

Ofcom Broadcast Bulletin

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Introduction

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

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

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

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

Standards cases

In Breach

Running in Heels

The Style Network, 19 May 2009, 22:00

Introduction

Running in Heels is a US reality series following three interns working in Marie Claire magazine's New York office.

During routine monitoring, Ofcom noted that promotional-type messages about Maybelline Lash Stiletto mascara was featured in this programme.

During the 23 second long sequence, one of the interns entered the apartment and announced to the other two interns that she had brought something back from the office for them. She produced three mascaras from her handbag and said that they were "*the new Maybelline mascara*" to which one of the other interns added "*Lash Stiletto*". The mascara appeared in a close-up shot with the packaging and the name of the mascara clearly visible. This was followed by a medium close-up shot of the mascara.

The interns decided to go out that evening wearing the product and the remainder of the sequence contained shots of all three girls applying their make-up including the mascara. While applying it one of the interns commented "*my lashes look so much longer*" while another commented "*it really does make them look glossy*".

Ofcom asked the broadcaster for its comments in relation to the following rules of the Code:

- Rule 10.4 – No undue prominence may be given in any programme to a product or service; and
- Rule 10.5 – Product placement is prohibited.

Response

E! Entertainment UK Limited ("E! Entertainment"), the licensee for The Style Network said that the series was originally commissioned for broadcast in the US by its parent company E! Entertainment Television Inc. It confirmed that while there had been a product placement arrangement in place between Maybelline and its parent company, it had not itself received any payment or valuable consideration for the inclusion of, or reference to, Maybelline Lash Stiletto mascara in the programme.

E! Entertainment said that the series was reviewed by its UK compliance agent prior to its first broadcast in the UK and the sequence in question did not raise any concerns insofar as it could be regarded as giving Maybelline undue prominence.

The broadcaster added that "the series takes place entirely in the world of fashion and contains numerous references to fashion brands. The reference to a new brand of mascara and a sequence where the protagonists try out make-up while getting ready for a night out did not appear out of place in such a format". However, having viewed the episode in light of Ofcom's request for comments under Rule 10.4, E!

Entertainment removed the close-up shot of the mascara showing the Maybelline brand.

The broadcaster said that since being contacted by Ofcom about this issue, it has implemented a process whereby it is provided with a list of any product placement which has occurred in the programming it acquires.

Decision

One of the fundamental principles of European broadcasting regulation is that advertising and programming (that is, editorial content) must be kept separate. This is set out in Article 10 of the Television Without Frontiers Directive which is in turn reflected in the rules in Section Ten (Commercial References in Programmes) of the Code.

Rule 10.5 of the Code states that product placement is prohibited. Ofcom noted the broadcaster's assurances that it had acquired the programmes from outside the UK and that it had not directly benefited from the product placement arrangement with Maybelline that had been in place when the programme was produced. The Code sets out an exemption under the prohibition of product placement in Rule 10.5, for television programmes acquired from outside the UK, provided that the Ofcom licensee broadcasting the acquired programme does not directly benefit from that arrangement. Ofcom therefore concluded that E! Entertainment was not in breach of Rule 10.5 of the Code.

Programmes exempt from Rule 10.5 (as described above) are nevertheless still subject to Rule 10.4 which states that "no undue prominence may be given in any programme to a product or service". Ofcom accepts that there may be editorial justification for referring to brands within programmes, provided that they are not given undue prominence. In this programme, there were brief references to a variety of clothing designers which Ofcom considered were not unduly prominent and were justified by the context of the programme (i.e. following three interns behind the scenes at Marie Claire fashion magazine). However, in contrast, the programme contained references which were clearly promotional to the Maybelline Lash Stiletto mascara.

Ofcom considered that the interns' comments, "*my lashes look so much longer*" and "*it really does make them look glossy*" were the type of statements and claims which are typical of a promotion for such a product. The undue prominence was further exacerbated by the drama creating a story line around the specific product. This, together with the close-up shot of the mascara in which the packaging and name of the product were clearly visible, gave undue prominence to the product, in breach of Rule 10.4.

Breach of Rule 10.4

In Breach

News bulletin

NTV, 20 April 2009, 11:40

Bari Bari Shari Shari

NTV, 20 April 2009, 11:10

Introduction

Bangladesh language network NTV provides general entertainment and news for a UK audience with content originating from Bangladesh. Two viewers complained to Ofcom that its news output was sponsored, in breach of the Code.

After reviewing the material, we determined that the news was not sponsored, but during clips of acquired footage from a cricket match, a caption containing a commercial logo and brand name was displayed on the original content.

Additionally, from the recording provided by NTV, we noted during the broadcast of a drama called *Bari Bari Shari Shari* on-screen captions for two companies were visible on four separate occasions although these were partially obscured by masking.

We requested NTV's comments on both incidents under Rules 10.3 (products and services must not be promoted in programmes), 10.4 (undue prominence) and 10.5 (product placement is prohibited) of the Code.

Response

NTV apologised for both situations and said the appearance of the caption in the cricket clip was a result of human error. Since this matter had been brought to its attention, it has put stricter procedures in place to eliminate any recurrence.

The broadcaster said the commercial captions were included in the drama as a result of a technical problem with the equipment it uses to mask sponsor references in acquired dramas and other entertainment programmes. NTV said it made no commercial gain from including references to either of the companies. It said while there had been two problems on this occasion, such instances were the exception rather than the rule.

Decision

Ofcom noted the broadcaster's assurances it had no commercial gain from the companies included in the content and we found no evidence that either of the broadcasts was in breach of Rule 10.5 which prohibits product placement.

We acknowledge non-UK broadcasters have different regulations on issues such as the inclusion of commercial references in programming. However, Ofcom licensees must ensure any material shown in the UK complies with all relevant European legislation and the Code, irrespective of whether the content in question is original or acquired. Broadcasters must retain independent editorial control over all programme content to ensure programmes are not distorted for commercial purposes.

