

# **Ofcom Broadcast Bulletin**

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## Introduction

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

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

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

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

## Standards cases

### In Breach

#### **Brit Cops: Frontline Crime**

*Bravo, 8 January 2009, 17:00*

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#### **Introduction**

In this episode of *Brit Cops: Frontline Crime*, the fly on the wall documentary series, a camera crew followed police officers patrolling the streets of Plymouth in the early hours of the morning. Ofcom received two complaints from viewers who heard repeated uses of the words “*fuck*” and “*fucking*” as the police reprimanded members of the public for drunk and disorderly conduct.

#### **Response**

Virgin Media, which is responsible for compliance of Bravo, explained that a version of the programme with the offensive language bleeped out and suitable for broadcast at 17:00 had been scheduled. However, due to a technical error by their outsourced play-out provider, an unedited version was played out instead. As soon as the broadcaster was alerted to the error it investigated how the mistake occurred. As a consequence a number of processes have been put into place to prevent any recurrence.

The broadcaster acknowledged the seriousness of this incident and apologised unreservedly to the complainants for the error.

#### **Decision**

The Code requires that licensees do not broadcast the most offensive language before the watershed. The repeated use of the words “*fuck*” and “*fucking*” in this episode of *Brit Cops: Frontline Crime* were clear examples of such language.

Ofcom noted the broadcaster’s apology and that this error occurred as a result of a technical problem. Nonetheless, all broadcasters are required to put in place robust procedures that ensure the most offensive language is not broadcast before the watershed. Ofcom has therefore recorded a breach of Rule 1.14.

#### **Breach of Rule 1.14**

## In Breach

### Louis Theroux's Weird Weekends: UFOs

*Dave, 4 January 2009 at 20:00*

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#### Introduction

*Louis Theroux's Weird Weekends* is a documentary series which follows Louis Theroux around the world as he reports on obscure and obsessive sub-cultures. The series was originally broadcast on BBC Two and was repeated on the channel Dave.

This particular episode was entitled “UFOs” and featured several people in the south west of the United States who believe in extra-terrestrials and UFOs. During the programme Louis Theroux met two local businessmen who were feuding over their competing businesses. When discussing their rift the men used language such as “fuck” and “bald faced fucker” on four occasions. Three viewers complained about the broadcast of this language before the watershed.

The Dave channel is operated and complied by UKTV. Ofcom wrote to UKTV, asking it to comment under Rule 1.14 (the most offensive language must not be broadcast before the watershed).

#### Response

UKTV accepted that the expletives should not have been used in the broadcast. It apologised for any offence caused and explained that the bad language was included as a result of human error. The programme was assessed as requiring language edits for a 20:00 broadcast, but the edit was incorrectly scheduled for a date after the programme was transmitted. In response to the error, UKTV said that it has implemented additional compliance measures to ensure that programmes are correctly scheduled for pre- and post- watershed broadcast and appropriately edited. It also stated that it broadcast an on-air apology before the transmission of the next episode the following week.

#### Decision

Rule 1.14 prohibits the broadcast of the most offensive language before the watershed. Ofcom research on offensive language<sup>1</sup> identified that “fuck” and its derivatives were considered by viewers to be very offensive.

Ofcom notes that the broadcast of this language on this occasion occurred as a result of human error. We also welcome UKTV's on-air apology the following week and note that it has made subsequent steps to improve its compliance as a result. However, the broadcast of such language before the 21:00 watershed is a clear breach of Rule 1.14.

#### Breach of Rule 1.14

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

## Not In Breach

### The X Factor

*ITV1, Various dates 2008*

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#### Introduction

*The X Factor* is a popular musical talent show broadcast weekly from late summer until Christmas. A combination of a panel of four judges and viewers' votes decide which act wins the prize of a £1,000,000 recording contract.

The programme is broadcast live on Saturday nights and invites viewers to vote for their favourite act via a premium rate telephone number. The two contestants who receive the fewest votes must perform again in a 'sing off'. The judges then decide which of the two acts to eliminate from the competition. In the final three weeks, the outcome is determined solely by viewers' votes.

Ofcom received 944 complaints about the voting mechanism or how the competition was conducted. The majority of complainants raised one or more of the following issues:

- a) they experienced problems getting through when attempting to vote and thus, they believed, some of the results were unfair. The highest volume of complaints of this nature related to editions broadcast on 1 and 8 November 2008, on which contestants Austin Drage and Laura White were eliminated respectively;
- b) the number they dialled did not correspond with the message advising which contestant a vote had been recorded for;
- c) during one particular recap of the voting numbers broadcast on 18 October 2008, the telephone number allocated to contestant Ruth Lorenzo was incorrect and as such, she may not have received all of the votes intended for her; and
- d) contestant Diana Vickers was unable to perform in the contest on 8 November owing to illness and therefore automatically went through to the subsequent week. Some complainants thought this was unfair on the other contestants.

#### Response

Channel Television Ltd ("Channel TV"), an ITV licence holder, which is responsible for compliance of the programme on behalf of the ITV network (ITV1) responded to Ofcom. At Ofcom's request, Channel Television supplied information about the performance of the voting platform and the incident on 18 October 2008 during the recap of voting numbers.

Like many programmes that involve public voting, the BT Recorded Information Delivery Equipment (RIDE) platform was used. BT's RIDE is a termination platform capable of handling around 200,000 votes per minute, irrespective of the phone service provider used by the caller. Additionally, calls reach RIDE using the first generic eight digits [the 'stem digits'] of the premium rate number (in this case

09016161). Once calls reach the platform, the last three digits identifying each contestant determine who a vote is recorded for. It therefore gives no priority to callers dialling a particular number and does not differentiate between mobile and landline telephone calls.

In order to monitor RIDE's performance, Channel Television and the programme's premium rate telephony provider, Harvest Media, checked voting lines before, during and after each show from various landline and mobile service providers. Similar checks were done on the audio message attached to each number to ensure that it corresponded with the correct contestant. Channel Television has explained that any failures would have been automatically flagged to the network management team for their immediate attention.

Channel Television said that although the RIDE platform can get busy during certain periods (for example, when lines first open), BT reported no capacity issues. Channel Television also requested performance reports on the exchanges local to the home towns of contestants Austin Drage and Laura White (who were eliminated on 1 and 8 November 2008) but again, BT recorded no congestion problems.

In its response, the broadcaster included several examples of complainants who had contacted them claiming the automated message advising of their vote did not match the telephone number they had dialled. However, it transpired they had either misdialled or used the number allocated to the same contestant the previous week. (The contestants' identifying final phone digits change from week to week.)

Channel Television acknowledged that on the show broadcast on 18 October 2008 a single digit was missing from Ruth Lorenzo's voting number when the full range of numbers were promoted using a 'split screen' device soon after lines opened. Nevertheless, it argued that the number was on-screen for less than five seconds and that on all other occasions, it was displayed correctly. It also provided voting data that indicated there was no significant change in the momentum of votes Ms Lorenzo was receiving in the moments after the error. It added that as the number was incomplete, callers would not have accessed any service and as such, no charge would have been applied. Notwithstanding this, it regretted the error and implemented additional checks into its standard procedures for subsequent programmes.

## **Decision**

Ofcom sought and received substantial information and comment from Channel Television. The information included voting figures from the RIDE platform and evidence relating to misdialled calls. Generally, the licensee confirmed that no technical breakdowns or errors of any sort had occurred over the series.

Addressing viewers' concerns in turn:

- a) *they experienced problems getting through when attempting to vote and thus, they believed, some of the results were unfair. The highest volume of complaints of this nature related to editions broadcast on 1 and 8 November 2008;*

Ofcom can confirm that the design of the RIDE system means it cannot give priority to calls for any particular contestant. All the contestants' voting lines begin with the same eight 'stem' digits. Once calls have reached the platform the last three digits of the number dialled determine which contestant the vote is registered for. Therefore

even if a particularly high number of calls are made to the RIDE platform at any one time, no single contestant can be disadvantaged.

Ofcom noted the broadcaster's confirmation that there were no significant problems or capacity issues on the RIDE platform or within the BT Network during the voting windows. Ofcom also recognised that Channel Television could not make similar assurances for mobile operators, cable networks (e.g. Virgin Media) or Carrier Pre-select providers that use BT's infrastructure (e.g. Talk Talk, Sky Talk, Tiscali) and in any event, that it would be unreasonable to make it accountable for network performance beyond its control.

- b) the number they dialled did not correspond with the message advising which contestant a vote had been recorded for;*

Taking into account the extensive checking procedure, the small number of complaints of this nature and evidence provided by the licensee of proven instances of misdialling, Ofcom concluded that there was no other likely explanation other than viewers misdialling.

- c) during one particular recap of the voting numbers broadcast on 18 October 2008, the telephone number allocated to contestant Ruth Lorenzo was incorrect and as such, she may not have received all of the votes intended for her;*

Ofcom considered this an unfortunate error. Even so, our decision must reflect the degree of actual (financial) harm this mistake might have caused to viewers. Having reviewed the telephony report provided, we find that the incident did not materially influence voting patterns or, importantly, the outcome – particularly as Ms Lorenzo progressed to the subsequent week without participating in the 'sing off'. Given the broadcaster's swift implementation of more robust procedures, Ofcom does not believe further regulatory action is warranted in this instance.

- d) contestant Diana Vickers was unable to perform in the contest on 8 November owing to illness and therefore automatically went through to the subsequent week. Some complainants thought this was unfair on the other contestants.*

Ofcom noted that the absence of Ms Vickers was explained from the outset and that no opportunity to vote for her was given. The decision to allow her to advance to the following week presented no possibility of material harm to viewers and as such rested entirely with the broadcaster and production team.

It is important that Ofcom is clear that the terms on which participants compete, including decisions that have to be made during a contest because of unforeseen events, are generally matters for the broadcaster to decide. Ofcom is not responsible for the design of 'reality' or talent shows. We will intervene in circumstances only where we consider viewers to have been misled or otherwise improperly disadvantaged.

In summary, the data available to Ofcom did not indicate shortcomings in the series design, editorial judgment or administrative and technical arrangements such that viewers' or callers' interests were abused.

## **Not In Breach**



## Fairness and Privacy Cases

### Upheld

#### Complaint by Mr D

*A Girl's Guide to 21<sup>st</sup> Century Sex, Fiver, 24 April 2008*

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**Summary:** Ofcom has upheld this complaint of unwarranted infringement of privacy in the programme as broadcast.

This programme was part of a series that featured advice and information from a range of doctors and sexual health practitioners on sexual behaviour and practices. It also featured the sexual experiences of individuals. In this programme interview footage of Mr D was included in which he talked about how he derived sexual pleasure from wrapping his body in cling film. Footage of Mr D wrapped in cling film was shown in the programme which included the close-up images of his mouth, eye and the side of his head.

Mr D complained to Ofcom that his privacy was unwarrantably infringed in the broadcast of the programme in that he was identifiable.

Ofcom found as follows:

- Ofcom's considered that Mr D had a legitimate expectation of privacy in that the assurances given to him by the programme makers before and after filming him explicitly guaranteed his anonymity;
- Ofcom considered that his privacy was infringed by close up shots of Mr D's eye, mouth and the side of his head being included in the programme; and
- Ofcom did not consider that there was any public interest in the broadcast of the footage of Mr D which made him identifiable, or any other justification, which outweighed his right to privacy. Ofcom therefore found that Mr D's privacy was unwarrantably infringed in the broadcast of the programme.

#### Introduction

On 24 April 2008 Fiver, one of Five's cable and satellite services, broadcast an edition of its factual, educational documentary series *A Girl's Guide to 21<sup>st</sup> Century Sex*. The programme was first broadcast by Five on 4 December 2006 and since then has been repeated on Five and on Fiver.

The series featured advice, information and tips from a range of doctors and sexual health practitioners on sexual behaviour and practices. This programme included footage of Mr D being interviewed about how he derived sexual pleasure from wrapping his body in cling film. Mr D explained how he had perfected the skill of covering his whole body, including his head, with cling film and how he felt "*completely removed from the universe*" when wrapped up.

Images of Mr D wrapping himself up in cling film accompanied footage of him being interviewed. Most of the images of his face and head were obscured either by being out of shot or blurred. However, the programme also included close-up shots of his mouth, eye and the side of his head.

