was unsuitable for broadcast at this time. We understand the broadcast of the programme was the result of human error, and in view of the action taken to prevent a recurrence, we consider the matter resolved.

In Bulletin 34, before the Horror Channel was taken over by Zone Vision, we registered a breach against the channel for the broadcast of a horror film which included graphic sexual scenes and a strong horror theme which meant that it was not suitable for scheduling before the 21:00 watershed. Even if a broadcaster chooses to subcontract its compliance arrangements, it remains ultimately responsible for these. It has a duty to ensure that its arrangements ensure that it is able to comply with the Broadcasting Code. On this occasion, we accept the broadcaster’s reasons; however, we are concerned that this is the second occasion on which the channel has broadcast unsuitable material before 21:00.

Resolved

Robin Hood - Prince of Thieves

TV3 Sweden, 5 March 2006, 13:45

Introduction

A viewer was concerned that this film was inadequately edited for the time of broadcast. The film showed a close-up scene of a stabbing, the attempted hanging of a young boy, a sexual assault and included strong language such as “bollocks” and “fuck me”.

Response

TV3 Sweden said that it had erroneously broadcast the original version of this film, rather than the UK version which had been edited and rated a “PG” by the British Board of Film Classification. The broadcaster accepted that some of the scenes and language were inappropriate for the time the film was scheduled. This version of the film would not be shown again before the watershed at 21:00.

TV3 apologised for its oversight. It had discussed the issue with its acquisitions department and had asked it to review its procedures for acquiring films from abroad.

Decision

We welcome TV3 Sweden’s acknowledgement of its error and the review of procedures that it has undertaken. We believe that this resolves the matter.

Resolved

Subtitles

Channel 4, 9 March 2006, 04:00

Introduction

A viewer noted that the subtitles for a number of programmes shown from 04:00, including *Dispatches*, *Countdown* and children's programmes (starting from 06:00), contained various offensive language.

Response

Channel 4 said that its computerised subtitling system had erroneously extracted subtitles from the wrong files. This had included the file for the programme, *Six Shooter*, which had been transmitted earlier, at 00:05. Unfortunately these subtitles contained strong language and continued after the watershed ended (05:30). The subtitles were taken off-air at 06:19, as soon as the problem was discovered. The problem was corrected when the subtitling unit was rebooted. The broadcaster also discovered that its Network Director had been able to detect the presence of subtitles but not their content.

Channel 4 stated that it viewed this as a serious incident. To safeguard against recurrence, it had installed, and repositioned, larger monitors in its transmission suite. It had also provided additional large screen subtitle monitoring in its master control room. The broadcaster said that it had reminded Network Directors to check subtitle content at the start of each programme. The problem had been discussed with the master control's staff and Channel 4 had also issued a document to all relevant operational staff reinforcing responsibilities for monitoring all access services across all platforms.

Decision

The subtitles were clearly inappropriate for some of the programmes they accompanied, and particularly so after post-watershed programming had finished at 05:30. When discovered, the technical problem that had caused the incident highlighted operational matters that the broadcaster clearly needed to address. We therefore welcome the immediate and appropriate action taken by Channel 4, both during the transmission of the material and afterwards, to avoid recurrence, which we believe resolves the matter in this instance.

Resolved

Not in Breach

The Root of All Evil?

Channel 4, 9 January 2006 & 16 January 2006; 20:00

Introduction

This was a short series of two programmes presented by Professor Richard Dawkins challenging, what he described as, “a process of non-thinking faith”. In the programmes he questioned why militant faith appeared to him to be on the increase and why religious people were allowed to teach their children their beliefs from an early age.

Over the two programmes, 23 viewers complained to Ofcom.

In summary, the complainants considered that the programme:

- a) showed a negative portrayal of religious beliefs and called religious faith “a virus”, and that this was both offensive and harmful;
- b) contained inflammatory comments, slanderous remarks and atheist propaganda, which resulted in possible incitement to religious hatred;
- c) allowed an “ill-informed” presenter to treat religion with “ridicule and scorn”, and misrepresented religious views, which - along with disingenuous editing - offered no opportunity for debate. As there was no balancing programme on the same service, this resulted in an approach to the religious matters being explored that was not responsible;
- d) allowed the presenter to air bigoted, intolerant, biased and anti-religious views;
- e) attempted to promote religious (i.e. atheist) views by stealth;
- f) generally contravened Ofcom’s rules on due impartiality and due accuracy; and
- g) focused on the behaviour and beliefs of “religious extremists”, with little reference to moderate/mainstream religious belief and practice, and that therefore this was misleading;

The issues raised by the complainants related to a number of Broadcasting Code rules. We asked Channel 4 to respond to these complaints but with particular reference to the following rules:

4.1 Broadcasters must exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes.

4.2 The religious views and beliefs of those belonging to a particular religion or religious denomination must not be subject to abusive treatment.

Response

Channel 4 said that the two programmes were a polemic series. It described Professor Dawkins as "...one of the foremost evolutionary scientists. He had gained prominence as a 'professional atheist' and was an ambassador for the rationality of science".

With reference to Rule 4.1, Channel 4 was confident that the proper degree of responsibility with respect to the content was demonstrated, in that the proposed content was considered at a high editorial level and with advice from a lawyer. With reference to Rule 4.2, the broadcaster said that it was also confident that the religious views and beliefs of those belonging to a particular religion were not subject to abusive treatment.

In support of this, Channel 4 said:

- The question mark in the title would have alerted viewers to the fact that the programmes would be questioning religion. The announcements preceding both programmes also made this clear:

"An Oxford professor who says God is fiction, join the debate next on 4... we should all reject all religions. Radical, controversial and the debate right now on 4..."

"Is religion the root of all evil? A virus particularly affecting the young?... 'Darwin's Rottweiler' Richard Dawkins expresses concern over the virus of faith in The Root of all Evil"
- Richard Dawkins made clear the perspective he was coming from, and that what he was going to say was what *he* thought. Therefore the editorial content of the programme was transparently spelt out for the viewer.
- It was essential that Channel 4 should broadcast programmes that offered alternative perspectives to mainstream thought. Ofcom's research (*Religious Programmes: a report of the key findings of a qualitative research study, May 2005*) demonstrated that people were willing to receive programmes that espoused differing views. Of the 882 viewers responses about the programmes to Channel 4 directly, more than half praised the series as a genuine example of freedom of expression.
- The presenter was not allowed to espouse his views in a completely biased and unchallenged manner. He was challenged by other religious contributors throughout the series. These included the pastor of a 12,000 strong congregation in Colorado Springs, a Jewish convert to Islam, an orthodox rabbi, the teacher of an Accelerated Christian Education (ACE) school and an Anglican Bishop. In Channel 4's view, he was not disrespectful of any contributor espousing faith, nor did he seek to ridicule or vilify any of the religions.
- The presenter was not allowed to espouse his views in a completely biased and unchallenged manner. However, polemic or authored films are, by their very nature, biased as they are clearly representing the opinion of the author.

However this is acceptable under the Broadcasting Code, provided this type of film is contextualised and signposted. Broadcasting a polemic view is integral to both the Channel 4 remit and to the right to both freedom of thought, conscience and religion and freedom of expression (European Convention on Human Rights, Articles 9 and 10).

- Richard Dawkins' views were challenging and provocative but not abusive. Channel 4 said that to disagree with conventional thought did not, in itself, make an abuse of that thought.

The broadcaster, in its response, also addressed issues related to whether it had applied generally accepted standards to the programmes (Rule 2.3). Channel 4 pointed out that it was satisfied that the series was clearly signposted as a polemic. Richard Dawkins regularly used expressions such as "I think" or "As far as I am concerned" and the programmes were preceded by presentation announcements about the content. The broadcaster had also taken into account the potential audience and likely expectation of that audience tuning in to such a series, broadcast in prime time on a minority channel.