During the acquired footage from the cricket match, a green and white masking banner appeared across the bottom of the screen. Ofcom noted that on a number of

occasions, a caption was not obscured by the masking banner and appeared above it, containing a commercial logo and the following words in Bengali and English “*Havells Energy Saving Fans*”. This also occurred when reference was made to the cricket match at other times during the coverage. There was no editorial justification for these commercial references and we therefore considered that they were unduly prominent, in breach of Rule 10.4.

Throughout the drama, a similar green and white masking banner appeared at the bottom of the screen. This was an apparent attempt to obscure the commercial branding which appeared intermittently in captions. However, this was not sufficient to mask the logos completely. Ofcom noted that on four occasions it was possible to see references in Bengali to mobile phone companies’ tariff information (e.g. “*Pre pay Super Simple plan only 88 paisa*”). Again, there was clearly no editorial justification for such references to appear on screen during the drama. Notwithstanding the broadcaster’s ineffective attempts to mask the references, we considered them to be unduly prominent, in breach of Rule 10.4.

Ofcom was concerned that, while the licensee suggested this was an isolated case and resulted from human error, the references in both the drama and the cricket coverage were repeated within the programmes. We acknowledge NTV had made attempts to obscure the commercial references, however these attempts were not sufficient and the content in question should have been completely masked. Given the assurances provided by the broadcaster, we would not expect any recurrences of this issue.

News bulletin - breach of Rule 10.4
Bari Bari Shari Shari – breach of Rule 10.4

In Breach

Competition sponsored by New Look Furnishings

Apni Awaaz FM (Bradford), 16 February 2009, 17:00

Introduction

Apni Awaaz FM was a restricted service licensee operating a community radio trial service for 28 days from 23 January 2009. Aimed at the local Asian community in Bradford, it broadcast in Urdu, Punjabi, Gujrati, Kashmiri, Pushto, Hindi and Bengali, covering community, health and social issues and local news and events.

The licensee broadcast a listener competition feature, sponsored by New Look Furnishings. This appeared in editorial and started with the broadcast of an advertisement for the sponsor, which was also running in Apni Awaaz FM's commercial breaks. This was then followed by a presenter asking listeners to phone in if they knew the advertiser's address. Callers were then brought to air until such time as the correct location was stated on air by a caller.

A listener believed the broadcast was in breach of the Code, as an advertisement for the programming sponsor had been used in the sponsored programming and was not clearly separated from it.

We asked Apni Awaaz FM to comment with regard to the following Code rules:

- 10.12 – Advertising must be clearly separated from programmes. Advertisements must not appear in programme time, unless editorially justified;
- 10.2 – Broadcasters must ensure that the advertising and programme elements of a service are kept separate; and
- 9.5 – There must be no promotional reference to the sponsor, its name, trademark, image, activities, services or products or to any of its other direct or indirect interests. There must be no promotional generic references. Non-promotional references are permitted only where they are editorially justified and incidental.

Response

Separation

The broadcaster did not comment with regard to Rule 10.12, concerning the use of advertisements in programming.

With regard to Rule 10.2, concerning the broadcaster's responsibility to ensure the separation of programming and advertising, Apni Awaaz FM stated: "It was a competition for the children."

Sponsor references

With regard to Rule 9.5, concerning the limited references to the sponsor that can be made in sponsored programming, the broadcaster stated: "No product was promoted."

Decision

Ofcom was particularly concerned by the broadcaster's apparent lack of understanding about compliance with the Code as evidenced by their response.

Separation

Rule 10.12 states: "Advertising must be clearly separated from programmes. Advertisements must not appear in programme time, unless editorially justified."

All broadcast output on radio is either advertising or editorial (i.e. advertisements or programmes/programming).

As the advertising and editorial elements of broadcast output must be clearly separated, there is generally no editorial justification for broadcasting in programming an advertisement that currently forms part of a campaign within the commercial breaks on the same radio service.

In this case, a current advertisement was broadcast in a listener competition feature sponsored by the advertiser (New Look Furnishings). The advertisement contained a reference to the address of the advertiser, which was also the answer to the only question posed by the presenter. Both the advertisement and the competition therefore lacked any editorial justification, appearing to be featured as programming for no other purpose than to promote further the advertiser through additional broadcast exposure in programming.

The broadcast was therefore in breach of Rule 10.12 of the Code.

Rule 10.2 states: "Broadcasters must ensure that the advertising and programme elements of a service are kept separate."

Apni Awaaz FM's comment (i.e. "It was a competition for the children.") not only appeared to be inaccurate but also bore no relevance to the requirement of Rule 10.2, namely that advertising and programming are kept separate. This demonstrated that the broadcaster had little understanding of, and possibly little regard for, Code compliance.

The licensee transmitted an advertisement in a programme with no editorial justification other than to promote the product. There was clearly no separation as required by the Code.

The broadcaster was therefore in breach of Rule 10.2 of the Code.

Sponsor references

Rule 9.5 states: "There must be no promotional reference to the sponsor, its name, trademark, image, activities, services or products or to any of its other direct or indirect interests. There must be no promotional generic references. Non-promotional references are permitted only where they are editorially justified and incidental."

Further, the Code provides the following meaning of "promotional reference" with regard to Rule 9.5: "This includes, but is not limited to, references that encourage, or are intended to encourage, the purchase or rental of a product or service."

The advertisement for New Look Furnishings was broadcast in programming as part of a competition sponsored by the same retail outlet. It included the following:

“New Look Furnishings ... leather beds, pine beds, sofa beds, wardrobes, chest drawers, dining tables ... free car parking ... 383/387 Leeds Road, Bradford. Phone 743030 – that’s 743030 – New Look Furnishings.”

We therefore disagree with Apni Awaaz FM’s brief statement, that “no product was promoted.” Further, the fact that the competition comprised little more than a current advertisement for the sponsor merely promoted the sponsor (i.e. New Look Furnishings) in editorial.