The filming of Mr D's interview took place on 30 November 2005. Prior to this date, and before the filming took place, Mr D and the programme makers exchanged a series of emails in which they discussed his fetish and the details of the filming itself. During the email exchanges, the matter of Mr D's anonymity was discussed:

- On 26 September 2005, Mr D told the programme makers that "I insist that you do not do anything that could in any way reveal my identity", to which the programme makers responded on the following day by saying that "should you wish to take part in the show we would offer you total anonymity".
- On 6 October 2005, Mr D wrote to the programme makers: "although you offer me total anonymity I know there is still a chance someone will recognise a verbal pattern or physical characteristic...so if any one recognised me my life would be made hell". On the same day, the programme makers contacted Mr D and stated "I completely understand your wish for anonymity – it is something that we can 100% guarantee should you agree to contribute to the programme. We have a contract/release form that can be signed which legally guarantees this for you".
- On 28 November 2005, in an email discussing where the filming would take place, Mr D reminded the programme makers: "...as long as you can still guarantee my anonymity...". The programme makers replied on the same day and referred to the release form that Mr D would be asked to sign on the day of filming. They said that the release form "will state there in writing that you contribute on the condition of your total anonymity".
- On 1 December 2005, Mr D again emailed the programme makers about the issue of his anonymity. He said that "Firstly, I want you to know that I would be unhappy for you to show my face even when wrapped in cling film as I think I would still be recognisable to friends and family. Secondly, I was wondering if you would be disguising my voice in any way, I would prefer it if you did." The programme makers replied on the same day saying "Please do not worry about us showing your face in the programme. You have both a verbal and written guarantee that this will not happen. However, I genuinely feel that disguising your voice would really take away from the authenticity of your contribution".
- On 20 January 2006, Mr D sought confirmation about his anonymity from the programme makers and queried whether anonymity also related to the still photographs he had provided. The programme makers replied on the same day stating that "the contributor release that you signed on the day of filming guarantees your anonymity. You will not be identified either from the film or your stills. Your face will be disguised".

Mr D complained to Ofcom that his privacy was unwarrantably infringed in the programme as broadcast.

### **The Complaint and Broadcaster's response**

#### **Mr D's case**

In summary, Mr D complained that his privacy was unwarrantably infringed in the programme as broadcast in that he was identifiable in the broadcast.

By way of background to his complaint, Mr D said that, due to the nature of his interview, he had insisted that he must not be identifiable in the programme when broadcast. To this end, Mr D said that he had signed a consent release form and had asked that his face be obscured at all times and that his voice be disguised electronically. Mr D said that he had stressed to the programme makers the importance to him of remaining anonymous and that he was assured by them that his anonymity was “something that we can 100% guarantee”.

Mr D said that the programme was first broadcast in 2006, but that it had been repeated since. He said that after the broadcast of the programme broadcast on 24 April 2008, he was contacted by a friend who had recognised him from the images shown. Mr D said that it was down to “good fortune” that nobody had recognised him from the earlier broadcasts of the programme.

### **Five’s case**

In summary, Five responded to Mr D’s complaint that his privacy was unwarrantably infringed in the programme as broadcast. Five said that Mr D had signed voluntarily a Contributor Release Form when he was interviewed on the 30 November 2005. The form specifically stated that:

“My consent is given on the condition that I am not identified in the programme by name and that my face will not be shown as part of my contribution, should my contribution appear in the programme”.

Five said that the programme’s producer, Ms Forbes, had confirmed that the programme makers had agreed not to identify Mr D by name, and also to disguise his face. On the day of filming, Five said that the programme makers took the unusual precaution, of obscuring the camera lens with grease so that his face would not be apparent even from the rushes. To this end, Five said that the programme makers stuck to the letter of their agreement with Mr D.

Five said that in accordance with the assurances given to Mr D by the programme makers, Mr D was not identified by name in the programme, but was referred to as “*32 year old Paddy*”. Also, whenever Mr D’s face was visible, it was fully blurred. Five said that the only exceptions were two brief close-ups of his eye, two of his mouth, and one brief image of the back of his head from behind the ear. Five said that this was done in such a way as to ensure that he would not be recognisable. Five also said that the programme makers were adamant that they did not agree to disguise Mr D’s voice.

Five said that it did not accept that Mr D’s privacy was unwarrantably infringed. It acknowledged that whilst it was unfortunate that Mr D was recognised by a friend, albeit after the programme had been repeated numerous times, this was neither the fault of Five nor the programme makers who had acted in good faith and had adhered to their agreement. Five said that it was further arguable that after the initial transmission, no breach of privacy could have been committed, as the material had by then already entered the public domain. Five also said that it was significant that Mr D did not make a complaint after the initial or subsequent broadcasts of the programme, but only after he had been recognised.

### **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 and unwarrantable infringement of privacy in the broadcast 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. This complaint was considered by Ofcom's Executive Fairness Group. Ofcom considered the complaint and the broadcaster's response, together with supporting material and a recordings and transcripts of the programme as broadcast and the unedited footage taken at the scene of Mr D's interview. In its considerations, Ofcom took account of Ofcom's Broadcasting Code ("the Code").

Ofcom's recognises that the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted? (Rule 8.1 of the Code).

Ofcom recognises that there is a distinction between an individual being specifically *identified* in a programme, for instance by being named, and being rendered *identifiable* in a programme, for example through footage of him or her. In Ofcom's view where a programme maker agrees to take steps to protect a contributor's identity, it is important that the contributor is given sufficient information to be able to understand in advance of transmission the nature of the steps to be taken.

Ofcom considered Mr D's complaint that his privacy was unwarrantably infringed in the broadcast of the programme in that he was identifiable in the broadcast. Ofcom first considered whether or not Mr D had a legitimate expectation of privacy in respect of the footage of him that was broadcast in the programme.

Ofcom noted the email exchanges prior to and after filming his interview, between the programme makers and Mr D, about his anonymity. In particular, it noted the following assurances given to Mr D by the programme makers: "we would offer you total anonymity"; "I completely understand you wish for anonymity...it is something we can 100% guarantee...we have a contract/release form that can be signed which legally guarantees this for you"; "you contribute on the condition of your total anonymity"; and, "please do not worry about us showing your face".

Ofcom noted that these assurances arose out of Mr D's wish that he should not be identified by name in the programme nor have his face shown (as detailed in his consent form and in email correspondence). Ofcom noted from the email correspondence that the programme makers understood that Mr D did not want to be identified and considered that he had been led to understand by the programme makers' assurances that steps would be taken by them to ensure that his face would not be shown in the programme. Ofcom took the view that it was clear that such steps were fundamental to Mr D's decision to participate in the programme.

Ofcom also noted that Mr D raised the prospect with the programme makers that his voice be disguised in the programme. However, the programme makers explained to Mr D that it would not be possible to disguise his voice for editorial reasons. Ofcom acknowledged that Mr D did not pursue the matter of disguising the verbal pattern of his voice with the programme makers any further. Ofcom took this to effectively mean

that Mr D understood his voice would not be disguised in the programme, but only in the context of the assurance given to him that his face would not be shown. Ofcom considered that the unequivocal pre-transmission assurances given to Mr D by the programme makers heightened his expectation of privacy.

Ofcom noted that the programme was originally broadcast on 4 December 2006 and repeated five times after that. Ofcom recognised that Mr D had not complained about the programme until he was recognised by a friend in a subsequent re-broadcast. Ofcom noted Five's assertion that "after the initial transmission, no breach of privacy could have been committed, as the material had by then already entered the public domain". Ofcom considered that the fact that the programme had been repeated a number of times since its first broadcast did lessen Mr D's expectation of privacy in relation to the programme complained of (namely the broadcast on 24 April 2008) although, in Ofcom's view, the prior disclosure of this material did not in itself mean that no infringement of privacy could result from the subsequent broadcasts.

Ofcom recognised that the kind of information revealed by participants in a programme of this type (dealing with sexual behaviours and practices) was likely to be of a highly personal nature and is likely to attract an expectation of privacy (subject to the contributor provided truly informed consent for its disclosure). In this particular case, Ofcom considered that Mr D's contribution was particularly sensitive in nature, in that it related to a fetish, and had an enormous potential to cause him embarrassment. Ofcom noted that Mr D persistently sought reassurance from the programme makers that his anonymity would be protected in the programme (in relation to shots of his face). It should have been clear to the programme makers that not only did Mr D not want his identity disclosed widely but also (because of the very sensitive and personal nature of the information) did not want to be identifiable to family and friends (that is, those who knew him best and were most able to identify him). As a result of his numerous requests for reassurance Ofcom noted that he was lead to believe by the programme makers that his anonymity was "...something that we can 100% guarantee...". All these factors, in Ofcom's view, heightened Mr D's expectation of privacy.

Having taken all the factors above into account, Ofcom was satisfied that in these circumstances Mr D had a legitimate expectation of privacy. It considered that the assurances given to him by the programme makers before and after filming explicitly guaranteed his anonymity in that his face would not be shown (or at least would be disguised). In Ofcom's view this outweighed any diminishing of Mr D's expectation of privacy resulting from the prior disclosure in earlier broadcasts. Ofcom then considered whether or not Mr D's privacy was infringed in the broadcast of the programme.

Ofcom noted that the close up shots of Mr D's eye, mouth and side of his head were included in the programme. Ofcom considered that the use of these close up shots along with his voice was likely to be sufficient to render him identifiable. In particular, Ofcom considered that the inclusion of close up shots of Mr D's mouth, eye and the side of his head would have enabled his friends and family to identify him. In Ofcom's view, the close up shots provided viewers with personal identifying information about Mr D. Ofcom concluded therefore that the inclusion of this footage of Mr D in the programme did infringe his privacy.

Ofcom finally considered whether or not the inclusion of the footage of Mr D that rendered him identifiable in the programme was warranted. In doing so, Ofcom took account of the content and context of the programme, namely a factual educational programme about sexual practices and behaviour. Ofcom did not consider that there

was any public interest in the broadcast of this material which made Mr D identifiable, or any other justification, which would have outweighed Mr D's right to privacy. Ofcom therefore found that Mr D's privacy was unwarrantably infringed in the broadcast of the programme.

**Accordingly, Ofcom has upheld Mr D's complaint of unwarranted infringement of privacy in the broadcast of the programme. The broadcaster was found in breach of Rule 8.1 of the Code.**

## Partly Upheld

### Complaint by Mr Clement Dortie

*Amy: My Body for Bucks, BBC3, 20 April 2008*

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**Summary:** Ofcom has partly upheld this complaint of unfair treatment made by Mr Clement Dortie.

The programme set out to investigate the findings of research that suggested that a growing number of higher education students work in the sex industry to fund their studies. To do so the programme followed a single mother and student called Amy who worked as a lap dancer in an attempt to support herself and pay for her education. In a bid to find out how to earn more money Amy was shown meeting another student who worked as an escort, and a soft porn actress. She was also shown going to a casting for a job as a “promo girl” for a promotions manager, Tony (the complainant), who subsequently hired her to work at an after-show party on the night of the Brit Awards. Amy was shown working at the event and leaving it early to get the last train home.

In summary Ofcom found the following:

- The programme was unfair to Mr Dortie because he was not given sufficient information about the programme’s nature and purpose before he agreed to participate.
- Mr Dortie’s contribution to the programme was not unfairly edited in the broadcast programme.

### Introduction

On 20 April 2008, BBC3 broadcast the programme *Amy: My Body for Bucks*. The programme followed Amy, a single mother, who had started stripping and lap dancing in order to pay her way through university. The programme said that research suggested that a growing number of higher education students work in the sex industry to fund their studies. Amy explained in the programme that she was looking for ways to make more money that would allow her to look after her child and continue with her studies.

In a bid to find out how to earn more money Amy was shown meeting another student who worked as an escort, and a soft porn actress. She was also shown going to a casting for a job as a “promo girl” for a promotions manager, Tony (the complainant), who subsequently hired her to work at an after-show party on the night of the Brit Awards. Amy talked about the advice Tony had given her to improve her look (following the casting).

The programme broadcast footage of Amy working at the Brit Awards party and later explaining to Tony that she needed to leave work early to catch the last train home.

After speaking to Tony and leaving the event Amy said:

*“He’s such a fucking wanker.”*

Towards the end of the programme, footage was shown of Amy returning to work as a stripper and lap dancer.

Ofcom received a complaint from Mr Clement Anthony Dortie, who was referred to as “Tony” in the programme. Mr Dortie complained that he was treated unfairly in the programme as broadcast.