Decision

Broadcasters have the right to impart information and ideas and viewers have a right to receive them as long as the Code is complied with. We considered the programmes in the light of: the complaints; the comments from Channel 4; and the relevant provisions of the Broadcasting Code, as set out below, which were set in accordance with our statutory duties under section 319 of the Communications Act 2003. Section 3(2) (e) of the Communications Act 2003 also requires Ofcom to apply standards:

"that provide adequate protection to members of the public from the inclusion of offensive and harmful material",

but in doing so we should have regard to – as much as it appears to be relevant – to the manner that,

"best guarantees an appropriate level of freedom of expression". (section 3(4)(g))

As the Broadcasting Code sets out, broadcasters may make programmes about any issue they choose, so long as the material complies with the Code and the law. Overall, these programmes were serious documentaries, questioning the validity of religion. In such areas as political and religious debate, it is essential that broadcasters and viewers have as much freedom of expression as is compatible with the law, to explore ideas. The programmes were clearly authored and the presenter had every right to challenge orthodox religion so long as there was a "proper degree of responsibility" and people's religious views were not subject to "abusive treatment".

- a) As with all programmes, the broadcasters must ensure that they apply "generally accepted standards" and that material, which may cause offence, is justified by the context (Rule 2.3).

The Code gives a meaning for context, which includes, but is not limited to:

"the editorial content of the series; the service on which the material is

broadcast; ...the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes of a particular description; the likely size and composition of the potential audience and likely expectation of the audience; and the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information...

In considering context we therefore took into account those matters set out above.

When considering the service on which this series was broadcast we took into account Channel 4's remit (or purpose) which requires it, amongst other things, to:

"encourage innovation and experiment in the form and content of programmes and generally to give the channel a distinctive character of its own "

Furthermore, this was an authored programme about religious faith presented by Professor Dawkins who has a reputation as a noted atheist. This was made clear from the start and throughout both programmes. Professor Dawkins regularly used expressions such as "I believe (that)..." and "I think (that)..." signalling the polemic nature of these programmes.

With this in mind - and given Channel 4's general reputation - we concluded that such a challenging and provocative series was unlikely to exceed the likely expectation of viewers to Channel 4.

For those viewers of Channel 4 who were unaware of Professor Dawkin's reputation, we recognised that the series title and the explicit presentation information given before both programmes made it clear that this was a polemic which challenged religious faith.

From the complaints received, it is clear that viewers were able to engage with the challenging material, but did not necessarily accept the conclusions of Professor Dawkins. However, this was not, in this case, a reason for finding that the programme breached the requirements of the Code. The degree of offence likely to be caused from content with a series which is presented by a noted atheist and which is clearly signalled by the title and before and during the series as a polemic which questions religious faith and is within the likely expectation of the viewers for that service and series must be considerably reduced.

Taking this context into account we did not consider that the programmes had breached generally accepted standards as set out in rule 2.3 of the Code:

- b) Some complainants stated that, in their opinion, the programme would incite religious hatred. We, therefore, considered whether the programmes had breached Rule 3.1:

Rule 3.1: *"Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services."*

We questioned whether Richard Dawkins' opinions (for example, that religion was "divisive and dangerous", or that it "acted like a virus") in any way

encouraged or incited the commission of crime or could lead to disorder, as suggested by some complainants.

We appreciate that for some, such opinions may cause offence. However, the programmes contained no calls, direct or implied, to action - militant or otherwise - towards a particular religion or to individuals or communities. The series was about ideas and religious philosophy and so did not, in our view, amount to the encouragement or incitement of the commission of crime or were likely to lead to disorder.

- c) Section Four of the Code deals with religious programmes. The Code sets out that a religious programme is a programme which deals with matters of religion as the central subject, or as a significant part, of the programme. The subject-matter of this series placed it within this definition.

We considered the programmes in the light of Rule 4.1:

Rule 4.1: *“Broadcasters must exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes”.*

We therefore considered whether Channel 4 had exercised the proper degree of responsibility in using Professor Dawkins as a presenter in a series which expressed his personal views on religion in the challenging way in which they were expressed.

There are many programmes on the terrestrial channels alone that approach religion from a believer’s perspective. Channel 4, as it pointed out in its response, has a duty to present alternative perspectives – as long as they do so with a proper degree of responsibility. Viewers should also be able to see matters of religion and belief discussed from a non-believer’s perspective.

We considered whether, notwithstanding the right to provide such programmes, the broadcaster had applied the proper degree of responsibility towards the content of the programme. In considering this we looked at what *“the proper degree of responsibility”*, in the specific context of a polemic in favour of atheism and opposed to religious faith and expressly designed to generate and/or contribute to debate, meant. We noted that in this case Channel 4 ensured that:

- the audience was given clear information as to what they were about to watch;
- the views of the presenter were identified clearly as his/her opinion;
- that those views were open to challenge; and
- opposing opinions to the presenter’s were aired.

These actions set the material in context. In our view, the content of the programme was treated with responsibility and the series was therefore not in breach of Rule 4.1 of the Code.

- d) We also considered Rule 4.2;

Rule 4.2: *“The religious views and beliefs of those belonging to a particular religion or religious denomination must not be subject to abusive treatment.”*

In considering whether Professor Dawkins’ polemic amounted to abusive

treatment of a particular religion or religious denomination - as implied by the complaints - we again took into account that his comments were made in the context of a polemic on Channel 4 by a noted atheist and rationalist on the subject of religious faith in a clearly signalled and titled series. Even so, it is important that the material does not amount to abusive treatment.

In both programmes Professor Dawkins addressed specific religions or denominations – in particular Catholicism, Judaism, Conservative Evangelicalism and Islam. However the overall theme of the programmes was critical of religious belief generally. The criticisms of religion by Professor Dawkins did not use offensive language or espouse intolerance, violence or militant actions against those with religious beliefs, and in our opinion, did not amount to abuse. Representatives of the various faiths concerned were also interviewed and put their own perspectives. For example Professor Dawkins' sceptical view of Lourdes and the Catholic Church was countered by a Catholic priest.

In the particular context of a polemical programme, challenging comments, similar to those found in political debate, are likely to be aired. Whilst accepting that such remarks would be potentially offensive to some people, we considered that these did not amount to the kind of abusive treatment set out in Rule 4.2.

- e) We also considered Rule 4.4.

Rule 4.4: *“Religious programmes must not seek to promote religious views or beliefs by stealth”.*

This rule concerns programming that purports to be one thing, but ultimately intends to acquire converts to a belief-system by not revealing its true intention. The viewpoint of the series *Root of All Evil* was clear and identifiably atheist from the outset. Atheism, by definition, is not a 'religion' and so does not fall under this particular category. This series was not in breach of Rule 4.4

- f) Some complainants stated that the issues in the programme were not addressed with due impartiality and accuracy. However, the requirement for due accuracy and impartiality relates solely to news. Outside of news, only programmes dealing with matters of political or industrial controversy and matters relating to current public policy are required to maintain “due impartiality”. Therefore the requirements for due accuracy and impartiality (as set out in Section Five of the Code) are not applicable to these programmes overall.

To that extent, this series did not generally fall under this Section of the Code. But during the sequence exploring Accelerated Christian Education (ACE) the programme touched on a matter relating to current public policy i.e. Faith Schools. However, relevant Christians involved in this area of educational policy were interviewed at this point and challenged Professor Dawkins' views. The requirements of due impartiality on this matter was met within the programme.

- g) Complainants were concerned that the programmes focused on the beliefs and behaviour of “religious extremists” and so were misleading. We considered Rule 2.2.