The broadcast was therefore in breach of Rule 9.5 of the Code.

This Finding will be held on record and considered in the assessment of any future application by the broadcaster for another licence to broadcast.

Breach of Rules 9.5, 10.2 and 10.12

In Breach

Sport TV

Lucky Star, 10 March 2009, 22:00

Introduction

Sport TV is free-to-air unencrypted programming on Lucky Star channel. The channel is listed in the adult section of the Sky electronic programme guide (“EPG”). It broadcasts programmes based on interactive ‘adult’ sex chat services: viewers are invited to contact on-screen presenters via premium rate services (“PRS”). The female presenters dress provocatively and encourage viewers to contact them.

A viewer was concerned that throughout the programme the Daily Sport newspaper was frequently referred to both visually and verbally and that its website was promoted.

Ofcom asked the broadcaster for its comments in relation to the following Code Rules:

- 10.3 – Products and services must not be promoted in programmes. This rule does not apply to programme-related material.
- 10.4 – No undue prominence may be given in any programme to a product or service.
- 10.5 – Product placement is prohibited.

Response

The licensee, Escape Channel Ltd (“Escape Channel”), said that it had paid the Daily Sport “for the right to mention that publication’s name as part of the theme of the programme”, but that it had no other commercial relationship with the Daily Sport. The broadcaster added that there was “no advertising by the [Daily] Sport” during the programme, and that it had retained full editorial control over the broadcast material as it had not received any payment nor any request from the Daily Sport for the inclusion of any reference to the publication in the programme.

Escape Channel stated that the presenter was “simply reviewing a newspaper, in this case the [Daily] Sport. In doing so, the presenter was linking their review to the broader theme of the broadcast content, namely ‘The Sport are looking for a stunner’”. It added that its intention was to seek out new presenters for the programme.

The broadcaster admitted that “whilst this was clearly not an example of product placement and full editorial control was retained at all times, it is accepted that the programme could have been better produced”. The broadcaster added that the programme was “discontinued” before Ofcom contacted it and that should a programme of a similar nature be considered in the future, “careful regard will be had to the matters raised [by Ofcom] with compliance procedures to the fore”.

Decision

The Code prohibits broadcasters promoting, or giving undue prominence to, products and services in programmes. This is to ensure there is clear separation between

programmes and advertising and to prevent programmes from being distorted for commercial purposes.

Ofcom considered the broadcaster's decision to create a thematic link between the product, the Daily Sport, and its programming, to be problematic in terms of ensuring clear separation between programming and advertising.

With regard to Rule 10.4, undue prominence may arise where a product or service is referred to without editorial justification. In this programme, a presenter flicked through a copy of the Daily Sport newspaper and made a number of references to its content. She said:

"We've had a little perusal through the paper tonight, yes, as it is Sport TV night we're gonna have a few little looks at the daily rag."

She continued by talking about stories that appeared in the newspaper.

She then referred to the Daily Sport's "Search for a Stunna" competition:

"We do have our search for a star. The Sport are looking for a stunner.... Get your picture in now. You could be the next Sport stunner. Let's have a look at a few of the entrants so far sending in their pictures to us here on the show [photographs of entrants shown on-screen].... We know you're out there and we know you're good enough to be the next Sport stunner. You could be in this paper on a daily basis. It is a daily paper and you could be in it. Send your pictures into us here www.dailysport.com. That's where you need to send your pictures if you want to appear, or wanna go for the Daily Sport stunner competition. So it's www.dailysport.com. Send your pictures in there."

The competition was also referred to in a caption: *"Search for a Stunner. If you know a stunning babe then send her pics to www.dailysport.com".* This caption appeared on-screen continuously for 14 minutes.

Broadcasters often review different media in programmes – such as newspapers and the internet. There is frequently editorial justification for such references. However, broadcasters need to ensure that they do not actively promote such products. In this case, Ofcom judged there was no editorial justification for the number and nature of the references to the Daily Sport. While, the presenter referred to the stories in the newspaper while flicking through it, she also gave a lengthy verbal and visual promotion of the newspaper's "Search for a Stunna" competition. Overall, this sequence gave the Daily Sport undue prominence within the programme, in breach of Rule 10.4 of the Code.

Additionally, the detail and frequency of these references to the Daily Sport newspaper, as well as the verbal and visual encouragements to viewers to visit the Daily Sport's website promoted the Daily Sport, in breach of Rule 10.3 of the Code.

Ofcom noted the broadcaster's assurances that it had received no payment, or other valuable consideration, for referring to the Daily Sport in the programme and therefore found no evidence that the broadcast was in breach of Rule 10.5 of the Code.

Breach of Rules 10.3 and 10.4

In Breach

Gay TV promotion broadcast ‘free-to-view’

Gay TV, 26 March 2009, 22:00

Introduction

Gay TV is a channel located in the ‘adult’ section of the Electronic Programme Guide (“EPG”) on both Sky and Virgin which specialises in showing homosexual ‘adult-sex’ material. It is owned and operated by RHF Productions Limited, which is also the Licensee. Most of this content is broadcast encrypted in accordance with the requirements of the Code¹. However, in common with a number of other ‘adult-sex’ channels, it also broadcasts short ‘free-to-air’ promotions usually between 10 and 15 minutes in length after 20:00. Their purpose is to encourage viewers to subscribe to the encrypted ‘adult-sex’ service. One viewer complained to Ofcom that material transmitted in a ‘free-to-view’ promotion by Gay TV from 22:00 on 26 March 2009 was too explicit for the time of broadcast.