### **The Complaint**

#### **Mr Dortie’s case**

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

- a) Mr Dortie was misled about the nature of the programme, including details of Amy’s former career, which resulted in him being portrayed as a person who hired strippers.

By way of background, Mr Dortie said the programme makers deliberately concealed the fact that their programme was about the sex industry or a stripper. In addition, Mr Dortie said he had had been told by the programme makers that Amy was a single mother, student and model. He said that if he had known that she was a lap dancer he would not have employed her, as he was shown doing in the programme, as the reputation of his promo-girls was important to his clients. Mr Dortie said the BBC actively encouraged Mr Dortie to hire Amy and induced him into trusting them by expressly stating that “they are the BBC” and therefore they would never “stitch him up”.

- b) Mr Dortie’s contribution to the programme was unfairly edited in that:
  - i) It omitted his numerous comments about the importance of his promo-girls having a “clean” background. This gave the unfair impression that he employed staff with Amy’s sort of background, to promote his business.
  - ii) The programme had been edited to make it appear that Mr Dortie had criticised Amy’s appearance for the sake of it and failed to mention his offer of a free hair consultation.
  - ii) The programme omitted his positive comments about being able to help someone who was in an unfortunate position. For example, Mr Dortie commented that Amy’s pay of £75, plus a goody bag worth £200, was a very good rate for promotions work when it was compared with what a nurse earned for several hours of work.

By way of background Mr Dortie said this comment had been removed from a part of the programme in which Amy was shown complaining about her role at the event; losing money by deciding to work at the event; and referring to Mr Dortie as “a wanker”.

#### **The BBC’s statement**

In summary the BBC responded to Mr Dortie’s complaint as follows:

- a) The BBC said that it accepted that Mr Dortie had not been “fully informed about Amy’s background and the nature of the programme”. It said that this was “unacceptable and a matter of regret”.



The BBC asked Ofcom to consider that when Mr Dortie raised his concerns with the programme makers (the day after transmission) they took immediate and appropriate action. This action included a verbal and written apology to Mr Dortie (which had been copied to a number of Mr Dortie's business associates) and the issuing of a public apology which was reported on the website of *Broadcast* magazine. BBC provided Ofcom with copies of its post broadcast correspondence with Mr Dortie and his solicitors, and a copy of the *Broadcast* magazine article. The BBC also asked Ofcom to consider that it removed the programme from BBC iPlayer and re-edited the programme to remove all references to Mr Dortie.

The BBC said that while it recognised that Mr Dortie had not been provided with sufficient information about the nature of the programme it did not believe that viewers would have gained the impression that Mr Dortie was an individual who hired strippers, as he suggested in his complaint.

The BBC said it was clear in the programme that Amy did not tell people what she did for a living. Given this the BBC said there was no reason for viewers to assume that Mr Dortie had been aware of Amy's work as a lap dancer.

- b) In response to Mr Dortie's complaint that his contribution had been edited unfairly, the BBC said that the programme gave a fair and accurate portrayal of the events involving Mr Dortie.

The BBC provided Ofcom with the relevant unedited and untransmitted recordings of Mr Dortie's contribution. The BBC responded to each head of the complaint as follows:

- i) In response to the complaint that the programme omitted Mr Dortie's comment about the importance of his promo-girls having a clean background, the BBC reiterated that it did not believe that the programme gave viewers the impression that Mr Dortie hired staff who worked in the sex industry. It also said the programme gave no indication that Mr Dortie knew Amy was a lap dancer and therefore there was no reason why viewers would have assumed he knowingly employed people from this industry to promote his business.
- ii) In response to the complaint regarding Mr Dortie's criticisms of Amy and the omission of his offer of a free hair consultation, the BBC referred to an extract from the programme in which Amy commented on the feedback she had had from Mr Dortie. The BBC said viewers would have understood that Mr Dortie's comments had been intended as constructive feedback, based on his experience in the industry. It said that Amy appeared to implicitly accept the feedback despite being genuinely disappointed at what she regarded as Mr Dortie's negative reaction. The BBC said that the programme's portrayal of Mr Dortie's comments, and Amy's reaction, was fair and accurate.

As regards the omission of Mr Dortie's offer of a hair consultation at a hair salon, the BBC said that when Amy turned up for her consultation the salon had no knowledge of her and it was clear that Mr Dortie had not spoken to the proprietor. It said that Amy contacted the proprietor again on the day of the event but was told that an appointment had not been arranged and she would have to pay if she made one.

- iii) With regard to Mr Dortie's complaint about the removal of his positive comments (for example, about being able to help someone in an unfortunate position and the fact that Amy's pay was very good when compared with that of a nurse), the BBC said Mr Dortie had been portrayed as a fair and reasonable employer.

The BBC said that the programme showed Mr Dortie paying his staff in advance in cash. It was also clear that he allowed them to help themselves to the contents of goody bags (which he explained was unusual for promo-girls). The BBC said it believed that viewers would have made their own judgement about Amy's role and remuneration. It did not believe it was unfair to Mr Dortie to exclude his comment that the job compared favourably to the earnings of a nurse.

The BBC said that it recognised that Mr Dortie was upset by Amy's reference to him in the programme as "*a fucking wanker*". However, it believed it was justified to include her reaction in the context of a programme which was examining the efforts of a teenage student to make money in a predominantly adult industry. The BBC said the programme fairly represented Mr Dortie's position and made it clear that it was Amy who had broken their agreement and acted unprofessionally. It did not believe that viewers would have drawn a negative impression of Mr Dortie's behaviour from Amy's comments. However, it said that any such impression would have been offset by the comments by Mr Dortie that were included in the programme.

The BBC said the audience was given both sides of the story and left to draw its own conclusions about Amy's behaviour and whether her reaction was justified.

## Decision

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

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

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

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

- a) Ofcom first considered the complaint that Mr Dortie was misled about the nature of the programme, which resulted in unfairness to him. Ofcom considered whether the programme makers' actions ensured that the programme as

broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Ofcom Broadcasting Code (“the Code”), and whether they were fair in their dealings with Mr Dortie as a potential contributor to the programme (as outlined in Practice 7.2 of the Code). In particular, Ofcom considered whether Mr Dortie gave his ‘informed consent’ to participate in the programme (as outlined in Practice 7.3 of the Code).

Practice 7.3 of the Code sets out that in order for potential contributors to a programme to be able to make an informed decision about whether to take part, they should be given sufficient information about their involvement, including: the programme’s nature and purpose; their likely contribution; any changes to the programme that might affect their decision to contribute; and the contractual rights and obligations of both parties.

Ofcom first considered the nature and content of the broadcast programme. Ofcom noted that the programme title, *Amy: My Body for Bucks*, made clear that the programme was about a woman using her body to earn money. Ofcom noted that the programme said that research suggested that a growing number of higher education students work in the sex industry to fund their studies and Amy was shown as an example of this. The programme focused on Amy’s efforts to make enough money through lap dancing and stripping to pay her college fees and support herself and her young daughter. She was shown meeting with women who worked in the escort and porn industry to find out how they made their money.

Ofcom next considered the information that was made available to Mr Dortie before he agreed to take part in the programme. Ofcom noted that both parties agreed that Mr Dortie was told that Amy was a single mother trying to earn money through acting and modelling. Both parties agreed that Mr Dortie was not informed that the programme was about a young woman who had earned money as a stripper and lap dancer, nor that it would include contributions from those working in the sex industry.

Ofcom then considered whether the nature of the information made available to Mr Dortie resulted in unfairness to him. In Ofcom’s view there was no implication in the programme that Mr Dortie hired strippers, as he complained. However he was nonetheless a contributor to a programme that focused on the sex industry as a source of income for a young single mother and student. Given the sensitivity of the subject matter, Ofcom considered that it was reasonable that the programme makers should have advised Mr Dortie of the full context of Amy’s background, as explored in the programme, in order for him to provide informed consent for his participation. Ofcom noted from the information provided that Mr Dortie was not fully informed of the programme’s subject matter or Amy’s background in lap dancing and stripping. In the circumstances Ofcom found that he was not given sufficient information about the programme’s nature and purpose in order to give his informed consent to take part and this resulted in unfairness to him.

- b) In considering head b) of the complaint of unfairness, Ofcom looked at each individual sub-heads of the complaint in turn.

Ofcom had particular regard to whether the programme makers’ actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Code, and whether Mr Dortie’s contributions had been edited fairly (as outlined in Practice 7.6 of the Code).

- i) Ofcom considered Mr Dortie's complaint that his contribution to the programme was unfairly edited in that it omitted his numerous comments about the importance of the promo-girls he worked with having a "clean" background. Mr Dortie said that this was unfair because it gave the impression that he employed staff with Amy's background in order to promote his business.

Ofcom viewed the full untransmitted material provided by the broadcaster. Ofcom noted that Mr Dortie had made comments about his "golden rules" and the fact that he was looking for promo-girls who worked hard rather than girls who were interested in the glamour industry, meeting famous people or becoming the subject of "kiss and tell" stories.

Ofcom considered that the selection and presentation of material is a matter of editorial discretion as long as it does not result in unfairness. As such, Ofcom considered that the producer was under no obligation to include Mr Dortie's comments about the importance of the girls he hired having a clean background as long as this did not result in any unfairness to him. Ofcom considered that the programme fairly reflected Mr Dortie's dealings with Amy (as shown in the full untransmitted material) and there was no suggestion that he employed staff with a background in the sex industry, or even that he was aware of Amy's previous jobs as a stripper and lap dancer. The omission of the comments about employing staff with a "clean" background did not therefore lead to Mr Dortie being portrayed unfairly and therefore did not result in any unfairness to him.

- ii) Ofcom next considered Mr Dortie's complaint that the programme was unfair to him because it had been edited to make it appear that he had criticised Amy's appearance for the sake of it and failed to mention his offer of a free hair consultation.

Ofcom reviewed the unedited and untransmitted material provided by the broadcaster. Ofcom noted that Mr Dortie had made several comments about how Amy could improve her appearance. For example, he had recommended a hairdresser and suggested that he would arrange a consultation for Amy.

Ofcom noted that these comments were not included in the programme as broadcast. The programme included the following references to the comments Mr Dortie made about Amy's appearance:

Voiceover: *"It's one of Amy's first castings and she's realised from Tony's feedback, there's still a lot to learn."*

Amy: *"My pink bikini wasn't the best one to pick. I should have had a different colour because pink's not really good for my skin tone. Basically I need to sort my hair out, get better pictures, that sort of thing... I don't feel brilliant about it but these take money don't they?"*

Ofcom considered that the programme fairly presented Amy's references to Mr Dortie's advice about how she could improve her appearance as constructive criticism. It made clear that Amy was inexperienced and could benefit from acting on the feedback she had received.

As above at b)i), Ofcom noted that the selection and presentation of material is a matter of editorial discretion as long as it does not result in unfairness. Ofcom found that Amy's account of Mr Dortie's comments about her appearance fairly represented the comments that he had made in the full untransmitted material and did not suggest that he had criticised her appearance "for the sake of it" as he complained. As a result, the omission of his comments about a free hair consultation did not result in unfairness to him. Taking these factors into account, Ofcom found that the material included in the programme that referred to Mr Dortie's comments about Amy's appearance was not unfairly edited.

- iii) Ofcom lastly considered Mr Dortie's complaint that the programme was unfairly edited because it omitted his comments about helping someone who was in an unfortunate position and that Amy was paid £75 plus a goody bag (which he said compared favourably to the amount that nurses earn for hospital work). As background to the complaint, Mr Dortie said this comment had been removed from a part of the programme in which Amy was shown complaining about her role at the event; losing money by deciding to work at the event; and referring to Mr Dortie as "a wanker".

As discussed above, in Ofcom's view the selection of material for broadcast is a matter of editorial discretion as long as it does not result in unfairness. In order to consider this complaint of unfair editing Ofcom again viewed the full untransmitted material. Ofcom noted that Mr Dortie made reference to the free goody bag and compared the rate of pay for promotions work and hospital work. Mr Dortie commented that he gave Amy the job because she seemed like a nice girl and he wanted to give her an opportunity.