Rule 2.2 *Factual programmes or items or portrayals of factual matters must not materially mislead the audience.*

The programmes reflected on a range of views, including those of the Bishop of Oxford, and did not mislead by presenting extreme views as moderate views. The balance of views within the programme was an editorial decision for Channel 4 as the programmes were not dealing with matters set out in Section Five. The programmes were not therefore in breach of Rule 2.2.

Taking all the above into account we do not believe the series was in breach of the Code.

Not in Breach

Fairness and Privacy Cases

Not Upheld

Complaint by Pannone & Partners (Solicitors) on behalf of Space Kitchens and Bathrooms Limited

Watchdog, BBC1, 4 October 2005

Summary: Ofcom has not upheld this complaint of unfair treatment. Pannone & Partners, Solicitors (“Pannone”) complained on behalf of Space Kitchens and Bathrooms Limited (“Space Kitchens”) that the company was treated unfairly in this edition of Watchdog. The programme included an item about Space Kitchens. It featured two dissatisfied customers and two former employees of the company. Space Kitchens was criticised for its sales techniques, its system of discounts and the quality of some of its kitchens.

Ofcom concluded that:

- a) A reasonable period of time was given to Space Kitchens to respond to the issues raised. The initial letter to the company from Watchdog gave detailed information and all the criticisms included in the programme were referred to in correspondence before the broadcast.
- b) The programme fairly reflected what Space Kitchens said in a statement provided for the programme about the two complaints featured. Other issues, such as discounts and sales techniques, were not referred to in the statement.
- c) Watchdog conducted a legitimate investigation into the stories of two of the dissatisfied customers it had heard from and there was no requirement on the programme makers to refer to letters of recommendation or the size of the company. The programme neither said nor implied that Space Kitchens was a “cowboy” company.
- d) The company was not criticised in the programme for using telephone canvassing. It was not, therefore, necessary to state that the practice was legal and legitimate.
- e) The script did refer to the fact that Mrs Mary Heal was seeking a new kitchen when she received the call from Space Kitchens and the programme did not suggest that Mr McBain was cold called.
- f) The presenter clearly stated that footage of Mrs Heal’s kitchen was taken from a home video, which was filmed during the period when she was dissatisfied with the work carried out. Since it appears that she remained dissatisfied after Space Kitchens had carried out work to rectify the kitchen and had their replacement kitchen removed and a new one installed by another company, it would not have been relevant to include footage of the kitchen as it was when the BBC filmed at her home.
- g) Mrs Heal’s age was referred to once in the programme, as a statement of fact. It was legitimate to mention this, in view of the fact that her relative who

appeared on the programme referred to his concern about the duration of the sales representative's visit to "lady on her own", who was "very vulnerable".

- h) It was clear that Mrs Heal was a willing customer of Space Kitchens. The difference (of less than half an hour) between Mrs Heal's and her relative's versions of the duration of the visit from Space Kitchens' representative was not material. Mrs Heal's relative was entitled to give his views on her vulnerability in his interview. This issue was put to Space Kitchens in the initial letter from the programme makers.
- i) The programme makers were entitled to rely on what Mr Jason McBain said in interview regarding the extent of problems with his boiler. They gave the company an opportunity to respond to this allegation, which it did not do in the statement provided.
- j) Whilst a staged scene of Mr McBain crossing fields and dry stone walls in his pyjamas, dressing gown and slippers to use a neighbour's shower appears to have exaggerated what he had to do to have a shower, he willingly agreed to take part in the filming. It was not disputed that he had to use his neighbour's shower for a period of time. In the circumstances it was not materially unfair to include the scene in the programme.
- k) Mr McBain's concerns about the quality of his kitchen were put to Space Kitchens in the initial letter from Watchdog. The company did not suggest that the portrayal of the kitchen in the programme was inaccurate.
- l) The complaints from Mrs Heal and Mr McBain were representative of the issues being raised about Space Kitchens and Mr McBain's complaint was still unresolved at the time of the broadcast. There was therefore no need for the programme to specify the age of the complaints, nor was it inappropriate to use them to illustrate the issues.
- m) The information included in the programme about Space Kitchens' system of discounts was justified by the information given to the programme makers by former employees of the company and by what took place during a secretly filmed meeting between a sales representative and member of the production team. The company was informed in the initial letter from the programme makers that this issue would be raised and did not refer to it in the statement provided to Watchdog.
- n) The programme contained no criticism of Space Kitchens' advertising and there was no need for the programme to refer to the company's compliance in this area.

Introduction

This edition of the consumer affairs programme included an item about Space Kitchens and Bathrooms Limited ("Space Kitchens"), a company that provides and fits kitchens.

The item stated that Watchdog had received a "steady stream of complaints" about Space Kitchens. The programme was critical of the quality of some of Space Kitchens products and suggested that Space Kitchens "cold-called" members of the public. The item also suggested that Space Kitchens employed "highly persistent sales techniques" and operated a "questionable discount scheme". Watchdog

filmed some secretly filmed footage of a Space Kitchen's salesman making a pitch to a customer and included some of the footage in the programme.

The item featured two dissatisfied customers (Mrs Heal and Mr McBain) and included footage shot at their homes. The item also included comments from two former employees of the company concerning sales techniques allegedly employed by the company.

Pannone & Partners, Solicitors ("Pannone") complained that Space Kitchens were treated unfairly in the programme as broadcast.

Complaint

Space Kitchens' case

In summary, Pannone complained that Space Kitchens was treated unfairly in that:

- a) Space Kitchens was not given sufficient time to respond to the allegations and complaints in the programme. Space Kitchens was given four working days to deal with the allegations, despite the fact that the programme must have been in production for at least four weeks. Mr Jason McBain, one of the customers featured on the programme, said that he made his complaint to *Watchdog* 12 months before the programme was broadcast. The BBC also failed to give Space Kitchens a proper opportunity to respond in terms of the information it provided. Although a fax sent to Space Kitchens on 27 September 2005 claimed that *Watchdog* had received "in excess of 200 complaints", no details were ever given of any of those complaints other than the two featured in the programme, despite repeated requests from Space Kitchens. The BBC failed to state whether the complaints of the individuals to be featured on the programme were intended to be representative of the 200 complaints. Without details, Space Kitchens was unable to put the complaints featured into context. The BBC also failed to identify two "independent kitchen fitters", referred to in the fax of 27 September 2005, who had examined Mrs Mary Heal's kitchen, although one of them appeared on the broadcast and was clearly a relative of Mrs Heal. No details were given of examples of when Space Kitchens promises had not been matched by delivery, nor were any details given of the "authoritative information" from within Space Kitchens about sales techniques that the fax referred to.
- b) Space Kitchens responded to an invitation by the programme makers to appear on screen or submit a written statement by providing a final written response (with a statement for broadcast) within the deadline given by the BBC. The statement was headed, "To be broadcast in full" and consisted of four short paragraphs. It was not read in full and "only the gist of matters stated in the first paragraph was referred" to in the item.
- c) Although Space Kitchens provided the programme makers with around 200 letters of recommendation covering the same period as the complaints, the programme failed to refer to them. Nor did the programme make any comparison between the number of complaints received and the very large number of appointments and orders dealt with by the company each year. Without such a comparison, the viewer was left with the impression that Space Kitchens was a "cowboy" company, whose products and services should be shunned.
- d) The item failed to refer to the fact that, although the company was criticised for telephone canvassing, this was a legal and legitimate technique, used by many

reputable companies.