Ofcom noted that in this promotion some of the male presenters spoke to camera fully naked with their genitals in full view and on occasion in close up. Brief but non-explicit sequences of sexual activity, where genitals were frequently and clearly visible, were also shown and on occasions the genitals were being handled. In addition, some explicit sexual language was used by the presenters. Examples included:

- *“I’m aching to show you all the big dicks we have...getting hard for you tonight...”;*
- *“we will be unloading our balls all over big hot studs...”;*
- *“it’s explicit sucking and fucking action...these boys are fresh and their cocks are throbbing to get some tight arse”;*
- *“it’s all about cock so come in and get some tonight...”;* and
- *“cock after cock after cock, giving and taking it until everyone blows their load.”*

Ofcom sought comments from the broadcaster under the following Code Rules which relate to Harm and Offence:

- 2.1 (the broadcaster must apply generally accepted standards); and
- 2.3 (offensive material must be justified by the context).

Response

The broadcaster said it accepted that, concerning enforcement of the Code, Ofcom did not discriminate as regards sexual orientation when investigating material which may breach generally accepted standards. However, Gay TV stated that upon receipt of Ofcom’s letter, it viewed a selection of equivalent Gay TV promotions it had broadcast over the last decade which it said had been broadcast without complaints. It concluded that these earlier promotions were not dissimilar in strength of content from the promotion that was the subject of this current complaint.

¹ Rule 1.24 of the Code states that premium subscription services and pay per view/night services may broadcast ‘adult-sex’ material between 2200 and 0530 provided appropriate protections are in place.

The broadcaster continued that when Gay TV launched in 1998 it discussed the boundaries of the content that would be permitted by regulation with the then broadcast regulator, the Independent Television Commission (“the ITC”)². At that time, with respect to ‘free-to-view’ promotions, it said that it was established that it would be permitted to show male genitalia in homosexual promotional programming more frequently than would be permitted in equivalent heterosexual promotions. The rationale for this was that similar heterosexual promotions are able to show breasts relatively frequently whereas, because men do not have breasts, homosexual promotions could not show equivalent material. Gay TV was therefore able to show male genitals more frequently in its ‘free-to-view’ promotions in order to compensate, with the caveat that such shots were relatively brief and should not include genitals that were engorged. Gay TV said that it had adhered to this guidance with regard to ‘adult’ homosexual promotions over the past decade and as a result they had attracted very few actual viewer complaints and little by way of regulatory attention.

The broadcaster confirmed that the language used in this promotion was in places explicit particularly in the links where a presenter spoke to camera. However, it said this type of language was standard in all adult ‘free-to-view’ promotional programming and had been for years and that it was justified by the context of an adult programme broadcast well after the watershed in the ‘adult’ area of the EPG. It continued that the likelihood of viewers watching this promotion inadvertently, and not expecting such explicitness was reduced because a prominent warning appeared at the beginning which stated “*WARNING – The following programmes are for a mature audience aged 18 or over*”. It also considered that the name ‘Gay-TV’ was self-explanatory.

Gay TV confirmed that the presenters of the links in question were naked. It asked Ofcom however to take into account: the frequency with which it is normal to see male genitalia in adult ‘free-to-view’ promotions, the context in which the promotion was broadcast, that the shots were fast moving and cut between other promotional material, and that the presenters’ genitals were obscured by their own legs for significant periods. Despite the cumulative effect of the language used and the images broadcast, Gay TV said the presenter-led links complied with Rules 2.1 and 2.3 of the Code.

In relation to some of the material featured in this promotion, the broadcaster said that it had introduced a fast pace to the editing and cropped a number of shots in order to restrict the content shown. However, with particular regard to some of the images of male genitalia shown in programme clips between the presenters’ links, the broadcaster accepted that there were two images which were more close-up than normal and were being touched by hand. It apologised for the inclusion of these two images and said that it had informed the staff responsible that they were too strong for ‘free-to-view’ promotions and instructed them to take particular care to avoid any similar images from “creeping into freeviews” in the future.

Decision

Ofcom accepts that a promotion (broadcast without mandatory access restrictions) for encrypted adult-sex material within the ‘adult’ section of the EPG will contain a certain amount of sexual activity and that viewers of these channels might expect some depiction of such content. Whilst a substantial number of viewers may object to such content being aired at all, to curb all visual or verbal reference to sexual activity

² The ITC Code was in force until 24 July 2005 after which time the Ofcom Broadcasting Code came into force.

(irrespective of orientation) would not in Ofcom's opinion be in line with the generally accepted standards for such channels. However, it is the extent to, and manner in, which sexual scenes and material are portrayed that are the most important factors in deciding whether this material complies with Rule 2.3 of the Code.

With regard to this promotion in particular Ofcom noted the two graphic images of male genitalia referred to by the broadcaster. In addition however it also featured frequent scenes which focussed in close-up on genitals much of which had a graphic sexual element to it and brief clips of 'real couples' having sex which, although brief and without any sexual nudity, would have left viewers in no doubt as to what was being depicted. It also featured a number of close-ups of the presenters' genitals as they spoke to camera with their legs spread apart including one presenter led segment where the camera moved slowly in close up on his genitals whilst he spoke. In addition, as described above, some extremely explicit sexual language was employed. The material in this promotion therefore had the potential to cause offence.

Ofcom then had to consider whether this potentially offensive material was justified by the context. In doing so we noted first that it was broadcast an hour after the watershed at 22:00 on a channel located in the 'adult' section of the EPG and was preceded by a warning that it was aimed at a "mature audience aged 18 or over". However, the use of material potentially suitable for broadcast only under encryption in promotions such as this requires particular care, precisely to avoid the inclusion of inappropriate and/or unacceptable material, however, brief.

Ofcom disagreed with the broadcaster's assertion that this material was justified by the context because it was transmitted "well after" the watershed. Ofcom does not consider that 22:00 is so significantly past the watershed that audience expectations will have evolved to the point that such explicit material as was included in this promotion (broadcast without mandatory access restrictions) could be transmitted at 22:00 without a correspondingly significant amount of justification for doing so.