Ofcom noted that in the broadcast programme the voiceover explained that Amy was getting paid £75 for the night's work, but also indicated the financial implications of her decision to accept work in London, as follows:

*"Trouble is she's only getting paid £75 tonight and had already spent £50 on her train fare."*

The programme also included the following reference to the goody bags:

*Tony: "The thing with goody bags is normally if you work on an event you don't get one. So help yourself."*

In Ofcom's view, this comment made it clear that Amy and the other girls received a goody bag in addition to the money they were paid for the evening's work. Ofcom therefore considered that the programme fairly presented the nature of the payment arrangements.

In relation to Mr Dortie's statement that the omission of his comments resulted in unfairness to him because the programme included other negative comments about him, Ofcom noted the full context of this section of the programme. Amy was shown leaving the job early, and the programme included the following statements:

*Voiceover: "Amy's booked to work till 12.30pm and Tony's already paid her, but she decides to leave early, letting him down."*

Amy: *“He’s such a fucking wanker, you know I don’t swear very much but he is a \*\*\*\*. He said, right, I have booked you til half past 12 so you should stay til half past 12. He said, yeah, but you know it depends whether you want to get any work ever again as to whether you go. Kind of basically threatening me.”*

Mr Dortie: *“I don’t think we have had a promo-girl that has left before the celebrities. The easy thing is to say ‘Yeah she’s gone blah blah blah’, she’s made a decision, she has left. I personally don’t think she made the right decision but that is her decision.”*

Interviewer: *“Would you employ her again?”*

Mr Dortie: *“Never.”*

Amy: *“I have learnt a big lesson tonight. Well it was hardly walking celebrities down the red carpet was it? It was opening flipping doors. I’m not a door man.”*

Interviewer: *“You’ve lost money haven’t you?”*

Amy: *“Yeah I will have lost money tonight. Well that is it, this is going back to Primark now. I’m never wearing suits again.”*

Ofcom acknowledged that Amy’s comment about Mr Dortie “*fucking wanker*” was clearly offensive to him, however in Ofcom’s view it reflected her personal views and was not endorsed by the programme. Further, the comment was placed in a context in which Amy was clearly shown to be leaving “*early*” and therefore reneging on their agreement and “*letting him [Mr Dortie] down*”; no criticism of Mr Dortie was made by the programme. The programme also fairly represented Mr Dortie’s position on Amy’s early departure.

In the circumstances Ofcom found that the editing of this section of the programme fairly reflected the untransmitted material, and the views of both Amy and Mr Dortie, and did not result in unfairness to Mr Dortie.

**Accordingly Ofcom has partly upheld Mr Dortie’s complaint of unfair treatment in the programme as broadcast.**

## Not Upheld

### Complaint by Mr Kulwarn Cheema

*Road Wars, Sky 3, 20 August 2008 (and repeats on Sky 1 and Sky 2)*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Mr Cheema.

The programme featured incidents filmed during police patrols. It included footage which showed Mr Cheema being pulled over and arrested by the police on suspicion of theft of a stolen vehicle. The programme stated that Mr Cheema was not charged for theft but that he had been cautioned for possession of cannabis. Mr Cheema complained that he was unfairly portrayed as an example of someone committing a crime and that his privacy was unwarrantably infringed by the filming and broadcast of the footage without his consent.

In summary Ofcom found the following:

- The programme had not unfairly portrayed the circumstances around Mr Cheema's arrest.
- Mr Cheema did not have a legitimate expectation of privacy in relation to the filming or broadcast of footage of him being arrested by the police as he was filmed openly in a public place and found to be in possession of an illegal drug. Therefore, his privacy was not unwarrantably infringed in the making or the broadcast of the programme.

### Introduction

On 20 August 2008 Sky 3 broadcast an edition of Road Wars (also repeated in August and September 2008 on Sky 1 and Sky 2). The programme was introduced as follows:

*"We've caught some criminals on tape now on Sky 3 and their driving leaves a lot to be desired. With strong language it's Road Wars."*

The programme itself followed the work of the Thames Valley Police and other police forces. This episode featured a man arrested on suspicion of theft of a vehicle.

Viewers saw a police officer pulling over a vehicle that was said to have been reported as stolen. The police officer was shown asking the driver if he was the owner of the vehicle and the driver stated that it was his friend's car.

The man was not named in the broadcast but footage of him being questioned, searched and placed in the police vehicle was shown. The programme also showed footage of the driver throwing what was found to be a joint of cannabis from the car, just prior to him being pulled over by the police.

At the end of the item the commentary stated that:

*"The car was recovered and returned to the [owner]. The driver didn't face any theft charges but was cautioned for the possession of cannabis."*

Ofcom received a complaint from the driver that was pulled over by the police - Mr Kulwarn Cheema. Mr Cheema complained that he was treated unfairly and his privacy was unwarrantably infringed in the making and broadcast of the programme.

### **The Complaint**

#### **Mr Cheema's case**

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

- a) The programme portrayed him as an example of someone committing a crime even though he had not committed a crime. Mr Cheema said that although he had been taken to the police station he was later released and found not guilty.

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

- b) He was filmed by the programme makers without his consent. Mr Cheema said he was not told the purpose of the filming at the time.

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

- c) The programme showed footage of him, in which his face had not been obscured, being searched and put into the police vehicle. This was broadcast without his knowledge or consent.

#### **Sky's case**

- a) In summary, Sky responded to Mr Cheema's complaint of unfairness as follows:

Mr Cheema claimed that the programme unfairly portrayed him as having committed a crime despite the fact that he was found not guilty. However, Sky disputed his claim that he had not committed a crime and was innocent.

Sky said that the programme featured footage of Mr Cheema being stopped by the police while driving a vehicle which was identified as stolen. He was then shown being searched and questioned by the police at the vehicle. The broadcaster said that the police officer suspected that Mr Cheema was in possession of cannabis because it appeared that he had disposed of a joint of cannabis from the car window before being stopped by the police. He was then placed into a police vehicle.

The broadcaster said that while Mr Cheema was not charged in relation to the theft of the vehicle, he was cautioned for possession of cannabis and had therefore committed a criminal offence. The broadcaster said that this was made clear in the programme as the narrator stated that "*the driver didn't face any theft charges but was cautioned for possession of cannabis*". The broadcaster said that admission from the suspect that an offence had been committed was a pre-requisite for issuing a caution (as outlined in 'Home Office Circular 016 / 2008: Simple Cautioning Of Adult Offenders').

Sky concluded that Mr Cheema was not treated unfairly in the programme as broadcast because he had committed a crime and received a caution from the police.



- b) In summary, Sky responded to Mr Cheema's complaint of unwarranted infringement of privacy in the making of the programme as follows:

Sky said that Mr Cheema did not have a legitimate expectation of privacy in relation to being stopped, searched, questioned by the police and placed in a police vehicle. The broadcaster said that this was because he was driving on a public road and he threw a joint of cannabis out of his car before being stopped by the police in public view. It added that neither the crime for which he was cautioned, nor the crime for which he was initially suspected, warranted him being questioned in private. Sky said that neither circumstance gave rise to a reasonable expectation of privacy in a public place nor were they of such a sensitive or unusual nature that filming should have been stopped on the basis that a legitimate expectation of privacy had arisen. The broadcaster further stated that the cameraman was visible to Mr Cheema at the time of filming and no filming was conducted in secret.

The broadcaster further stated that if Ofcom did consider that Mr Cheema had a legitimate expectation of privacy then any infringement of privacy was warranted. It said that Mr Cheema did not request that the filming stop or make clear any concerns he had, at the time, about the continued filming of the incident. It said that the programme followed Thames Valley police officers attending incidents as and when they took place. It was therefore not possible, or appropriate, to seek prior consent for filming and seeking consent at the time could risk disrupting the work of the police.

Sky said that there was clear public interest in showing the work of the police, and the situations they faced, and this outweighed any right to privacy Mr Cheema may have had in these circumstances. It also said that there was public benefit in highlighting the consequences of committing a criminal offence.

- c) In summary, Sky responded to Mr Cheema's complaint of unwarranted infringement of privacy in the broadcast of the programme as follows:

For the same reasons as outlined with reference to the making of the programme, Sky said that Mr Cheema did not have a legitimate expectation of privacy in relation to the broadcast of footage of him, without his face obscured, being stopped, searched and put into a police vehicle. Sky said that any personal distress resulting from the broadcast of the programme was not relevant to the consideration of Mr Cheema's expectation of privacy. It said that if Ofcom did consider Mr Cheema had a legitimate expectation of privacy then the infringement was warranted and the footage was not of such a nature that its broadcast without Mr Cheema's consent was unwarranted. Furthermore, Mr Cheema did not contact the programme makers before the first broadcast of the programme to make his objections known. Sky said the public interest justification for any infringement of privacy in the making of the programme also applied to the broadcast of the programme. It said that Mr Cheema did not make any attempt to inform the programme makers of his objections to the broadcast of the footage.

By way of background, Sky said that it had compliance procedures in place with the production companies it worked with to ensure that the programmes they made adhered to the relevant codes. It was informed of the status of legal proceedings for each subject featured in the programme before broadcast. Sky

did not obscure the faces of people who were found to have committed illegal acts.

However Sky said that the edition of *Road Wars* which was the subject of Mr Cheema's complaint was first broadcast on Sky 1 on 6 July 2005. Following re-editing in line with Sky's editorial policy for factual entertainment programmes, Mr Cheema's image would be obscured in future repeats of the episode in question.

## Decision

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

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

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

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

- a) Ofcom first considered the complaint that Mr Cheema was unfairly portrayed as an example of a person committing a crime even though he had not committed an offence.

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

Ofcom noted that the programme featured incidents filmed on patrol with officers from Thames Valley Police, including an incident involving Mr Cheema. The relevant section of the programme showed Mr Cheema being pulled over by the police as information from a database suggested that the car he was driving was stolen. He was shown being questioned and arrested by the police on suspicion of theft of a motor vehicle. Mr Cheema was shown stating that the car belonged to a friend. One of the officers found a joint of cannabis on the ground close to the car and the programme included slow motion footage of Mr Cheema throwing it out of the car window as he was being pulled over. An officer explained that the vehicle was a hire car that had been reported stolen by the hire company because the person that hired the car had provided false details. The following commentary, explained how the case concluded:

*“The car was recovered and returned to the hire company. The driver didn’t face any theft charges but was cautioned for the possession of cannabis.”*

In Ofcom’s view, this explicit statement that Mr Cheema was cautioned for the possession of cannabis but did not face charges for theft, unambiguously reflected the nature of his criminal activity. Further, it placed the footage in which he was shown being pulled over, questioned and arrested by the police into context. As such, Ofcom found that the programme did not present the material facts in relation to the incident unfairly, and Mr Cheema was not portrayed unfairly in the programme.

- b) Ofcom next considered Mr Cheema’s complaint that his privacy was unwarrantably infringed in the making of the programme because he was filmed by the programme makers without his consent and without being told the purpose of the filming.

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

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

Ofcom also considered the complaint with reference to Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with a person’s consent or be otherwise warranted.

In considering whether or not there had been an infringement of privacy, Ofcom was first required to consider whether Mr Cheema had a legitimate expectation of privacy in relation to the circumstances in which he was filmed. Ofcom noted that Mr Cheema was filmed throwing a joint of cannabis out of the window of the car he was driving, as he was being pulled over by the police. He was filmed being questioned and arrested for suspicion of theft of a motor vehicle and being searched by the police.

Ofcom considered the nature of the footage filmed of Mr Cheema. Ofcom noted that the programme’s purpose was to show police officers dealing with a variety of situations that arose during patrols of the Thames Valley area and that the footage of Mr Cheema was filmed in this context. He was filmed because the police suspected that he had committed criminal offences, namely that he had stolen a vehicle and was in possession of cannabis. Ofcom noted that the images of Mr Cheema were filmed openly through the window of the police car, and from outside the police car, after he had been stopped while driving on a public road. In Ofcom’s view, when a person is filmed either committing or being arrested for an offence, that person’s expectation of privacy is diminished in light of their actions. In Mr Cheema’s case, Ofcom considered that by committing an offence for which he was later cautioned (namely possession of cannabis), Mr Cheema’s expectation of privacy was lessened.

Taking into account all of the factors above, it is Ofcom’s view that Mr Cheema did not have a legitimate expectation of privacy in circumstances where he was filmed while engaged in activity for which he was arrested and subsequently

cautioned. Ofcom therefore found that there was no infringement of privacy in relation to the footage filmed of his arrest by the police. As a result, it was not necessary for Ofcom to further consider whether any infringement of privacy was warranted.