- e) The programme failed to make it clear that Mrs Heal and Mr McBain were actively seeking new kitchens and were pleased to have been contacted by Space Kitchens at the outset.
- f) The programme gave the false impression that footage shown of Mrs Heal's house was taken by the programme makers and that it represented the kitchen at the time of the broadcast. In fact the shots in the programme were taken from a home video prepared before the broadcast. Given that a film crew attended Mrs Heal's home, there was no reason why images of her kitchen at the time of making the film, in a pristine condition and finished to her satisfaction, could not have been broadcast. The effect of this was to suggest wrongly that Space Kitchens only rectified the problems having seen the home video.
- g) Much was made of Mrs Heal's age, although the telephone canvasser could not have been aware of her age at the outset of the conversation.
- h) The time spent at Mrs Heal's house by the Space Kitchens' representative was exaggerated and it was suggested that undue influence was brought to bear upon her. The home video produced by or on behalf of Mrs Heal suggested that the sales representative stayed for four hours. Only a few seconds of film was broadcast, of what was alleged to have taken place during the course of the four hours in question. This was not accurate or a "valid representation of the discussions". This ignored the fact that Mrs Heal was a willing customer and that during the course of the visit, the salesman measured up, designed and costed Mrs Heal's kitchen.
- i) The programme included an unsubstantiated claim that Space Kitchens damaged Mr McBain's boiler resulting in him not having any central heating. Mr McBain had admitted to Space Kitchens that he had, at one point, got the boiler working. Space Kitchens had ascertained that the boiler was defective due to age and that hot water was available to Mr McBain at all times through his immersion heater.
- j) The programme unfairly included a scene, which was clearly staged, of Mr McBain crossing fields and dry stone walls in his pyjamas, dressing gown and slippers to use a neighbour's shower, when in fact Mr McBain could have gained access to his neighbour's property either across a small courtyard or by driving there on made up roads.
- k) Mr McBain had informed Space Kitchens that *Watchdog's* film crew told him to be careful where he sat, as they felt that the kitchen looked good on camera.
- l) It was not made clear in the programme that the complaints from Mrs Heal and Mr McBain were 11 and 18 months old, respectively. As they were far from recent, they did not reflect the business of Space Kitchens.
- m) It was implied, incorrectly, that Space Kitchens only gives discounts of 10 per cent. The text running across the bottom of a Space Kitchens advertisement shown on the programme makes it clear that the discount awarded by the company is anything from 100% to 10%. This discount is by way of a prize and is awarded by the company at random. Space Kitchens could have provided the programme makers with a list of customers who had received a full refund for allowing their kitchen to be used in the feature home promotion. Such discounting

is not uncommon in many markets and industries and, in the circumstances, the more common discounts are inevitably at the lower end.

- n) The programme failed to take into account that all Space Kitchens' advertising complies with the Advertising Standards Authority and Committee of Advertising Practice Codes of Conduct or that the company is monitored and satisfies all regulatory requirements.

The BBC's case

In response, the BBC said, in summary:

- a) *Watchdog* is a weekly programme and items are generated and produced on a fast turn-round basis, usually within three weeks preceding transmission. Although *Watchdog* received Mr McBain's email in December 2004, the programme makers did not contact him for over nine months, once researchers had decided to investigate a trend in complaints. Filming at his home took place six days before the broadcast. The programme gave Space Kitchens five working days to respond. Although a deadline was given of 6pm on 3 October 2005, this was in order to be clear on the day before transmission as to whether Space Kitchens would be sending a representative to the studio or providing a statement. Discussions between the programme makers and the company continued on 4 October 2005. There was no need to send Space Kitchens details of the 200 complaints, as they were not referred to in detail in the report. It was made clear to Space Kitchens in a fax on 3 October 2005 that Mrs Heal and Mr McBain's complaints were representative of the 200. In any event, the company's dealings with a trading standards authority had made them well aware of the kind of complaints they were attracting. Although the producer did refer in his fax of 27 September 2005 to "two independent kitchen fitters", they did not feature in the programme. Details of broken promises featured in the programme were also included in the details of the Heal and McBain cases in the fax of 27 September 2005. Details of all the allegations made in the programme were clearly set out in advance in the producer's faxes of 27 September and 3 October 2005. These included any allegations the programme intended to make as a result of the "authoritative information" from within the company, which did not add materially to the issues already raised by the cases of Mrs Heal and Mr McBain.
- b) *Watchdog* was under no obligation to broadcast the company's statement in full, as long as any extract, paraphrase or summary fairly represented the response. The summary of the statement included in the programme was fair.
- c) A successful company such as Space Kitchens would be expected to receive some positive letters. *Watchdog* was under no obligation to refer to such letters and, in any event, there were some doubts as to their validity. Calls by a researcher to approximately 10% of the correspondents established that many were either solicited by the company after the job completion or had been discussed by agents as part of their sales pitch offering discounts. While the BBC did not dispute that some of the letters were genuine, their inclusion, given the weight of complaints to the programme, the company and regulatory bodies, could have been misleading. The programme's remit is to report on complaints made by consumers regardless of the size of the company concerned. Had the company accepted the BBC's offer to appear on the programme, it could have made the comparison between the number of complaints and the number of orders. Space Kitchens was not referred to as a "cowboy company".

- d) The programme did not criticise Space Kitchens' telephone sales technique nor did it suggest that the practice of telephone canvassing was illegal.
- e) It was made clear in the programme that Mrs Heal wanted a new kitchen. The programme did not say that Mr McBain was cold called.
- f) It was made clear in the programme that the footage of Mrs Heal's kitchen was taken by family member Richard Hilderley and it was also clear from the use of Space Kitchens' statement that the company had not left the kitchen in the poor state shown on the film, but had put things right. The reason why no footage of the kitchen at the time of filming was shown was that Mrs Heal was not satisfied with her Space Kitchens replacement kitchen and had it removed and a new one installed by another company prior to the programme being filmed.
- g) It was irrelevant whether the telephone canvasser was aware of Mrs Heal's age. The point being made in the programme was that she was an elderly lady living on her own and that the sales representative spent several hours late into the evening at her home making promises about the kitchen.
- h) In her interview, Mrs Heal said that the sales representative was at her home for about four hours. Mr Hilderley said in the programme "They came at half past seven and didn't leave till very nearly midnight". Mrs Heal estimated that no more than 30 minutes of the session with the sales representative was devoted to measuring up and design sketching. The presenter's comment, "Soon after she was visited by a salesman who spent hours in her house pushing his product" was a fair description of the Space Kitchens sales approach to her. There was no interview with Mrs Heal on the home video and *Watchdog* did not film this. The secret filming in which the salesman stayed for four hours was a completely separate pitch to *Watchdog* researchers.
- i) Mr McBain told *Watchdog* that a workman brought to his home by a Space Kitchens representative broke the boiler by incorrectly shutting it down and that, regardless of his immersion heater, he had no gas central heating or hot water following the installation of the new kitchen by Space Kitchens. He had put this in writing to Space Kitchens when signing a document relating to compensation.
- j) Mr McBain told a researcher and said on camera that he had to walk to his neighbour's house to have a shower. Whether or not he could have driven was irrelevant. He suggested and willingly participated in what was clearly a reconstruction. At the time of filming the courtyard referred to was not paved and was very muddy.
- k) The BBC assumed that Space Kitchens meant that *Watchdog* intended to show Mr McBain's kitchen at its worst. The composition of the interview with Mr McBain in his kitchen did not show the kitchen in a bad light, nor had the BBC ever suggested that it did. The images used to reflect the kitchen's bad installation were all contained in a montage prefaced by the words "And this is bespoke, designer quality, Space Kitchens style", which showed that the quality of the materials and the installation was sub-standard.
- l) The two complaints chosen were representative of those made to *Watchdog* throughout the year up to and after transmission. The company has not indicated any steps taken since Mrs Heal's case to reduce complaints and Mr McBain's complaint was still ongoing at the time of broadcast.