Similarly, the warning provided by the broadcaster on this occasion (i.e. that it was aimed at an audience aged 18 and over) did not, in Ofcom's view, adequately convey the strength of some of the sexual material that was broadcast. This is particularly the case when taking into account that it was freely available to view by anyone who might have come across it unawares.

Ofcom did not agree with the broadcaster's assessment that the current frequency with which it alleged it is "normal" to see male genitalia in 'adult' promotions that are broadcast without mandatory access restrictions meant that the range and extent of the genitalia on show in this promotion was acceptable or that it was on a par with similar heterosexual material. Similarly, while Ofcom accepts that there is some editorial justification for the use of strong sexual language used in tandem with sexual images in promotions broadcast without mandatory access restrictions, broadcasters cannot assume that the requirements of Section Two of the Code cease to apply at all. In this case the use of language such as *"it's explicit sucking and fucking action...these boys are fresh and their cocks are throbbing to get some tight arse...cock after cock after cock giving and taking it until everyone blows their load"* was unacceptable for broadcast at 22:00 particularly when combined with a number of extremely explicit images of genitalia and brief scenes of 'real' sex.

Broadcasters who operate 'adult-sex' channels and promote those channels without mandatory access restrictions must at all times ensure that they comply with Section

Two of the Code which requires generally accepted standards to be applied so as to provide adequate protection from harmful and/or offensive material.

In addition, Ofcom notes the advice given by the ITC (as described by Gay TV) related to what images could be broadcast, Gay TV said that the ITC had indicated to it in 1998 that there were key differences between homosexual and heterosexual content which meant that more shots of genitalia could be shown in homosexual content. However, the Licensee was unable to provide any written evidence of the advice given by the ITC ten years ago. In assessing this particular case, Ofcom took into account the combined effect of the use of explicit images of genitals – including two for which the Licensee has apologised – with the use of some extremely explicit sexual language and it was clear to Ofcom that such material went beyond any apparent advice which was given over ten years ago by a different regulator and under a different Code. This promotion was broadcast without access restrictions only one hour after the watershed. In assessing this content under the current Code, Ofcom did not find it comparable with the type of material which might be more acceptable for broadcast without access restrictions after 23:00.

It is important that Licensees do not rely on informal and non-binding advice from a legacy regulator for compliance purposes even in the absence of complaints, particularly when such advice was provided a decade ago.

Taking all of the above into account, the broadcaster did not apply generally accepted standards and this promotion was therefore in breach of Rules 2.1 and 2.3.

Breach of Rules 2.1 and 2.3

In Breach

Sex Station

Lucky Star, 21 May 2009, 21:00

Introduction

Sex Station is free-to-air and unencrypted programming on the channel Lucky Star, located in the 'adult' section of the Sky Electronic Programme Guide ("EPG"). The channel broadcasts programmes based on interactive 'adult' sex chat services: viewers are invited to contact female on-screen presenters via premium rate telephony services. The female presenters dress provocatively and encourage viewers to contact them.

As part of a separate investigation into the channel, Ofcom noted that during content broadcast on the channel after 21:00, the website URL www.sexstationtv.com ("the Website URL") was broadcast at intervals, in scrolling form across the screen.

Ofcom noted that on visiting the website ("the Website"), to which the Website URL led, there were no mandatory forms of age verification¹ in place to enter the website. To access videos available on the website, users were required to complete mandatory age verification checks. Ofcom noted however that the Website contained a number of unprotected free-to-view still pornographic images. Ofcom considered that these images were equivalent to British Board of Film Classification R18-rated material.

Although the still images on the Website were not broadcast on-air, Ofcom was concerned that the Website URL was being promoted free-to-air. This was especially of concern, given Ofcom's previously published Finding on 21 July 2008 ("the 21 July 2008 Finding") and 18 May 2009 against RHF Productions Ltd². These findings made it clear that it was a breach of the Code for free-to-air and unencrypted channels to make promotional references to website URLs which led to content that was equivalent to R18-rated material unless appropriate protection was in place.

The Ofcom Licence for Lucky Star is held by Escape Channel Limited ("Escape Channel"). Ofcom asked Escape Channel for its comments under Rule 2.1 (generally accepted standards) and Rule 2.3 (broadcasters must ensure that material which may cause offence is justified by context).

Response

Escape Channel said that the broadcaster apologised unreservedly for this broadcast and accepted "without qualification that great care must be given to ensuring that viewers, including in particular children, are not exposed to material which could give rise to harm or offence".

¹ For example the need to purchase access to material by using a credit card or similar means that require the purchaser to be an adult.

² See http://www.ofcom.org.uk/tv/obb/prog_cb/obb114/issue114.pdf In addition, Ofcom's Content Sanctions Committee on 18 May 2009 imposed a statutory sanction on RHF Productions Ltd for the broadcast of website URLs, that led to freely accessible websites containing the equivalent of R18-rated material, on a number of its services (See http://www.ofcom.org.uk/tv/obb/ocsc_adjud/rhfportland.pdf - "the RHF Sanctions Decision").

The broadcaster said it had become aware of the RHF Sanctions Decision on 18 May 2009, adding that that this was the first time the broadcaster had “been alerted by Ofcom to a potential difficulty with...web-site content”. According to Escape Channel, the RHF Sanctions Decision had said: “there had been no comparable precedents concerning references to ‘adult’ websites containing unprotected R18-rated equivalent material”. As a consequence of the RHF Sanctions Decision, the broadcaster said that it had removed all website URL references from its programming.

Escape Channel added that: the Website URL was broadcast after the watershed; it was not broadcast continuously; age verification restrictions were in place on the Website “so far as the web-site video content was concerned”; viewers would not have been able to come across content on the Website unawares, and would have had to make a conscious decision to visit the Website; and “the fact that [the Website’s] content is suitable for person aged 18 and over is patently clear to a visitor on arrival at the site”.