- c) Ofcom lastly considered Mr Cheema's complaint that his privacy was unwarrantably infringed in the programme as broadcast as it included footage of him being searched and put into a police vehicle. Mr Cheema said the footage was broadcast without his knowledge or consent and that his face was not obscured.

In considering whether or not there had been an infringement of privacy, Ofcom was first required to consider whether Mr Cheema had a legitimate expectation of privacy in relation to the footage that was broadcast. Ofcom noted that the programme included footage of Mr Cheema being pulled over and arrested by the police. While Mr Cheema was not named, Ofcom acknowledged that his face was visible and he was therefore identifiable. However Ofcom also noted that Mr Cheema's actions took place on a public street in full view of those around him.

Ofcom further noted that Mr Cheema was not charged for theft (the offence for which he was originally pulled over). However he was issued with a caution for the possession of cannabis. In light of the fact that Mr Cheema had committed a criminal offence, and taking into account all the circumstances discussed above, Ofcom was satisfied that he did not have a legitimate expectation of privacy in relation to the broadcast of the footage of him engaged in activity which led to his arrest, and of the arrest itself. Ofcom therefore found that Mr Cheema's privacy was not infringed in the programme as broadcast and it was not necessary for Ofcom to further consider whether any infringement of privacy was warranted.

**Accordingly Ofcom has not upheld Mr Cheema's complaint of unfair treatment or unwarranted infringement of privacy in either the making or the broadcast of the programme.**

## Not Upheld

### Complaint by Mr Michael Shrimpton

*David Kelly: The Conspiracy Files, BBC2, 25 February 2007*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Mr Michael Shrimpton.

The BBC broadcast a documentary on 25 February 2007 that looked at the circumstances surrounding the death of weapons inspector Dr David Kelly in July 2003. Dr Kelly died at the time when the controversy about Iraq's weapons of mass destruction was at its height. The programme looked at theories that he was murdered by intelligence agencies and at the findings of the Hutton Inquiry, which concluded that Dr Kelly committed suicide. The programme included interviews with doctors, lawyers and politicians. One of the lawyers interviewed in the programme was Mr Michael Shrimpton, who explained his view that Dr Kelly had been assassinated.

Ofcom found as follows:

- Mr Shrimpton was one of a number of people in the programme who set out their views that Dr Kelly was murdered. Mr Shrimpton was not misled about the nature of the programme and his contribution was not included without his consent.
- It was not unfair for Mr Shrimpton to be described as a barrister in the programme.
- The extract used in the programme of interview footage of Mr Shrimpton set out fairly the key points of his theory regarding the death of Dr Kelly.
- No unfairness arose from the reference to similarities between Mr Shrimpton's theory and the story in a novel by Tom Clancy. Mr Shrimpton was given the opportunity to dismiss any link between the two.

#### Introduction

On 25 February 2007, the BBC broadcast a documentary that looked at the circumstances surrounding the death of weapons inspector Dr David Kelly in July 2003. Dr Kelly died at the time when the controversy about Iraq's weapons of mass destruction was at its height. The programme looked at theories that he was murdered by intelligence agencies and at the findings of the Hutton Inquiry, which concluded that Dr Kelly committed suicide. The programme included interviews with doctors, lawyers and politicians. One of the lawyers interviewed in the programme was Mr Michael Shrimpton. Mr Shrimpton explained his view that Dr Kelly had been assassinated and said that he had information from within the intelligence community in support of his view that Dr Kelly had been murdered. He explained how he believed the murder had been committed and referred to his contacts in the intelligence community. In untransmitted footage, Mr Shrimpton explained his view that the figure given in the Hutton Report for the amount of paracetamol allegedly ingested by Dr Kelly was either a mistake or suggested that he had ingested 800 times a lethal dose.

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

## **The Complaint**

### **Mr Shrimpton's case**

In summary, Mr Shrimpton complained that he was treated unfairly in that:

- a) He was misled into participating in the programme, which was broadcast without his consent. Mr Shrimpton said he was informed, incorrectly, that the programme would be a serious examination of the arguments for and against the suicide and murder theories. He said he gave consent to participate initially on the basis of the programme makers' representation of the nature of the programme. He then withdrew his consent when he discovered the programme would not be a serious examination of the issues but would present what he considered to be the point of view most favourable to the Government.
- b) He was described in the programme as a barrister against his express wishes. He said that he had refused consent to be described as a barrister, as he had not acted as a barrister either at the inquest or in the Hutton Inquiry.
- c) His interview was unfairly edited. The programme makers failed to include the main points he put to them and edited his contribution so as to make him appear to be a "crank" and a conspiracy theorist.
- d) He was portrayed unfairly in that his home library was rearranged without his knowledge so as to make a facetious point about a Tom Clancy novel. Mr Shrimpton said that this led to an implication, given the similarity between the book's plot and Mr Shrimpton's views about Dr Kelly's death, that Mr Shrimpton's theory had been drawn from the novel.

### **The BBC's case**

The BBC said, by way of introduction, that *The Conspiracy Files* was a series of programmes examining contrasting theories about what happened in some of the biggest news stories of recent years. The programme complained of set out to look at the various questions that had been raised following Dr Kelly's death in 2003.

The BBC said that the programme featured interviews with a number of people, including doctors, lawyers, security experts and politicians, who had all questioned the official account of Dr Kelly's death and put forward a range of theories about how he had died. This included Mr Shrimpton, who believed that Dr Kelly had been assassinated by a branch of the intelligence services.

In summary the BBC responded to Mr Shrimpton's complaint as follows:

- a) The BBC first responded to the complaint that Mr Shrimpton was misled into participating and that the programme was broadcast without his consent. The BBC said that Mr Shrimpton was first contacted by the programme makers in 2006 as part of their research into the theories about Dr Kelly's death. The programme makers explained to him that the documentary would include contributions from a number of people putting forward various arguments and counter-arguments as to how Dr Kelly died and would leave the audience to draw their own conclusions. An initial meeting was held in September 2006 and Mr Shrimpton subsequently agreed to take part in lengthy filming sessions in

London, at his home and at the scene of Dr Kelly's death. This included two in-depth, sit-down interviews. The BBC said that on each occasion the programme makers explained the nature of the documentary to Mr Shrimpton.

The BBC said that following the final day of filming, Mr Shrimpton was asked to sign a consent form. He returned this to the BBC with a hand-written amendment, which suggested that he had read the form carefully rather than simply signing it without understanding its purpose.

The BBC said that email correspondence provided by Mr Shrimpton indicated that there was a degree of disagreement prior to broadcast as to the manner in which he was to be described in the programme. However, at no point during this correspondence had Mr Shrimpton suggested that he had been misled about the nature or content of the programme. A number of emails were exchanged in the days prior to transmission, but they implicitly assumed that the broadcast would go ahead. The programme makers therefore had no reason to consider that Mr Shrimpton had withdrawn his consent at the time of broadcast.

The BBC said that the aim of the documentary was to air various theories surrounding Dr Kelly's death. It was not a detailed exploration of a particular theory but offered the proponents of a number of theories the opportunity to explain in their own words why they did not accept the official version of events. Their views were balanced by counter-arguments towards the end of the programme. Mr Shrimpton was allowed to present his theory in his own words and was given adequate time and space to ensure that his views were fairly and accurately presented. The BBC said that there was no evidence to support Mr Shrimpton's claim that the programme presented the view most favourable to the government rather than being the serious examination of issues he had been led to believe.

- b) In relation to Mr Shrimpton's complaint that he was described in the programme as a barrister against his wishes, the BBC said that the description was factually accurate and fairly represented his occupation to the audience. It was a professional title that Mr Shrimpton used publicly. At no stage did the programme suggest that Mr Shrimpton had acted in a professional capacity in the case of Dr Kelly, either at the inquest or the Hutton Inquiry.

The BBC said that, while Mr Shrimpton would have preferred to have been described in terms of his intelligence connections, the programme allowed him to establish his credentials within the intelligence community in his own words. The footage included in the programme was sufficient to establish Mr Shrimpton's links with intelligence and security sources and ensured that the audience was not misled as to his contacts or credibility. The terms in which contributors to programmes of this kind were identified were a matter of legitimate editorial discretion, as long as they were not tendentious or misleading, and the identification of Mr Shrimpton as a barrister was neither.

- c) The BBC next responded to the complaint that Mr Shrimpton's interview was unfairly edited. The BBC said that Mr Shrimpton was given sufficient opportunity to put forward his explanation of how Dr Kelly died and to cast doubt on the official version that he committed suicide by cutting his wrist and taking an overdose of co-proxamol. It was clear from the transcript of Mr Shrimpton's full interview with the programme makers that the programme provided an accurate summary of this main theory about Dr Kelly's death. The summary in the

programme of Mr Shrimpton's theory as to how Dr Kelly was killed was fair and accurate.

- d) As regards Mr Shrimpton's complaint that his home library was rearranged so as to make a facetious point about a Tom Clancy novel, the BBC said that the reference to the novel was reasonable and justified given the similarity between the plot and Mr Shrimpton's theory about Dr Kelly's death. This was a legitimate line of questioning and did not result in Mr Shrimpton's theory being unfairly represented. Mr Shrimpton openly discussed the novel with the programme makers, picked up a copy from his bookshelf and flicked through the pages, in the knowledge that he was being filmed. The programme gave Mr Shrimpton the opportunity to dismiss the suggestion that this theory had been drawn from the plot of Mr Clancy's novel and allowed him to have the final word on the matter.

The BBC accepted that, if the programme makers had wanted a close-up shot of the cover of the book, it would have been preferable if this had been done with Mr Shrimpton's knowledge. However, in the light of his willingness to discuss the book and its contents, the BBC did not consider that the single shot of the book led to any unfairness to him.

### **Mr Shrimpton's comments**

In response to the introductory statement made by the BBC, Mr Shrimpton said that it was a gross misrepresentation of his position for the BBC to say that he believed that the intelligence services were involved in Dr Kelly's death, if by that the BBC meant MI5 or MI6.

In summary Mr Shrimpton responded to the BBC's statement in response to specific complaints as follows:

- a) Mr Shrimpton said that his regrets as to his decision to participate in the programme were pre-broadcast and not post-broadcast. This was because he came to the view prior to transmission that the programme would not be a serious one intending to represent the competing theories about Dr Kelly's death and that he had been conned by the BBC.
- c) In relation to the complaint that his interview was unfairly edited, Mr Shrimpton said that the BBC appeared not to be able to get to grips with the forensic points he had made. He said that he had pointed out to the BBC that if the 97 milligram figure for paracetamol referred to in Lord Hutton's report was not a mistake, then it was about 800 times a lethal dose. This would have been incapable of ingestion by a human being and could only have been administered by injection.

### **The BBC's comments**

The BBC noted Mr Shrimpton's view that it was a gross misrepresentation of his position for the BBC to say that he believed that the intelligence services were involved in Dr Kelly's death, if by that the BBC meant MI5 or MI6. However the BBC argued that the reference to "intelligence services" in the introduction to its first statement in response to the complaint was to intelligence services generally, not the UK's intelligence services in particular. The programme did not state who Mr Shrimpton believed was responsible for Dr Kelly's murder. Mr Shrimpton said in the programme:

*"I was contacted within about twenty four hours by somebody working with David Kelly in the intelligence community and he said he'd been murdered and I wasn't*



*particularly surprised at that and given the source I had no doubts whatsoever that he'd been murdered from that time".*

The BBC also said that the programme did not go into the details of who Mr Shrimpton thought was behind the killing and so could not have misrepresented his position.

In summary the BBC responded to Mr Shrimpton's comments as follows:

- a) In response to the complaint that the programme was broadcast without Mr Shrimpton's consent, the BBC said that nothing in the email exchanges between Mr Shrimpton and the programme makers supported his statement that his regrets as to his decision to participate in the programme were pre-broadcast. The BBC said that the emails contained no suggestion that Mr Shrimpton had been misled as to the nature or content of the programme nor that he wished to withdraw his consent to contribute. Even the disagreement about the terms in which he was to be described in the programme was in a context of explicit assumption that the programme would be broadcast and would include his contribution. The BBC said that Mr Shrimpton had also agreed to assist with media interviews to publicise the programme, which did not appear to be the action of someone who had by then concluded that he had been "conned" into participating.
- c) In relation to the complaint that Mr Shrimpton's interview was unfairly edited, the BBC said that the aim of the programme was to air the various theories about Dr Kelly's death. The programme did not offer a detailed exploration of a particular theory but featured interviews with a number of people who had questioned the official account of his death and put forward alternative explanations. Those views had been balanced by counter-arguments towards the end of the programme. The programme had allowed Mr Shrimpton to explain in his own words how he believed Dr Kelly was killed and accurately reflected his view that the pain killers were simply a cover used by whoever killed Dr Kelly to give the impression that he had committed suicide. Mr Shrimpton's observations on the treatment of co-proxamol in the Hutton report, even if valid, were at best only indirect evidence in support of his theory. Further, the leading toxicologists who took part in the programme did not consider them to be valid. There was therefore no unfairness in not having dealt with them in the programme.