- m) The programme did not state that no customers received 100% discounts, nor did it suggest that everyone in the feature homes promotion only got a 10% discount. The 10% discount was only referred to once, in relation to the claim made by the secretly filmed salesperson that “everyone (in the brochure) got a full refund on their kitchen”. At least one family featured in the brochure told the programme they had only received a discount of 10%. Testimony from former employees indicated that offering phoney discounts was part of the company’s sales policy.
- n) The report did not criticise the company’s advertising.

Decision

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

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

Ofcom concluded that:

- a) Space Kitchens complained that it was not given a proper opportunity to respond to the issues raised in the programme, both in terms of the time allowed and the information provided in advance of the broadcast.

Where a programme alleges wrongdoing or makes other significant allegations about an individual or organisation, those concerned should normally be given an appropriate and timely opportunity to respond to the arguments and evidence contained within that programme. Ofcom first considered whether or not the programme included allegations of wrongdoing or other significant allegations. In Ofcom’s view, the programme was capable of adversely affecting the reputation of Space Kitchens. In particular, it noted that the programme was critical of the quality of some of Space Kitchens products and also suggested that Space Kitchens employed “highly persistent sales techniques” and operated a “questionable discount scheme”.

Taking this into account, Ofcom then considered whether or not Space Kitchens were given an appropriate opportunity to respond to the allegations included in the programme. Ofcom took into account the timeliness of the offer, the sufficiency of the information provided and the nature of the opportunity offered. Ofcom also had regard to the type and nature of the programme.

Ofcom noted that four working days were given for Space Kitchens to decide whether to participate in an interview or provide a statement and discussions continued for another day, resulting in five working days between the initial contact from Watchdog and the broadcast. Ofcom considered that, in the context of a weekly investigative programme, this was a reasonable period of time. Ofcom noted that the issues raised in the programme were unlikely to have taken the company by surprise, since it was already aware of the two complaints featured in the programme and had had extensive dealings with local trading standards authorities on similar issues. As regards the information provided to

Space Kitchens, Ofcom considered that the initial letter from the BBC to Space Kitchens gave detailed information about the complaints from Mrs Heal and Mr McBain. The letter also referred to concerns about sales techniques, the quality of some kitchens and discounts. The criticisms included in the programme were referred to in correspondence before the broadcast. Ofcom, therefore, found no unfairness in this respect.

- b) In considering the complaint that the statement provided by the company was not read out in full, Ofcom took the view that it was unrealistic to expect that a relatively lengthy statement would be read in full during an item on *Watchdog*. Ofcom believed that it was not incumbent upon the programme, in the interests of fairness in this case, to present the statement in full. Ofcom considered that the statement, although summarised for broadcast, was reflected fairly and presented in a fair and appropriate manner and tone. In particular, Ofcom noted that Space Kitchens' comments concerning the two complaints (from Mrs Heal and Mr McBain) were included in the programme as well as Space Kitchens' statement that it had "high customer satisfaction and values its reputation". Other issues, which were addressed in the programme, such as discounts and sales techniques, were not referred to in the statement provided to the programme makers by Space Kitchens. Ofcom found no unfairness in this respect.
- c) The complainant claimed that the programme unfairly failed to refer to letters of recommendation and to put the complaints featured in the programme into the context of the number of customers Space Kitchens deals with. Ofcom noted that the programme received information from viewers and from a trading standards authority that suggested a pattern of problems experienced by Space Kitchens' customers. Ofcom also noted that the programme makers had information that cast doubt on the credibility of some of the letters of recommendation provided by Space Kitchens. In the light of the information received, *Watchdog* conducted a legitimate investigation into the stories of two of the dissatisfied customers it had heard from. In these circumstances, there was no requirement on the programme makers to refer to the letters of recommendation or the size of the company. Ofcom took the view that the programme legitimately presented the complainants as two examples of the type of complaints that *Watchdog* and trading standards had received. It was not stated or implied that every kitchen produced and fitted by Space Kitchen was problematic. The programme did not refer to Space Kitchens as a "cowboy" company and viewers were left to make their own conclusions about the company based on the material broadcast. Ofcom found no unfairness in this respect.
- d) Space Kitchens complained that the programme failed to refer to the fact that telephone canvassing for customers was a legal and legitimate technique. Ofcom considered that, although it was stated as a fact that Mrs Heal was cold called, the company was not criticised in the programme for using telephone canvassing. It was not, therefore, necessary to state that the practice was legal and legitimate. Ofcom found no unfairness in this respect.
- e) Space Kitchens complained that the programme failed to make it clear that Mrs Heal and Mr McBain were both actively seeking kitchens. Ofcom noted that the script did refer to the fact that Mrs Heal was seeking a new kitchen when she received the call from Space Kitchens. The programme did not suggest that Mr McBain was cold called and made no reference to how his dealings with Space Kitchens commenced. Ofcom found no unfairness in this respect.

- f) The complainant claimed that a false impression was given that footage shown of Mrs Heal's house was taken by the programme makers and that it represented the kitchen at the time of the broadcast. However, in Ofcom's view this was not the case since the presenter clearly stated that the footage of the kitchen was taken from a home video filmed during the period when Mrs Heal was dissatisfied with the work carried out. Since it appeared that Mrs Heal remained dissatisfied after Space Kitchens had carried out work to rectify the kitchen and had their replacement kitchen removed and a new one installed by another company, it would not have been relevant to include footage of the kitchen as it was when the BBC filmed at her home. Ofcom found no unfairness in this respect.
- g) The complainant said that the programme dwelt excessively on Mrs Heal's age. Ofcom noted that the programme makers referred to Mrs Heal's age in the initial letter to Space Kitchens, so the company was aware of this issue prior to the broadcast. Ofcom also noted that Mrs Heal's age was, in fact, referred to once in the programme, as a statement of fact. Therefore in Ofcom's view, the programme did not dwell on her age. It was legitimate to mention it, particularly in view of the fact that her relative who appeared on the programme referred to his concern that the representative had stayed from half past seven until nearly midnight, with a "lady on her own" who was "very vulnerable". Ofcom found no unfairness in this respect.
- h) Space Kitchens complained that the time spent at Mrs Heal's house by the company's representative was exaggerated and it was suggested that undue influence was brought to bear upon her. Ofcom took the view that it was clear from the programme that Mrs Heal had been a willing customer. While there was some discrepancy between what Mrs Heal and her relative said about the duration of the visit, the difference (of less than half an hour) between the two versions was not material. Ofcom noted that in the initial letter to Space Kitchens, the BBC referred to the fact that Mrs Heal felt "extremely pressured" by the sales representative. In the event, the programme did not say that undue influence was brought to bear on Mrs Heal. The reference to her vulnerability came from her relative, who was entitled to give his views in his interview.

The secretly filmed footage that Space Kitchen's claimed was taken of the salesman with Mrs Heal, was not in fact the meeting with Mrs Heal. The secretly filmed footage obtained by the BBC was in fact of a separate meeting between the programme-makers, pretending to be potential customers, and a Space Kitchen representative. Ofcom found no unfairness in this respect.

- i) The complainant said that the programme included an unsubstantiated claim that Space Kitchens damaged Mr McBain's boiler. Ofcom noted that Mr McBain gave differing information regarding the extent of problems with his boiler at different times to different people. However he told the BBC on two occasions that he was without hot water and this allegation was put to Space Kitchens in the initial letter from *Watchdog* (allowing Space Kitchens the opportunity to counter, where and if necessary, any allegation that it believed to be inaccurate – which they failed to do). In the circumstances, the programme was entitled to rely on what Mr McBain said in interview. Ofcom noted that the programme makers also gave the company an opportunity to respond to this allegation, which it did not do in the statement provided. Ofcom found no unfairness in this respect.
- j) Space Kitchens complained that it was unfair for the programme to include a staged scene of Mr McBain crossing fields and dry stone walls in his pyjamas, dressing gown and slippers to use a neighbour's shower. Ofcom noted that there

were some inconsistencies in the information Mr McBain gave about this. However, he willingly agreed to take part in the filming. It appears that the scene staged for the programme did not represent what Mr McBain actually had to do and exaggerated the steps he had to take to have a shower. However, it is not disputed that he had to use his neighbour's shower for a period of time. In these circumstances, it was not materially unfair to include the staged scene. Ofcom found no unfairness in this respect.