Decision

In this case, Ofcom was concerned that a licensed channel was making promotional references on air to a website URL, which would directly lead the viewer to a website containing very explicit images of sexual activity that were the equivalent of R18 material. In a finding of 21 July 2008 (“21 July 2008 Finding”) Ofcom stated that: “While the content of...websites is not in itself broadcast material, and therefore not subject to the requirements of the Code, any on-air references to...websites are clearly broadcast content. Such references must therefore comply with the Code”.

Broadcasters may legitimately promote their own websites. While Ofcom does not regulate broadcasters’ websites, the 21 July 2008 Finding made clear: “In no circumstances may such websites contain R18 material if *they are promoted on a licensed service*” (emphasis added). Similarly, as the RHF Sanctions Decision stated: “The broadcast of R18-rated equivalent material, or website URLs whose websites lead to R18-rated equivalent material, is totally unacceptable.” All Ofcom licensees have a responsibility to ensure they are aware of the relevant Ofcom decisions so as to ensure compliance.

Ofcom took into consideration: the broadcaster’s apology; that the Website URL was broadcast intermittently after the 21:00 watershed, when it was likely that fewer children would be viewing; and the channel is found in the ‘adult’ section of the EPG; and the fact that, although the broadcaster should have been aware of the contents of the 21 July 2008 Finding, it did remove all Website URLs from its programming, on becoming aware of the RHF Sanctions Decision.

Nonetheless, in this case the Website URL was broadcast free-to-air, and it was possible to enter the Website (via the Website URL), without undergoing any mandatory age verification checks. On the Website were a number of free-to-view pornographic images that Ofcom considered were equivalent to R18-rated material. The fact that, for example, the promotional references to the Website URL were broadcast on a channel in the ‘adult’ section of the EPG and the nature of the content on Lucky Star, did not justify by the context the broadcast of these references. There was therefore a breach of generally accepted standards.

All daytime and adult sex chat channels, and channels broadcasting ‘adult’ content, are reminded of the importance of complying with both the 21 July 2008 Finding and

the RHF Sanctions Decision as regards promotional references to websites giving access to 'adult' material.

Breach of 2.1 and 2.3

Resolved

Saturday Kitchen

BBC1, 23 May 2009, 10:00

Introduction

Saturday Kitchen is a weekly live cooking programme. On this occasion, the guest chefs were Vivek Singh and Eric Chavot. During a segment where the chefs were involved in a “cook-off” to see who could make an omelette in the fastest time possible, Vivek Singh finished and teased Eric Chavot, saying “*It’s my turn to sit here now... la la la...*” Mr Chavot’s retort was “*You can la-la me, what the fucking la-la...*” before clamping his hand over his mouth.

Ofcom received one complaint from a viewer concerned about strong language being broadcast in the morning. The complainant told Ofcom he had young children who were watching at that time. Ofcom asked the BBC to comment with regard to Rule 1.14 (the most offensive language must not be broadcast before the watershed).

Response

The BBC said several steps are taken by senior members of the production team of *Saturday Kitchen* to brief guests about compliance issues prior to their appearance on the programme. They are specifically warned about offensive language given the programme’s child audience. In this instance, it said Eric Chavot momentarily forgot himself, and lapsed into friendly banter with his close friend Vivek Singh.

After the incident occurred, the presenter James Martin immediately apologised for the remark and an apology was also issued at the end of this particular “cook-off” challenge. However, the Executive Producer for the BBC felt that the exchange which followed this diminished the effectiveness of the initial apologies by James Martin, and therefore arranged for James Martin and Eric Chavot to make a further apology to viewers shortly after.

The BBC also noted that this programme was withheld from the BBC’s interactive service, BBC iPlayer, in order to avoid further offence.

Decision

The Code clearly states that the most offensive language must not be broadcast before the watershed, and therefore such language should not be included in daytime output.

However, Ofcom noted this is a live show, where the production team had followed its compliance guidelines and briefed the guests about the requirement not to use strong language. It considers that the BBC acted responsibly and broadcast several apologies during the programme – including immediately after the situation occurred. As this was an isolated incident, and the BBC addressed the matter promptly (including by withholding the programme from the BBC iPlayer to remove the risk of repeated offence), Ofcom considers the matter resolved.

Resolved

Other cases

In Breach

Pennine FM

17 April to 12 May 2009 (inclusive)

Introduction

Ofcom has a statutory duty to ensure “a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests.” In local commercial radio Ofcom secures this by the use of Formats. Each station’s Format includes a description of the output which each licensee is required to provide, based on the promises made in its application to win the licence. Formats may be varied over time only with the approval of Ofcom.

The Format for Pennine FM in Huddersfield (owned by Huddersfield FM Ltd) requires the licensee to deliver: “A locally oriented news, information and entertainment station aimed primarily at 30-55 year-olds in the Huddersfield area. Music is broad and community commitment includes Asian output.”

From 17 April 2009 Pennine FM began to broadcast back-to-back music with no news, information or programming. Ofcom therefore asked Pennine FM to comment on how the licensee (Huddersfield FM Ltd) complied with two conditions in its licence relating to its Format. The first is condition 2(1) contained in Part 2 of the Schedule to its licence, which states that:

“The Licensee shall provide the Licensed Service specified in the Annex for the licence period and shall secure that the Licensed Service serves so much of the licensed area as is for the time being reasonably practicable.” (Section 106(2) of the Broadcasting Act 1990).

The second is licence condition 2(4), contained in Part 2 of the Schedule to its licence, which states that:

“The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period.” (Section 106(1) of the Broadcasting Act 1990).

Response

Pennine FM replied that it had been experiencing financial problems and during the period of its back-to-back music output the company operating the station, and holding the licence, changed hands. Ofcom had sought comments from Pennine FM under the two licence conditions set out above when the station was still controlled by the original holder of the licence. The reply to Ofcom from Pennine FM however was sent on behalf of the new holder of the licence, which was in the process of completing the deal to take over the station. The new licence holder said it was preparing to resume Format delivery as soon as contracts were signed with “a view to a full re-launch with presenters” on 13 May 2009.