## **Decision**

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

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

Mr Shrimpton's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, the Committee carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme and written submissions from each party.

- a) The Committee first considered the complaint that Mr Shrimpton was misled into participating in the programme, and that it was broadcast without his consent when he realised it would not be a serious examination of the issues.

In considering this part of the complaint Ofcom took account of Practice 7.3 of the Ofcom Broadcasting Code (“the Code”). Practice 7.3 states that where a person is invited to make a contribution to a programme, they should normally be told about the nature and purpose of the programme and what kind of contribution they are expected to make.

In considering this head of complaint, Ofcom took into account the content of pre- and post-broadcast correspondence between Mr Shrimpton and the programme makers and a transcript of the full interviews with Mr Shrimpton, as well as the programme as broadcast.

As set out above, potential contributors to a programme should be given sufficient information about the programme’s nature and purpose, in order for them to be able to make an informed decision about whether or not to take part. In assessing whether a contributor has given informed consent for their participation, Ofcom will look at the information that was provided to the contributor prior to the recording of the contribution (that has been made available for its consideration) which provides an insight into the commencement of their contribution. Where possible Ofcom will also consider the contribution itself and any further involvement, by the contributor, in the production process. In this case, the Committee was able to view pre-interview correspondence and the unedited recordings of Mr Shrimpton’s full interview.

On the basis of the interviews and the correspondence, Ofcom considered that Mr Shrimpton had been given sufficient information about the programme to be able to give informed consent for his participation. Ofcom noted that the correspondence provided to it did not set out the aims of the programme, but it was clear from a series of emails between the parties that Mr Shrimpton was aware of the tenor of the programme, as he referred in this correspondence to his intelligence connections, his concerns about being “smeared as a ‘conspiracy theorist’” and to how he considered he should be described. Furthermore, in Ofcom’s view, the programme was a serious examination of the theories as to how Dr Kelly died which reflected the description of the programme’s purpose which appeared to have been provided to Mr Shrimpton prior to his participation. The programme included interviews with an MP, a UN weapons inspector, doctors and lawyers, all of whom stated that they believed that Dr Kelly was murdered. Mr Shrimpton was, therefore, one of a number of credible people who put forward the theory that Dr Kelly was murdered. Viewers were then able to form their own view as to which explanation for Dr Kelly’s death they believed. In these circumstances, Ofcom did not consider that there was evidence that Mr Shrimpton was misled about the nature of the programme.

The concerns he raised in pre-transmission correspondence related to details of the programme, such as how he was referred to (see decision head b) below). Mr Shrimpton did raise some concerns and made it clear to the programme makers that they did not have his unqualified consent to his contribution to participate. For example in an email sent to the programme makers on 9 December 2006, Mr Shrimpton said:

“...and we have not cleared up this issue of consent...at the moment you do not have my unqualified consent to appear in this programme”.

However, he continued to engage with them throughout the programme making process and did not formally withdraw his consent to appear in the programme. Ofcom noted that Mr Shrimpton agreed 11 days before the broadcast to take part in promotional interviews for the programme. In all the circumstances, Ofcom took the view that, although he had some reservations about the programme, Mr Shrimpton did not seek to withdraw his consent for his interview to be used.

Ofcom therefore found that Mr Shrimpton was not misled and that his inclusion in the programme was with his consent.

- b) Ofcom next considered Mr Shrimpton's complaint that the programme described him as a barrister against his wishes.

In considering this part of the complaint Ofcom took account of Practice 7.3, as set out above under decision head a) and Practice 7.9. Practice 7.9 states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom noted that Mr Shrimpton was captioned as a barrister and introduced by the narrator as follows:

*“A different explanation for Dr Kelly's death comes from barrister Michael Shrimpton”.*

Ofcom also noted that Mr Shrimpton does not dispute that he is a barrister. Ofcom also noted that he described himself in the programme as follows:

*“I'm known as a national security lawyer and it's known that I have links with the intelligence communities in the United Kingdom and throughout the western world. I was contacted within about twenty four hours by somebody working with David Kelly in the intelligence community and he said he'd been murdered and I wasn't particularly surprised at that and given the source I had no doubts whatsoever that he'd been murdered from that time”.*

Later in the programme, footage was included which had been filmed inside Mr Shrimpton's office in which he gave further details of his intelligence connections. The narrator said:

*“Michael Shrimpton says he knows that Dr Kelly was assassinated because of his extensive intelligence contacts”.*

Mr Shrimpton then said:

*“That is the red phone and if that phone goes it could be anyone from the White House to President's administration in Russia, to the CIA, to whoever. It's not usual for me to pick up the phone and have Henry Kissinger on the other end but that has happened. He actually has that number but he doesn't have that number. That gives me a direct line through to Vice President Cheney's Office”.*

In these circumstances, Ofcom considers that viewers would have understood that Mr Shrimpton was a barrister who dealt with national security issues. The

use of the word “*barrister*” to describe him was fair and was supplemented by his own explanation of his role. Viewers would not have thought any less of him because he was described as a barrister. In particular in Ofcom’s view the programme did not suggest through the use of the word barrister that he had acted as a barrister either at the Dr Kelly’s inquest or in the Hutton Inquiry (as Mr Shrimpton complained).

Ofcom noted that it was clear from correspondence between Mr Shrimpton and the programme makers prior to broadcast that Mr Shrimpton informed the programme makers that he did not wish to be described in the programme as a “barrister” and wished to be as a “national security expert” or “national security lawyer”. However, as set out above, this description of him did not result in unfairness.

Furthermore it does not appear to Ofcom that Mr Shrimpton’s consent to take part in the programme was contingent upon him not being described as a barrister.

Taking these factors into account, Ofcom found that there was no unfairness to Mr Shrimpton in the description of him as a barrister.

- c) Ofcom considered Mr Shrimpton’s complaint that his interview was unfairly edited.

In considering this part of the complaint Ofcom took account of Practice 7.6, which states that when a programme is edited, contributions should be represented fairly.

Ofcom noted the following extract from the programme, in which Mr Shrimpton put forward his views in his own words:

Mr Shrimpton: *“You could a hide a platoon or a company of men over the brow of that hill and you wouldn’t know if they kept quiet until you were right on top of them. As a place for an ambush it’s just frankly ideal. He was clearly assassinated to keep him quiet there was no other motive”.*

Commentary: *“Michael Shrimpton believes that the co-proxamol pain-killers found near the body were simply a cover used by assassins”.*

Mr Shrimpton: *“The plan is to leave co-proxamol by the side of the body. So they’re trying to get co-proxamol into the stomach and they’re trying to shove co-proxamol down into poor David Kelly he dies on them too quickly. As they’re shoving the tablet down him, probably the first tablet, there’s vomit, and that’s the end then he dies. And that’s the end of tablets”.*

Commentary: *“Michael Shrimpton also believes that the cut wrist was really to hide the injection marks created by a different method of death, an injection of a fatal substance”.*

Mr Shrimpton: *“Succynol choline is still very much the favoured means of killing him. That is because it is so easily disguised. The wrist slash is clearly, in my view, designed not just to create the*

*impression of suicide but it's a perfect means of disguising the puncture wounds".*

In considering Mr Shrimpton's complaint, Ofcom viewed untransmitted footage of a wide-ranging interview with him. During this interview, Mr Shrimpton gave a great deal of information about his theory as to how Dr Kelly died and what he considered to be the flaws in the Hutton Inquiry. It is important to note that the editing of a programme is an editorial matter for a broadcaster. However, in editing an interview, broadcasters must ensure that the programme as broadcast does not result in unfairness to an individual or organisation. In Ofcom's view, in using the above extract from the interview, the programme makers conveyed the key points of Mr Shrimpton's theory, in his own words.

Ofcom also noted that Mr Shrimpton complained that the editing of his contribution unfairly made him appear to be a "crank" and a conspiracy theorist. In Ofcom's view however Mr Shrimpton was one of a number of credible contributors to the programme who set out their theories that Dr Kelly was murdered. Mr Shrimpton was, fairly, portrayed as being an adherent to a theory that Dr Kelly was murdered by assassins, as he stated in the extract from the programme set out above. However, in Ofcom's view, he was clearly one of a number of people in the programme who believed that the Hutton Inquiry had reached a flawed conclusion and that Dr Kelly was murdered. In these circumstances, Mr Shrimpton's portrayal in the programme was not unfair.

Ofcom found no unfairness to Mr Shrimpton in this respect.

- d) Ofcom considered Mr Shrimpton's complaint that he was portrayed unfairly in that his home library was rearranged without his knowledge so as to make a facetious point about a Tom Clancy novel.

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

Ofcom noted the following extract from the programme:

Commentary: *"Michael Shrimpton is also a fan of espionage fiction from Frederick Forsyth to Tom Clancy".*

Mr Shrimpton: *"Yes, he's one of my favourite authors".*

Commentary: *"One of Tom Clancy's books, The Teeth of the Tiger concerns an "off the books" team of US Government assassins who avoid detection by killing their victims with succynol choline".*

Mr Shrimpton: *"There is a reference to succynol choline in this book and I think that follows the assassination of David Kelly. Tom Clancy has very good contacts with the, in the national security community. It may be that Tom Clancy picked up a reflection if you like, or a loopback from the Kelly assassination. But if the suggestion is that I got succynol choline from a Tom Clancy novel then sorry that won't wash".*

Ofcom took the view that no unfairness arose from the programme makers' decision, in the context of a programme investigating the various theories about Dr Kelly's death, to explore the similarities between Mr Shrimpton's theory and

the story in the Tom Clancy book. In particular Ofcom noted that, having raised the issue, the programme gave Mr Shrimpton the opportunity to dismiss immediately any suggestion that his theory originated in the novel.

In these circumstances, Ofcom found no unfairness to Mr Shrimpton in this respect.

**Accordingly Ofcom has not upheld Mr Shrimpton's complaint of unfair treatment in the broadcast of the programme.**

## Not Upheld

### Complaint by Ms Annette Howard

*Come Dine With Me, Channel 4 Television, 31 December 2007 and 1, 2, 3 and 4 January 2008*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Ms Annette Howard.

The programmes, shown as part of the third series of *Come Dine With Me*, featured five contestants, including Ms Howard, competing over the course of a week to throw the best dinner party. The contestants marked and commented on the meals cooked by the other participants. Ms Howard complained that she was misled about the real nature of the programme as she had not expected it to include scenes of personal confrontation.

In summary Ofcom found that Ms Howard was not misled about the nature of the programmes and gave informed consent to participate. Ofcom found no unfairness to Ms Howard in the programmes as broadcast.

#### Introduction

From 31 December 2007 to 4 January 2008, Channel 4 broadcast five episodes of the third series of the *Come Dine With Me*.

These episodes took place in Cardiff and featured the contestants Annette (the complainant), Charlie, Jane, Jim and Suzanne. The contestants took turns to host a dinner party in a competition to win a £1000 prize. Each guest scored each dinner party out of ten and the contestant with the most points was awarded the prize on the final night.

The programmes featured some verbal confrontation between the contestants. This culminated in a heated argument between the complainant, Charlie, Jane and Suzanne in the final episode. The programme showed that the complainant left the table as she felt excluded from the conversation and was served her dessert in a separate room. The contestants were shown swearing at each other (the expletives were 'bleeped out').

Ms Howard complained to Ofcom that she was treated unfairly in the programme as broadcast.

#### The Complaint

##### Ms Howard's case

In summary, Ms Howard complained that she was treated unfairly in the programme as broadcast in that:

- a) She was misled about the real nature of the programme. She said she was expecting to participate in a tasteful programme, but in reality her contribution had been used in a "Jerry Springer" type programme including personal confrontation. For example, the programme included footage of other participants shouting at Ms Howard and telling her to "f\*\*\* off".