- k) Space Kitchens complained that the film crew told Mr McBain to be careful where he sat, as they felt that the kitchen looked good on camera. Regardless of where Mr McBain sat for the interview, his concerns about the quality of the kitchen were put to Space Kitchens in the initial letter from *Watchdog*. The company had not suggested that the portrayal of his kitchen in the programme was inaccurate. Ofcom found no unfairness in this respect.
- l) The complainant said that it was not made clear in the programme that the complaints from Mrs Heal and Mr McBain were 11 and 18 months old respectively. Ofcom considered that, as the complaints were representative of the issues being raised about Space Kitchens (which Space Kitchens was made aware of), and, as Mr McBain's complaint was still unresolved at the time of the broadcast, there was no need for the programme to specify the age of the complaints, nor was it inappropriate to use them to illustrate the issues. Ofcom found no unfairness in this respect.
- m) Space Kitchens complained that its system of discounts was not fairly represented. Ofcom considered that the information included about the discounts was justified by the information given to the programme makers by former employees of the company. It was also justified by the fact that one family told the programme makers that, although their kitchen was featured in the Space Kitchens brochure, they only received a 10% discount on their kitchen. This was contrary to the claim made by the secretly filmed salesman that everyone whose kitchen appeared in the brochure got a full refund. The company was informed in the initial letter from the programme makers that this issue would be raised. However, Space Kitchens did not refer to this matter in the statement provided to *Watchdog*.
- n) The complainant considered that the programme should have referred to the fact that Space Kitchens complies with regulatory requirements in relation to advertising. Given that the programme contained no criticism of Space Kitchens' advertising, Ofcom does not consider it was necessary, in order to achieve fairness, to have referred to the company's compliance in this area. Ofcom found no unfairness in this respect.

Accordingly, the complaint of unfair treatment was not upheld.

Complaint by Nottingham City Council

Macintyre's Toughest Towns, Five, 2 November 2005

Summary: Ofcom has not upheld this complaint of unfair treatment made by Nottingham City Council ("the Council").

This programme focussed on Nottingham and claimed the city had a reputation for toughness. The Council complained the programme: was produced over a year before broadcast which rendered many of the assertions inaccurate, in particular a comment made by a journalist, Mr Edwards, passed on unsubstantiated rumour and, used inflammatory language without factual basis.

Ofcom found as follows:

- a) The time delay between the production of the programme and its transmission was not in itself capable of being unfair to the Council. As regards the specific complaint about the inclusion of a comment by Mr Edwards, Ofcom found the comment did not result in unfairness. Ofcom considered it would have been clear to viewers that the views expressed by Mr Edwards were his personal opinions, and there was no evidence to suggest that the comments were not Mr Edward's opinion at the time of broadcast.
- b) It was fair for the programme to use the phrase "dubbed assassination city" when describing Nottingham as a number of newspaper articles (provided to Ofcom by Five) had referred to Nottingham as "assassination city".
- c) It was not unfair for the programme to use the phrases "turf wars", "plagued by guns" and "gun crime spiralling out of control". Ofcom concluded that though the phrases were emotive, they had been sufficiently justified. The phrases were placed in context by date references; and balanced by the final statement in the programme by the police that in the last year gun crime had been reduced by thirty per cent.

Introduction

This series examined a number of towns and cities in Britain which it was alleged had a reputation for toughness. The programme drew parallels between the problems experienced by these towns and the record levels of violent crime occurring throughout Britain.

This edition of the series focussed on the city of Nottingham. The programme alleged that Nottingham was "plagued by guns" and had been dubbed by the national media as "assassination city".

Towards the end of the programme, a crime reporter, Mr Jeff Edwards, stated "I fear the situation will get worse before it gets better. I think we're going to see a lot more shootings".

A statement from Nottingham Police was included during the end credits of the programme. The statement read: "Nottingham Police have told us that in the last year gun crime has been reduced by thirty per cent, with five hundred and forty people arrested for drugs and firearms offences since January 2004."

Nottingham City Council (“the Council”) complained that it was treated unfairly in the programme as broadcast.

The Complaint

The Council’s case

In summary, Nottingham City Council complained that it was treated unfairly in the programme as broadcast in that:

- a) The programme was broadcast almost a year after it was filmed, which rendered many of the programme’s claims inaccurate. In particular, the Council complained about the effect the time delay had on the comments made by Jeff Edwards.
- b) The programme and trailers repeatedly referred to Nottingham as “dubbed assassination city by the national media”. The Council said the reference unfairly passed on unsubstantiated and inaccurate rumour.
- c) Inflammatory terms were used in the programme without any factual basis. These terms included: “gun crime spiralling out of control”, “plagued by guns”, and “turf wars”.

Five’s case

In summary Five said that the programme was not and never intended to be a present day general view of Nottingham as a city, but aimed to focus on certain problems that Nottingham and other cities faced with crime. The first half of the programme was a historical background to the city’s current problems, whilst the second half focussed on how the families of victims of gun crime in the city have been affected. Five said the programme had been produced with the cooperation of the Nottinghamshire Police and noted that they have received no complaint from the Police about the programme.

- a) In response to the complaint that many of the programme’s claims were inaccurate because they were out of date, Five said that the programme was a fair and accurate assessment of gun crime in the city using the latest statistics available. Five acknowledged that much of the programme had been produced several months before transmission but insisted the programme’s content was checked and updated in the weeks before broadcast.

Five stated that the programme’s transmission had been timely given the conviction of the killers of Danielle Beccan just three weeks before. In addition, dates were provided when specific incidents were referred to in the programme.

In relation to the programme’s use of the comment by Mr Jeff Edwards, Five said Mr Edward’s comments were his genuinely held opinions at the time of recording the interview and remain unchanged today.

Five noted that the programme had contained the Nottinghamshire Police’s statement which included the fact that gun crime had reduced and that 540 people had been arrested for drugs and firearms offences since January 2004.

- b) Five said that the programme itself did not refer to Nottingham as “assassination city”, but had described the phrase as a label given to it by the national press.

The programme had not sought to justify the label but merely had explained the context in which it had been earned. Five said the use of the phrase in this way was neither unfair nor inaccurate. Five also provided a number of newspaper extracts which provided background for how Nottingham became known as “assassination city”.

- c) In response to the complaint that the programme used inflammatory terms without factual basis, Five said the use of the phrases were justified by the context and the programme’s explanation of Nottingham’s gun crime history. Five said the police’s work to combat the city’s problems with gun crime had been given ample coverage in the programme and their success in reducing gun crime by thirty percent was also mentioned.

Five said they could find no reference in the programme to the term “turf wars”. However, acknowledged that reference had been made to the historical disputes between rival Yardie gangs and the modern day rivalry between the Meadows and St Ann’s. Five provided a number of newspaper extracts to document this rivalry.