In such unusual circumstances Ofcom took the view that it would delay consideration of this case in order to undertake monitoring of the station. Such monitoring would enable Ofcom to ascertain whether, in our view, Pennine FM has returned to Format compliance. Ofcom therefore requested recordings of Pennine FM output from 4, 5 and 6 June 2009 to make this assessment.

Decision

By broadcasting back-to-back music, with no news, information or programming from 17 April 2009, Huddersfield FM Ltd clearly breached two conditions in its licence requiring it to comply with the requirements of its Format: licence conditions 2(1) and 2(4) contained in Part 2 of the Schedule to its licence. The new holder of the licence admitted these contraventions.

The recordings of output from June 2009 however demonstrate that the station's new owners have now recruited presenters and news staff to carry out the Format requirements. Local news is strongly in evidence, running completely through daytime on weekdays. The news ranged from local health issues, accidents, trials, and politics to sport.

Local news on the two weekdays monitored was updated and/or re-written through the day, and at times the newscaster joined the presenter within general programming. The Saturday news bulletin was clearly recorded and played out each hour during the morning. Ofcom's Localness Guidelines¹ advise that recorded news bulletins should be exceptional rather than the norm and while this does not raise particular concerns, it is an issue that will be discussed further with the licensee.

The music on the station was drawn from a wide range of genres (from James Morrison and Abba to Lily Allen and Justin Timberlake). This satisfies the requirement for "broad music."

Information was in evidence throughout daytime programming, such as presenter banter centring on Huddersfield along with weather reports and local traffic as well as 'whats-ons'. Listener participation, with callers to daytime programmes as well as the *Friday Night Party* programme, adds to the local 'feel' of the station. The Asian programming demanded by the Format was not aired during the days monitored. The previous owner ran a weekly Asian programme, and Ofcom is in discussion with the new owner concerning the particular requirement. The new owner has confirmed that this requirement will be met.

The recordings show that Pennine FM is now operating within its Format under its new owners. In such circumstances, while it is formally recording a breach of two licence conditions for the period of 17 April to 12 May 2009 (inclusive), Ofcom believes it is not appropriate to take any further regulatory action.

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to Pennine FM's Licence

¹ These Guidelines are available at: <http://www.ofcom.org.uk/radio/ifi/rbl/car/localness>

Fairness and Privacy cases

Upheld

Complaint by Mr M

Rabbit Chat and Date, Teletext, 5 July 2008

Summary: Ofcom has upheld this complaint of unfair treatment and unwarranted infringement of privacy in the broadcast made by Mr M.

Rabbit Chat and Date is a user-generated commercial chat and dating service which enables contributors to send in photographs and text messages for broadcast in conjunction with the contributor's pseudonym and/or box number. Mr M complained that he had been treated unfairly and that his privacy had been infringed by the Rabbit service when his pseudonym and box number were broadcast in conjunction with a text message he had not sent and which unfairly represented both his views on the Rabbit service and the sexuality of those from whom he was seeking a response.

In summary Ofcom found that:

- Mr M was treated unfairly in that a text message he submitted to the Rabbit service for broadcast was substituted for one which unfairly represented both his opinion of the service and the type of person he was inviting to respond to his text message.
- Mr M's privacy was unwarrantably infringed in the programme as broadcast in that a text message he had sent to the Rabbit service was substituted for a text message which misrepresented his sexual preferences and then broadcast along with his pseudonym and box number without his consent and there was no evidence to suggest that this infringement was warranted.

Introduction

Rabbit Chat and Date (the "Service") is a user-generated commercial chat service which allows viewers to send text messages and photographs for broadcast. Contributors pay fees for text messages to appear on the screen and, if they wish, to submit photographs of themselves which are shown on another part of the screen for approximately 20 seconds with an accompanying text message from the contributor. Contributors are identified on screen by a "box number" (a six digit number) and a pseudonym (if they have chosen one). In order to make contact with each other, contributors pay another fee to send a text message to the box number shown on screen of any other contributor whom they wish to contact. This text message is received by the Service which passes it on to the intended recipient. The Service does not reveal the personal details of the sender to the recipient, rather the sender is identified by his or her box number and pseudonym (if applicable).

The Service is moderated by a team of "text jockeys". Text messages can be accepted and sent to air, edited and sent to air or rejected. The edit facility is provided so the text

jockeys can make minor amendments to text messages that, for example, include an offensive word, but are otherwise acceptable.

During the broadcast on 5 July 2008, the following text message from a contributor was shown as part of the on-screen chat:

“GOODCHOICE - I love this page. Thanks for keeping me entertained. Gay guys, text me now. mwah! (103646)”

Ofcom received a complaint from Mr M whose Service pseudonym and box number were “Goodchoice” and “103646”. Mr M complained that he was treated unfairly in the programme as broadcast and that his privacy had been unwarrantably infringed in the broadcast of the programme.

The Complaint

Mr M’s case

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

- a) The programme makers changed the text message that he had sent and replaced it with one that made it appear that he was gay and looking for other gay men to date.

By way of background, Mr M said his original text message to the programme was:

“This page is rubbish ave been after bi girls 4 weeks + got nothing cud av flown 2 amsterdam wa the money ave spent.”

In summary, Mr M complained that his privacy had been unwarrantably infringed in the programme as broadcast in that:

- b) The programme left viewers with the impression that he was gay.

Teletext’s case

- a) In response to Mr M’s complaint of unfair treatment Teletext accepted that the text message Mr M sent to the Service read:

“This page is rubbish ave been after bi girls 4 weeks + got nothing cud av flown 2 amsterdam wa the money ave spent.”