By way of background, Ms Howard said that she had been the subject of verbal abuse, harassment and constant bullying by a number of the other programme participants throughout the making of the programme. She said the programme makers should have intervened to stop the abuse and not allowed the situation between the participants to have deteriorated to the extent that it did.

### **Channel 4's case**

In summary the broadcaster responded to Ms Howard's fairness complaint as follows:

- a) Channel 4 stated that Ms Howard was familiar with the format of the programme before she agreed to appear on the show. The programmes were part of the third series of the popular format where five strangers who lived locally to each other competed over the course of a week to throw the best dinner party. By way of background the broadcaster stated that the programme had always taken a light-hearted, cheeky tone; focused on contributor interaction and involved conflict and tension. It said that this was to be expected when five strangers were placed in a stressful, competitive situation.

The programme makers explained in their written submissions that Ms Howard had contacted the programme in response to a mailshot inviting people to participate. During initial telephone conversations and a visit to Ms Howard's home to assess her suitability and film a 'taster tape', they ascertained that she had seen the programme before. The producer stated that Ms Howard demonstrated a clear understanding of the programme which led him to be confident she had seen the series. The programme mailshot and contributor profile of Ms Howard were provided in support of the written statements.

Channel 4 highlighted that Ms Howard had signed a release form that was explicitly clear about what would be expected of her as a contributor to the programme and how her contribution would be used. The broadcaster pointed out that the form included a paragraph that unambiguously stated that statements of a personal nature would be made about the contributors and that these would be included in the programme as broadcast. The broadcaster also noted that the programme's director had outlined exactly what would be required of Ms Howard during filming.

In conclusion the broadcaster said that the complainant gave fully informed consent to participate in the programme and that there was no evidence that she was misled about the nature of the programme.

By way of background to the complaint, Channel 4 provided comments on the complainant's allegations of harassment and bullying. The broadcaster said that while the statements from the production team acknowledge there were arguments between some of the contributors during filming, the complainant was not bullied or harassed. In fact the broadcaster said that the transcripts, recordings and statements showed that the complainant had instigated arguments, made personal comments about the other contributors and that they tried to appease her when exchanges became heated.

The broadcaster further stated that the complainant did not indicate to the production team that she felt she was being bullied or wanted them to intervene at any point during the filming. As the programme focuses on the interaction



between the group of contributors it was not appropriate for the production staff to get involved unless the situation got out of hand. On the final night, however, they instigated a short break in filming when another argument involving Ms Howard became heated. She ate her dessert separately from the other contributors and there were no further arguments as a result.

## Decision

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

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

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

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

- c) Ofcom considered Ms Howard's complaint that she was misled about the nature of the programme. Ofcom considered whether the programme makers' actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Ofcom Broadcasting Code ("the Code"), and whether they were fair in their dealings with Ms Howard as a potential contributor to the programme (as outlined in Practice 7.2 of the Code). In particular, Ofcom considered whether Ms Howard gave her 'informed consent' to participate in the programme (as outlined in Practice 7.3 of the Code).

Practice 7.3 of the Code sets out that in order for potential contributors to a programme to be able to make an informed decision about whether to take part, they should be given sufficient information about: the programme's nature and purpose; their likely contribution; any changes to the programme that might affect their decision to contribute; and the contractual rights and obligations of both parties.

Ofcom first considered the information that was available to Ms Howard about the nature, likely content of the programme and her likely contribution in advance of agreeing to participate. Ofcom was able to view: the targeted mailshot inviting potential contributors to contact the production team; a contemporaneous note of the programme researcher's initial conversation with Ms Howard (the "contributor profile"); statements from the production team; and the consent form signed by Ms Howard.

It was noted that Ms Howard responded to a mailshot inviting people to get in touch with the production team if they would like to be considered for the programme. Ofcom noted that the programme was in its third series and had an

established nature and format, which was reflected in the mailshot. The mailshot stated that contestants would “take it in turns to try to prepare the best meal, be the best host and hold the most memorable party for the others” in competition for £1000 and they were looking for people “from all walks of life”.

Ofcom noted that prior to being selected for the programme Ms Howard was contacted by the programme’s researcher and producer by telephone and that they also visited her home to discuss her contribution and film a ‘taster tape’. They confirmed in their written statements that they had described the nature of the programme to Ms Howard on these occasions and that they were confident that she was aware of the format. The contributor profile produced by the researcher noted that she watched the programme. The producer said that Ms Howard “demonstrated a genuine understanding of *Come Dine With Me* that left [him] in no doubt that she was familiar with the series”.

Ofcom noted that Ms Howard had signed a consent form which detailed her agreement with the production company in respect of her participation in the programme. It had particular regard for the following paragraph:

“You agree and understand that you and the Other Contributors may be required to record truthful and honest views, opinions, thoughts and experiences during the Filming Period and you have no objection to this forming part of the Programme at our sole discretion. Furthermore you acknowledge that part of the Programme shall incorporate the views, opinions, and thoughts of the Other Contributors (the “Statements”). The Statements may include personal and subjective comments in relation to (by way of example) you or your contribution or your Home and may or may not depict you positively. You agree that the inclusion of the Statements is fundamental to the Programme and agree to the inclusion of such Statements within the Programme.”

In Ofcom’s view this paragraph explicitly stated that the programme could potentially include unfavourable personal comments about Ms Howard or the other contributors. Ofcom also noted that the director stated in her written submission that she had talked to Ms Howard about what would be required of her during filming. The director said that she had explained that Ms Howard would be asked to make personal comments about the other contributors.

As a result of the information provided to Ms Howard by the production team before filming started as detailed above and taking into account that the programme had established a clear nature and format over the two previous series, Ofcom considered that she was fully informed about the programme before agreeing to participate. This, coupled with the comprehensive consent form which included an explicit statement that the programme may include personal comments, meant that Ofcom considered that Ms Howard gave her ‘informed consent’ to participate.

Ofcom next considered the programmes as broadcast and whether the content of the particular programmes reflected the nature and purpose explained to her prior to filming. Ofcom noted that the programmes included scenes of personal confrontation which involved Ms Howard. In particular, it noted that the contestants were shown shouting and swearing at each other (although any expletives were ‘bleeped out’). The first programme included an argument between Ms Howard and another contestant, Charlie, but they were shown reconciling their differences in the following two programmes. Another

confrontation was shown in the third episode of the week and this was referred to in the fourth and fifth episodes. The conflict culminated in a particularly heated argument, shown in the fifth and final programme of the week, when Ms Howard said she felt excluded from the conversation as the other contestants were talking about food. When she said she planned to leave the table, Charlie admonished her, saying she was *“worse than a two year old little kid”* and *“I’ll be writing to the Pope next week and get [your husband] (bleep) canonised... he must be a (bleep) saint”*. Suzanne was then also shown swearing at Ms Howard before she left the dinner table and Jane served her dessert alone in the lounge.

Ofcom considered that Ms Howard participated in the programme and engaged with the other contestants throughout in a manner which demonstrated she understood its nature and format. As set out in the consent form, Ms Howard and the other contestants were given opportunities to express themselves and were asked to provide personal opinions about the other guests, their food and their homes. Ms Howard was shown entering into this process: she was at the centre of the arguments that developed and gave unfavourable comments about other contestants both directly and in the daily interviews. For example, at the dinner table on the first night she made the following remark to Charlie: *“I’ve got no problem, Charlie, other than you being like a postman. For 20 years, you didn’t want to be a postman for 20 years”*. Following this when she was shown giving her assessment of the evening she said: *“Charlie’s the postman. He’s a (bleeps)”*.

Ofcom considered that the programme as broadcast followed the nature and format established in the previous two series of the programme; Ms Howard was fully informed about the likely nature and content of the programme when she consented to participate; and the programme as broadcast was in line with the information she was given before agreeing to take part. Ms Howard’s contribution to the programme showed her engaging in personal confrontation and swearing which suggested that she was aware that this kind of behaviour might feature in the programme as broadcast.

In light of the above, Ofcom does not consider that Ms Howard was misled about the nature of the programme therefore found that the programme as broadcast did not result in unfairness to her.

**Accordingly Ofcom has not upheld Ms Howard’s complaint of unfair treatment in the broadcast of the programme.**

## Other Programmes Not in Breach/Resolved

Up to 3 March 2009

Programme	Trans Date	Channel	Category	No of Complaints
5 Live Sport	18/02/2009	BBC Radio 5 Live	Due Impartiality/Bias	1
A Short Stay in Switzerland	25/01/2009	BBC1	Suicide/Self Harm	1
Aapani Sehat (My Health)	07/12/2008	KBC (Sky 836)	Generally Accepted Standards	1
American Godfathers Weekend (trailer)	10/01/2009	Paramount Comedy	Offensive Language	1
Aunt Bessie Sponsors Old Classics	07/12/2008	ITV3	Other	1
BBC News	16/02/2009	BBC1	Generally Accepted Standards	1
BRMB Breakfast	10/02/2009	BRMB (Birmingham)	Sex/Nudity	1
Barbie Petites Club sponsorship/ Milkshake	n/a	Five	Sponsorship	1
Bear Behaving Badly	19/02/2009	CBBC	Generally Accepted Standards	1
Beyond Westminster	27/12/2008	BBC Radio 4	Generally Accepted Standards	1
Blighty Channel Promotion	03/02/2009	Dave	Generally Accepted Standards	1
Breakfast	08/02/2009	Bath FM 107.9	Offensive Language	1
Breakfast Show	06/02/2009	Absolute Radio	Generally Accepted Standards	1
CSI: Crime Scene Investigation	20/01/2009	Five	Violence	1
Carolyn Stewart U105 Lunch promotion	12/02/2009	UTV	Flashing images	1
Cash in the Attic	19/02/2009	BBC1	Sex/Nudity	1
Celebrity Big Brother	21/01/2009	Channel 4	Offensive Language	1
Celebrity Big Brother	21/01/2009	Channel 4	Use of Premium Rate Numbers	1
Celebrity Big Brother's Big Mouth	15/01/2009	E4	Crime (incite/encourage)	1
Celebrity Big Brother's Big Mouth	23/01/2009	E4	Generally Accepted Standards	1
Celebrity Big Brother's Big Mouth	02/01/2009	E4	Use of Premium Rate Numbers	1
Celebrity Big Brother's Little Brother	16/01/2009	Channel 4	Violence	1
Celebrity Big Brother's Little Brother	15/01/2009	E4	Generally Accepted Standards	1
Central News	16/01/2009	ITV Central	Commercial References	1
Channel 4 News	22/01/2009	Channel 4	Due Impartiality/Bias	5
Channel 4 News	10/01/2009	Channel 4	Due Impartiality/Bias	1
Channel 4 News	15/01/2009	Channel 4	Due Impartiality/Bias	1
Chris Moyles Show	19/11/2008	BBC Radio 1	Generally Accepted Standards	28
Chris Moyles Show	20/01/2009	BBC Radio 1	Generally Accepted Standards	6

Come Dine With Me	05/12/2008	Channel 4	Generally Accepted Standards	1
Coronation Street	14/01/2009	ITV1	Religious Offence	27
Coronation Street	30/01/2009	ITV1	Offensive Language	8
Coronation Street	16/01/2009	ITV1	Generally Accepted Standards	1
Coronation Street	16/01/2009	ITV1	Sex/Nudity	1
Coronation Street	14/01/2009	ITV1	Generally Accepted Standards	6
Could You Eat an Elephant?	14/01/2009	Channel 4	Animal Welfare	34
Cowboy Builders	15/01/2009	Five	Inaccuracy/Misleading	6
Daily News	11/01/2009	Bangla TV	Generally Accepted Standards	1
Dancing on Ice	01/03/2009	ITV1	Generally Accepted Standards	1
Dancing on Ice	18/01/2009	ITV1	Generally Accepted Standards	6
Demons	24/01/2009	ITV1	Offensive Language	1
Demons	31/01/2009	ITV1	Scheduling	1
Demons	17/01/2009	ITV1	Violence	3
Demons	17/01/2009	ITV1	Offensive Language	3
Demons	10/01/2009	ITV1	Generally Accepted Standards	3
Dickinson's Real Deal	19/01/2009	ITV1	Inaccuracy/Misleading	1
Doctors	16/01/2009	BBC1	Sex/Nudity	1
Eastenders	23/01/2009	BBC1	Generally Accepted Standards	5
Eastenders	27/01/2009	BBC1	Sex/Nudity	3
Eastenders	27/01/2009	BBC1	Generally Accepted Standards	1
Eastenders	17/02/2009	BBC1	Generally Accepted Standards	1
Ekattorer Dinguli	16/12/2008	ATN Bangla	Violence	1
Europorno and Porno Valley	12/12/2008	Viasat Explorer	Scheduling	1
Extraordinary People: Building a New Face	29/01/2009	Fiver	Generally Accepted Standards	1
FA Cup Football	n/a	ITV1	Unconscious influence/hypnosis/subliminal	1
Fifth Gear	12/01/2009	Five	Generally Accepted Standards	1
Five News	06/01/2009	Five	Violence	1
GMTV	20/01/2009	ITV1	Generally Accepted Standards	1
GMTV	12/01/2009	ITV1	Due Impartiality/Bias	1
Gastronuts	11/02/2009	CBBC	Generally Accepted Standards	1
George Lamb	17/11/2008	BBC 6 Music	Generally Accepted Standards	1
Going For Gold	n/a	Five	Use of Premium Rate Numbers	1
Golden Balls	08/01/2009	ITV1	Generally Accepted Standards	1
Golden Balls	18/02/2009	ITV1	Crime (incite/encourage)	1
Gossip Girl (trailer)	17/01/2009	ITV1	Sex/Nudity	1