The statement that Nottingham was “plagued by guns”, referred to the increase in gun related crime which has occurred since 2001. Five said that the Nottinghamshire Police and the Council acknowledged this problem in their joint statement to the programme makers which stated:

“a unit to tackle gun-related drug crime has seen 540 people arrested for drugs and firearms offences, 200 firearms seized and drugs with a street value of over £12m confiscated”

Five said the “escalation in gun crime” was referred to by a member of the Nottinghamshire Police in the fourth minute of the programme. The phrase “gun crime in the city is spreading dangerously out of control” was used as an introduction to the second part of the programme. This part of the programme included reference to 14 gun shot murders occurring between February 2002 and October 2004.

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.

Before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that the material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

- a) Nottingham City Council complained that the film was produced almost a year

before it was transmitted, and that the time delay had made many of the programme's assertions inaccurate. In particular the Council said that a claim by crime reporter Mr Jeff Edwards was false.

In Ofcom's view a time delay occurring between the production of a programme and its transmission will not, in itself, result in unfairness and any time delay should not be considered in isolation. Rather the delay should be considered in conjunction with the content of the programme as broadcast with a view to determining any impact the passage of time might have had on the fairness of the programme.

Turning specifically to the following comment made by Jeff Edwards:

"There are people out there in Nottingham at the moment, walking around there just itching to use these guns; I fear that the situation will get worse before it gets better. I think we're going to see a lot more shootings, I don't think this is the end of the story in Nottingham at all."

In reaching a finding, Ofcom considered that it was likely to have been clear to viewers that this comment was simply the personal opinion of Mr Edwards. The programme did not present this as evidence that it was established as fact that gun related crime was increasing at the time of broadcast.

Ofcom was not persuaded that the complainant had provided any evidence to suggest that these were not Mr Edward's views at the time of broadcast and Five advised Ofcom that Mr Edwards continued to stand by these views today. Ofcom further considered that Mr Edward's opinion was balanced in the programme 30 seconds later by the Nottinghamshire Police statement that:

"Nottingham Police have told us that in the last year gun crime has been reduced by thirty per cent, with five hundred and forty people arrested for drugs and firearms offences since January 2004."

Taking these points into consideration, Ofcom concluded that the inclusion of the comments by Mr Edwards itself, and the programme's presentation of those comments, did not result in unfairness to the Council in the programme as broadcast. Ofcom has found no unfairness in this respect.

- b) The Council complained that the programme repeatedly referred to Nottingham as "dubbed assassination city by the national media". They claimed that this was an unsubstantiated and inaccurate rumour. Ofcom found it was not unfair to the Council for the programme to use the phrase "dubbed assassination city" when describing Nottingham. In making this decision, Ofcom noted that the programme itself did not refer to Nottingham as "assassination city". Rather the programme stated that the city had been labelled in this way by the media. Whilst, Ofcom appreciated that this was a label which Nottinghamshire had tried very hard to remove, Ofcom nevertheless considered the phrase to be fair as a number of newspaper articles (provided to Ofcom by Five) had referred to Nottingham in this way. Ofcom found no unfairness in this respect.
- c) The Council complained that the programme was unfair because the following inflammatory terms were used without any factual basis: "turf wars", "gun crime spiralling out of control", and "plagued by guns".

“turf wars”

Ofcom noted that the term “turf wars” was not used in the programme itself but was referred to during the continuity announcement directly before the start of the programme.

However, Ofcom acknowledged that related statements – which implied turf wars - were made to describe particular rivalries in Nottingham. The first was between Yardie gangs (over drug market-share) and the other was an associated rivalry between residents of two areas within the city, St Ann’s and the Meadows.

Ofcom took account of a number of descriptions used in the programme when referring to the rivalries, including: “guns to control their turf”; “A number of these murders have been linked to a long running feud between St Ann’s and a rival estate, called the Meadows”, and “The simmering tensions between St Ann’s and the Meadows means that there is always the potential for violence whenever youths from the rival estates meet”.

In Ofcom’s view the language used to describe these rivalries was emotive. However based on the information available, Ofcom concluded that the descriptions were sufficiently justified by the documented existence of gang rivalry in Nottingham during the 1980s and present day, and the violence connected to these rivalries. Ofcom received no evidence to suggest that the rivalries did not exist or that they were not linked to a number of murders within Nottingham. Ofcom noted that the programme had been made in cooperation with the Nottinghamshire Police who had not raised any issue with the content or accuracy of the programme.

“plagued by guns” “spiralling out of control”

Ofcom was asked to decide whether or not it was unfair for the programme makers to refer to Nottingham’s gun problem as “spiralling out of control” or at such a level to warrant the description “plagued with guns”. As noted above, the programme makers had an obligation to ensure that they did not present, disregard or omit material facts in a way that was unfair to Nottingham.

Ofcom considered a number of statistics relating to gun crime in Nottingham and noted some variations between the data. Accounting for much of the variation was the fact that the definition of ‘gun crime’ was not consistent. In some cases ‘gun crime’ related to the many different types of crime associated with guns - ranging from ‘murder’ to ‘threats without injuries’. In other cases, only ‘number of people shot’ was considered. Based on such varied statistics, although it was apparent that there had been a decrease in some types of gun crime within Nottingham, Ofcom was not persuaded that it was unfair to categorise Nottingham as having a problem with gun related crime (which had necessitated positive action by the Council).

Broadcasters must be careful that any descriptive language used in programmes does not lead to unfairness in the programme as broadcast. Ofcom considered that while the use of the phrases “plagued by guns” and “spiralling out of control” was emotive, their inclusion in the programme did not result in unfairness. This was because the context in which the phrases appeared, balanced the impact of the language. Specifically Ofcom concluded that the phrases had been placed in context by including date references for specific murders and balanced by the final statement in the programme by the police that in the last year gun crime had been reduced by thirty per cent.

On balance, Ofcom considered that it was likely that viewers of the programme would have understood that during the 1980s Nottingham had experienced a serious problem with crime (which was associated with drugs and guns) and that the city was continuing with their endeavours to tackle the problem. Ofcom found no unfairness in these respects.

Accordingly, the complaint of unfair treatment was not upheld.

Other Programmes not in breach/out of remit

26 April – 9 May 2006

Programme	Trans Date	Channel	Category	No of Complaints
A World Without Water	29/04/2006	Channel 4	Generally Accepted Standards	1
Airline	01/05/2006	ITV1	Generally Accepted Standards	1
Andy Townsend & Mike Parry	26/03/2006	Talksport	Generally Accepted Standards	1
Blood Sucking Freaks	09/10/2005	The Horror Channel	Offence	1
Boogie Pimps	19/04/2006	MTV	Sex/Nudity	1
Brainiac: Science Abuse	18/04/2006	Sky One	Dangerous behaviour	1
Bullet Boy	22/04/2006	BBC2	Sex/Nudity	2
Cash Lounge	08/03/2006	Men & Motors	Competitions	1
Central News	17/04/2006	ITV1	Elections Referendum	1
Central News	21/10/2005	ITV1	Competitions	1
Chris Evans	25/04/2006	BBC Radio 2	Offensive language	1
Cruise with Stelios	03/10/2005	Sky One	Offence	1
Derren Brown: Trick of the Mind	30/04/2006	Channel 4	Offensive language	1
Desi DNA	22/03/2006	BBC2	Religious offence	2
Dick and Dom in Da Bungalow	21/01/2006	BBC2	Violence	2
Doctors	24/04/2006	BBC1	Sex/Nudity	1
Does Snuff Exist?	18/04/2006	Channel 4	Crime Incitement/Encouragement	1
Dr Who	21/04/2006	BBC1	Scheduling	1
Dr Who	26/04/2006	BBC1	Advertising	1
EastEnders	25/04/2006	BBC1	Sex/Nudity	1
EastEnders	27/04/2006	BBC1	Generally Accepted Standards	1
EastEnders	04/05/2006	BBC1	Generally Accepted Standards	1
Ei Jonopode	26/04/2006	Bangla TV	Generally Accepted Standards	1
Emmerdale	20/01/2006	ITV1	Other	1
Emmerdale	02/05/2006	ITV1	Sex/Nudity	1
Everybody Hates Chris	23/04/2006	Five	Generally Accepted Standards	1
Fifth Gear	24/04/2006	Five	Dangerous behaviour	3
FTN - Quiz Night Live	26/02/2006	FTN	Competitions	1
GMTV	12/03/2004	ITV1	Offensive language	1
GMTV	07/07/2004	ITV1	Offence	1
GMTV	06/09/2004	ITV1	Offence	1
GMTV	18/10/2004	ITV1	Offence	1
GMTV	19/10/2004	ITV1	Offence	1
GMTV	11/11/2004	ITV1	Other	1
GMTV	01/02/2005	ITV1	Other	1
GMTV	05/02/2005	ITV1	Other	1
GMTV	04/04/2006	ITV1	Generally Accepted Standards	1
GMTV	12/04/2006	ITV1	Competitions	1
GMTV	25/04/2006	ITV1	Sex/Nudity	1
Granada Reports	23/12/2005	ITV1	Animal welfare	1
Grand Prix	23/04/2006	ITV1	Offensive language	1
Green Wing	21/04/2006	Channel 4	Generally Accepted Standards	1
Highlander: The Series	17/04/2006	F/X Channel	Scheduling	1

Hirsty's Daily Dose	18/04/2006	Galaxy 105	Inaccuracy/Misleading	1
I Predict A Riot	11/04/2006	Bravo	Due Impartiality	1
I'm a Celebrity	05/12/2005	ITV1	Other	1
ITV News	22/03/2006	ITV1	Due Impartiality	1
ITV News	30/04/2006	ITV1	Inaccuracy/Misleading	1
Jeremy Vine	15/09/2005	BBC Radio 2	Generally Accepted Standards	1
Kerrang	13/03/2006	Kerrang!	Offensive language	1
Legal TV	27/02/2006	Legal TV	Undue prominence	1
Live Test Cricket	29/04/2006	Sky Sports	Generally Accepted Standards	1
Loose Women	25/04/2006	ITV1	Generally Accepted Standards	1
Man Stroke Woman	17/04/2006	BBC2	Generally Accepted Standards	1
Mark Goodwin	09/04/2006	Q103FM	Generally Accepted Standards	1
Married to It	27/01/2006	Five	Offence	1
Martin's Drivetime	04/05/2006	Virgin 105.8 FM	Generally Accepted Standards	1
Masters of Horror	08/01/2006	Bravo	Violence	1
Me & My Slaves	11/04/2006	Channel 4	Sex/Nudity	3
Midsomer Murders	22/04/2006	ITV1	Offensive language	2
Mike Dickin	09/04/2006	Talksport	Generally Accepted Standards	1
My Family	21/04/2006	BBC1	Generally Accepted Standards	1
Newsround	18/04/2006	BBC1	Violence	1
Nighty Night	04/05/2006	BBC2	Generally Accepted Standards	1
Out To Lunch	15/04/2006	BBC Radio 2	Offensive language	1
Premier Radio	10/03/2006	Premier Christian Radio	Other	1
Quizmania	22/03/2006	ITV1	Competitions	1
Real Radio	24/04/2006	100-101 FM Radio	Inaccuracy/Misleading	1
Red Hot	05/04/2006	Red Hot	Inaccuracy/Misleading	1
Red Hot	19/04/2006	Red Hot	Sex/Nudity	1
Redemption TV	12/01/2006	Musicians Channel	Generally Accepted Standards	1
Richard and Judy	23/02/2006	Channel 4	Crime Incitement/Encouragement	1
Rising Damp	26/04/2006	ITV1		1
Robert Newman's History of Oil	12/04/2006	More4	Generally Accepted Standards	1
Selling Houses	19/04/2006	Channel 4	Crime Incitement/Encouragement	1
Selling Houses	26/04/2006	Channel 4	Inaccuracy/Misleading	1
Sexcetera	21/04/2006	Living	Generally Accepted Standards	1
Sharpe's Challenge	23/04/2006	ITV1	Generally Accepted Standards	2
Shaving Ryan's Privates	24/04/2006	Five	Sex/Nudity	1
Simon Mayo	27/03/2006	BBC Radio 5	Substance abuse	1
Sin Cities	25/04/2006	FTN	Sex/Nudity	1
Sky News	13/04/2006	Sky News	Due Impartiality	1
Sky News	27/04/2006	Sky News	Due Impartiality	1
Sleeper Cell	11/04/2006	F/X Channel	Generally Accepted Standards	1
Stephen Nolan	28/04/2006	BBC Radio 5	Generally Accepted Standards	1
Suburban Shootout	23/04/2006	Five	Animal welfare	1
Tarrant on TV	28/05/2006	ITV1	Animal welfare	1
Television X	27/04/2006	Television X	Sex/Nudity	1
Ten Days That Made The Queen	20/04/2006	Channel 4	Due Impartiality	1
The Chris Moyles Show	31/03/2006	BBC Radio 1	Generally Accepted Standards	2
The Corporation	19/12/2005	More4	Impartiality	1

The Couple with 27 Children	20/04/2006	Five	U18s in programmes	1
The Crocodile Hunter Diaries	09/04/2006	ITV1	U18s in programmes	1
The Gadget Show	24/04/2006	Five	Competitions	1
The Geoff Show	13/03/2006	Virgin Radio	Substance abuse	1
The Geoff Show	28/03/2006	Virgin Radio	Substance abuse	1
The Great Big British Quiz	20/03/2006	TTV	Competitions	1
The Great Big British Quiz	16/03/2006	TTV	Competitions	1
The Impressionists	30/04/2006	BBC1	Sex/Nudity	2
The Matrix	30/04/2006	ITV1	Violence	1
The New Paul O'Grady Show	21/04/2006	Channel 4	Inaccuracy/Misleading	1
The New Paul O'Grady Show	24/04/2006	Channel 4	Inaccuracy/Misleading	1
The Saturday Play	23/04/2006	BBC Radio 4	Offensive language	1
The Search for King Solomon's Mines	30/04/2006	Channel 4	Generally Accepted Standards	1
The Street	20/04/2006	BBC1	Offensive language	1
The Ugly Phil Breakfast Show	19/04/2006	Kerrang!	Generally Accepted Standards	1
This Morning	25/04/2006	ITV1	Competitions	1
This Morning	28/04/2006	ITV1	Sex/Nudity	1
Tonight with Trevor McDonald	21/04/2006	ITV1	Generally Accepted Standards	2
Tonight with Trevor McDonald	28/04/2006	ITV1	Inaccuracy/Misleading	1
Turn Back Your Body Clock	02/05/2006	Channel 4	Offensive language	2
TV Heaven, Telly Hell	30/04/2006	Channel 4	Offensive language	1
Uncle Tom's Cabin	02/05/2006	Five	Generally Accepted Standards	1
Uncle Tom's Cabin	03/05/2006	Five	Generally Accepted Standards	1
Virgin Breakfast Show	04/04/2006	Virgin Radio	Crime Incitement/Encouragement	1
Weapons of Mass Deception	30/04/2006	ITV4	Due Impartiality	1
Westwood Rap Show	24/03/2006	BBC Radio 1	Generally Accepted Standards	1
Westwood Rap Show	14/04/2006	BBC Radio 1	Generally Accepted Standards	1
Wife Swap	01/05/2006	Channel 4	U18s in programmes	2
Wife Swap	24/04/2006	Channel 4	Offensive language	1
World Wide Quiz	18/04/2006	TWC Wrestling Channel	Competitions	1
Yu-Gi-Oh!	12/04/2006	Nickelodeon	Dangerous behaviour	1