Grand Designs	04/02/2009	Channel 4	Inaccuracy/Misleading	1
Grand Designs	25/02/2009	Channel 4	Inaccuracy/Misleading	1
Grow Your Own Drugs (trailer)	17/02/2009	BBC1	Substance Abuse	2
HD Promo	29/01/2009	Sky Three	Inaccuracy/Misleading	1
Hare Krishna Culture	04/01/2009	MATV	Inaccuracy/Misleading	1
Harry Hill's TV Burp	14/02/2009	ITV1	Inaccuracy/Misleading	1
Harry Hill's TV Burp	24/01/2009	ITV1	Animal Welfare	3
Harry Hill's TV Burp	13/01/2009	ITV1	Generally Accepted Standards	1
Hidden	20/12/2008	Channel 4	Crime (incite/encourage)	1
Holby City	13/01/2009	BBC1	Offensive Language	5
Hollyoaks	19/01/2009	Channel 4	Generally Accepted Standards	4
Hollyoaks Omnibus	25/01/2009	Channel 4	Generally Accepted Standards	1
Hunter	19/01/2009	BBC1	Generally Accepted Standards	11
I Survived a Japanese Gameshow	25/01/2009	TV6	Advertising	1
ITV News	09/01/2009	ITV1	Due Impartiality/Bias	1
ITV News	15/01/2009	ITV1	Due Impartiality/Bias	13
ITV News	25/02/2009	ITV1	Dangerous Behaviour	2
Iceland sponsors I'm A Celebrity	n/a	ITV1	Sponsorship	1
Inside Out	14/01/2009	BBC1	Animal Welfare	3
Jamie Saves Our Bacon	29/01/2009	Channel 4	Inaccuracy/Misleading	1
Jamie Saves Our Bacon	29/01/2009	Channel 4	Sex/Nudity	3
Jamie Saves Our Bacon	29/01/2009	Channel 4	Animal Welfare	1
Jeff Randall Live (trailer)	n/a	Sky News	Due Impartiality/Bias	1
Jeremy Kyle Show	26/01/2009	ITV2	Offensive Language	1
Jeremy Vine	08/01/2009	BBC Radio 2	Generally Accepted Standards	1
Jo Russell	23/11/2008	Absolute Radio	Animal Welfare	1
Jonathan Creek	01/01/2009	BBC1	Generally Accepted Standards	1
Katy Brand's Big Ass Show	17/02/2009	ITV1	Religious Offence	2
Katy Brand's Big Ass Show	27/01/2009	ITV1	Generally Accepted Standards	1
Ken Livingstone	10/01/2009	LBC 97.3FM	Due Impartiality/Bias	1
Kill It, Cook It, Eat It	05/01/2009	BBC Three	Animal Welfare	3
Learners	11/01/2009	Watch	Advertising	1
Live at the Apollo	05/12/2008	BBC1	Generally Accepted Standards	1
Loch Ness Terror	20/12/2008	Sci-Fi	Violence	1
Loose Women	19/02/2009	ITV1	Generally Accepted Standards	1
Loose Women	22/01/2009	ITV1	Sex/Nudity	1
Malcolm in the Middle	24/01/2009	BBC2	Sex/Nudity	1
Maltesers sponsorship / Loose Women	16/02/2009	ITV1	Sex/Nudity	1
Manchester Utd v Middlesbrough	29/12/2008	BBC Radio 5 Live	Generally Accepted Standards	1
Margaret	26/02/2009	BBC2	Offensive Language	1
Minder	18/02/2009	Five	Dangerous Behaviour	1

Minder	14/02/2009	Five	Dangerous Behaviour	1
Monster.co.uk sponsorship/ American Idol	30/01/2009	ITV2	Animal Welfare	1
Most Haunted Live	13/01/2009	Living	Generally Accepted Standards	1
Most Haunted Live: The Search for Evil	10/01/2009	Living TV	Religious Offence	1
Motorway Cops: A Traffic Cops Special	26/01/2009	BBC1	Offensive Language	1
My Crazy Media Life	15/01/2009	Channel 4	Sex/Nudity	1
New Tricks	13/01/2009	BBC1	Generally Accepted Standards	1
New You've Been Framed!	28/02/2009	ITV1	Dangerous Behaviour	1
News	23/12/2008	ITV1	Inaccuracy/Misleading	1
News	08/01/2009	Magic 105.4	Inaccuracy/Misleading	1
News	14/02/2009	Sky News	Generally Accepted Standards	1
News at Ten	21/01/2009	ITV1	Due Impartiality/Bias	1
News at Ten	18/01/2009	ITV1	Due Impartiality/Bias	5
News at Ten	15/01/2009	ITV1	Inaccuracy/Misleading	1
Newsbeat	16/01/2009	BBC Radio 1	Violence	1
Nick Ferrari	12/01/2009	LBC 97.3FM	Due Impartiality/Bias	1
Nick Ferrari	10/12/2008	LBC 97.3FM	Religious Offence	1
Nick Ferrari	07/01/2009	LBC 97.3FM	Religious Offence	1
Nick JR 2 (promo)	05/01/2009	Nick JR 2	Dangerous Behaviour	1
On The Fiddle	07/01/2009	BBC1	Generally Accepted Standards	1
Outback 8	23/01/2009	BBC1	Generally Accepted Standards	1
Oz and James Drink To Britain	10/02/2009	BBC2	Generally Accepted Standards	1
Panorama	05/01/2009	BBC1	Information/Warnings	1
Paris Hilton's British Best Friend	19/02/2009	ITV2	Generally Accepted Standards	1
Piers Morgan's Life Stories	22/02/2009	ITV1	Generally Accepted Standards	1
Police Interceptors	23/01/2009	Five	Generally Accepted Standards	1
Pulling	12/01/2009	BBC Three	Animal Welfare	1
QI	13/02/2009	BBC1	Sex/Nudity	1
QI	16/01/2009	BBC1	Religious Offence	1
Quote Unquote	26/01/2009	BBC Radio 4	Religious Offence	3
Ray Atkinson	07/02/2009	Moray Firth Radio	Animal Welfare	1
Repossessed	06/01/2009	BBC1	Generally Accepted Standards	1
Richard Bacon	23/12/2008	BBC Radio 5 Live	Religious Offence	1
Ricky Gervais: Fame	20/02/2009	Channel 4	Generally Accepted Standards	7
Rogue Traders	19/02/2009	BBC1	Animal Welfare	1
Saturday Kitchen	24/01/2009	BBC1	Use of Premium Rate Numbers	1

Science Fiction Season (trailer)	24/02/2009	BBC2	Generally Accepted Standards	1
Shameless	17/02/2009	Channel 4	Generally Accepted Standards	1
Shameless	03/02/2009	Channel 4	Substance Abuse	1
Skins	12/02/2009	E4	Dangerous Behaviour	1
Skins	12/02/2009	E4	Substance Abuse	1
Skins	05/02/2009	E4	Offensive Language	1
Sky Bet promo	23/02/2009	Sky Sports 1	Sponsorship	1
Sky HD promo	n/a	Sky	Inaccuracy/Misleading	1
Sky News	06/01/2009	Sky News	Due Impartiality/Bias	1
Sky News	12/01/2009	Sky News	Due Impartiality/Bias	1
Sky News	05/01/2009	Sky News	Inaccuracy/Misleading	1
Sky News	23/02/2009	Sky News	Generally Accepted Standards	1
Sky News	10/01/2009	Sky News	Generally Accepted Standards	1
Soccer Special	25/02/2009	Sky Sports 1	Generally Accepted Standards	1
Steve Allen	27/01/2009	LBC 97.3FM	Offensive Language	3
Steve Wright in the Afternoon	18/02/2009	BBC Radio 2	Sex/Nudity	1
Take on the Takeaway	03/01/2009	BBC1	Dangerous Behaviour	1
The Big Fat Quiz of the Year	28/12/2008	Channel 4	Generally Accepted Standards	4
The Big Questions	25/01/2009	BBC1	Offensive Language	1
The Bill	20/02/2009	Alibi	Generally Accepted Standards	1
The Fairies	21/01/2009	Nick Jr2	Offensive Language	1
The Green Green Grass	22/01/2009	BBC1	Generally Accepted Standards	1
The Hunt For Britain's Tightest Person	09/01/2009	Channel 4	Religious Offence	1
The Hunt For Britain's Tightest Person	09/01/2009	Channel 4	Generally Accepted Standards	8
The Jeremy Kyle Show	19/01/2009	ITV1	Generally Accepted Standards	1
The Jeremy Kyle Show	29/01/2009	ITV1	Offensive Language	1
The Jeremy Kyle Show	26/01/2009	ITV1	Offensive Language	2
The Krypton Factor	08/01/2009	ITV1	Flashing images	1
The Paul O'Grady Show	15/12/2008	Channel 4	Generally Accepted Standards	2
The Paul O'Grady Show	15/12/2008	Channel 4	Sex/Nudity	4
The Sex Life of Twins	04/01/2009	Virgin1	Generally Accepted Standards	1
The Simpsons	15/12/2008	Sky One	Offensive Language	1
The Sunday Night Project	01/02/2009	Channel 4	Generally Accepted Standards	1
The Sunday Night Project	18/01/2009	Channel 4	Generally Accepted Standards	1
The Wright Stuff	23/01/2009	Five	Unconscious influence/hypnosis/subliminal	1
The Wright Stuff	26/01/2009	Five	Generally Accepted Standards	1



The Wright Stuff	14/01/2009	Five	Generally Accepted Standards	1
The X Factor	29/11/2008	ITV1	Generally Accepted Standards	2
This Is England	18/02/2009	Film 4	Generally Accepted Standards	1
Through The Night	18/02/2009	Century 105.4FM	Offensive Language	1
Too Posh to Pay	20/01/2009	ITV1	Crime (incite/encourage)	1
Top Gear	08/02/2009	BBC2	Generally Accepted Standards	1
Trial and Retribution	13/02/2009	ITV1	Offensive Language	1
U Tell Us	02/12/2008	Channel U	Use of Premium Rate Numbers	1
Unseen Gaza	22/01/2009	Channel 4	Inaccuracy/Misleading	1
Vanessa Feltz	22/09/2008	BBC London 94.9	Generally Accepted Standards	1
Waterloo Road	07/01/2009	BBC1	Violence	18
Waterloo Road	21/01/2009	BBC1	Generally Accepted Standards	1
Waterloo Road	07/01/2009	BBC1	Generally Accepted Standards	1
Waterloo Road	14/01/2009	BBC1	Crime (incite/encourage)	1
Wayne Rooney's Street Striker	30/11/2008	Sky One	Crime (incite/encourage)	6
Weakest Link	21/01/2009	BBC 1	Generally Accepted Standards	1
Weakest Link	14/01/2009	BBC1	Generally Accepted Standards	1
Whitechapel	16/02/2009	ITV1	Advertising	1
X-Men: The Last Stand	25/01/2009	Channel 4	Violence	1
You've Been Framed	10/01/2009	ITV1	Dangerous Behaviour	2