According to Teletext, this text message was considered inappropriate for broadcast and was therefore rejected. Teletext said that, in accordance with the terms and conditions of the Service, Mr M was informed of this and charged for the text message and that in response Mr M then texted the following message:

“Eye but u still charged me 4 it u minimum wage loser go + fuck yer self ya fuckin muppet.”

Teletext acknowledged that the text message which was broadcast was as follows:

“GOODCHOICE - I love this page. Thanks for keeping me entertained. Gay guys, text me now. mwah! (103646)”

Teletext said that after receiving the complaint its head of compliance visited the offices of its moderator to ensure that it met the standards expected by Teletext. The broadcaster said that it found no operating problems with the moderator’s text editing functions in use at the time of the incident or otherwise.

Teletext said it believed that it was most likely that the text message complained of had been sent to air deliberately by the text jockey after he was goaded by Mr M’s offensive language. The broadcaster said that the text jockey had left the employment of its moderator and it had had no direct contact with him. Teletext said that its training of text jockeys now includes a session on not taking any text messages personally and that all text jockeys have been instructed that if any text message is received which appears to be personal to them, they should simply refer the text message to their supervisor.

- b) In response to Mr M’s complaint of unwarranted infringement of privacy in the broadcast, Teletext said that the Service, which uses pseudonyms and box numbers (and prohibits the use of real names), was by its very nature private unless the sender made a deliberate choice to let people know his pseudonym.

Teletext did not believe that the substituted text message gave the impression that Mr M was gay. Rather it argued that the substituted text message gave the impression to anyone who read it that someone using the Service under the pseudonym used by Mr M was gay. Teletext also said that its records showed that no viewer had contacted the complainant in relation to the substituted text message and that therefore Mr M did not appear to have been in a position where anyone would have connected the text message with him or his name.

By way of background, Teletext said that Mr M sent a photograph to the Service and that the photograph was in the carousel of photographs broadcast on 5 July 2008 a full 18 minutes before the substituted text message was broadcast. Teletext explained that photographs are broadcast in quarterscreen and are on air for only 21 seconds.

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 M'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 both parties' written submissions.

- a) Ofcom first considered Mr M's complaint that he was treated unfairly in the programme in that the programme makers changed the text message that he had sent and replaced it with one that made it appear that he was gay and looking for other gay men to date.

Ofcom considered this complaint in light of the requirement on broadcasters in Rule 7.1 of Ofcom's Broadcasting Code (the "Code") to avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also took particular account of Practice 7.6 of the Code which states that when a programme is edited, contributions should be represented fairly.

Ofcom noted that Mr M had sent the Service the following text message for broadcast (the "Original Message"):

"This page is rubbish ave been after bi girls 4 weeks + got nothing cud av flown 2 amsterdam wa the money ave spent."

It noted from Teletext's submission that Mr M had also sent a second text message:

"Eye but u still charged me 4 it u minimum wage loser go + fuck yer self ya fuckin muppet."

It also noted the text message broadcast (the "Substituted Message") was:

"GOODCHOICE - I love this page. Thanks for keeping me entertained. Gay guys, text me now. mwah! (103646)".

Ofcom observed that the Substituted Message included the pseudonym "Goodchoice" and the box number "103646", both of which were unique to Mr M and, without revealing his identity, enabled other contributors to respond to his text messages on screen or to contact him via the Service.

Ofcom recognised that the editing of a programme is an editorial matter for a broadcaster. However, broadcasters must ensure that the programme as broadcast does not result in unfairness to an individual or organisation.

In addressing whether it was unfair for the programme to have edited Mr M's Original Message in the way it did (substituting it for another), Ofcom considered the extent to which the meaning of the Original Message differed to that of the Substituted Message.

Ofcom considered that the Original Message sent by Mr M would have been understood by viewers to indicate that the contributor was dissatisfied with the

results he was receiving from the Service because he had been trying to attract bisexual females to respond to the text messages he had been posting for four weeks with no success.

Ofcom also considered that the Substituted Message broadcast with Mr M's pseudonym and box number indicated that he loved the Service, had found it very entertaining and that he wanted gay men to send him text messages through the Service.

In Ofcom's view, the meanings of the two messages were entirely different. In particular it noted that Mr M's attitude towards the Service and the gender and sexual preferences of the people he was trying to attract, as expressed in the Original Message, were misrepresented.

Taking into account each of the points noted above, Ofcom considered that the Substituted Message unfairly represented both Mr M's views on the Service and the sexuality of those from whom he was seeking a response.

In considering whether Mr M was treated unfairly in the programme as broadcast (through the unfair substitution of the Original Message), Ofcom next considered whether, and if so how, the Substituted Message was linked to him in the broadcast.

Ofcom noted that Mr M was not named and was only referred to on screen via his pseudonym (Goodchoice) and box number (103646) which would not, by themselves, have identified Mr M (as opposed to Goodchoice/103646) to viewers.

Ofcom noted from the submissions, however, that Mr M had submitted a photograph of himself which had been broadcast 18 minutes prior to the broadcast of the Substituted Message. Teletext's practice was to broadcast contributors' box numbers under their photographs, along with a text message from the contributor with or without their pseudonym.

Given the nature of the Service, a chat and dating service, Ofcom considered there was a reasonable chance that some viewers may have seen the broadcast photograph of Mr M, recognised him, noted his box number and/or pseudonym and waited for a text message from 103646 or Goodchoice to be broadcast.

In the circumstances, when the Substituted Message with the pseudonym Goodchoice and box number 103646 was broadcast 18 minutes after the broadcast of Mr M's photograph, those viewers would have associated the Substituted Message (which misrepresented his views and the sexuality of the respondents he was seeking) with Mr M.

In light of these factors, Ofcom found that the broadcast of the Substituted Message resulted in unfairness to Mr M.

- b) Ofcom then considered Mr M's complaint that his privacy had been unwarrantably infringed in the programme as broadcast in that the programme left viewers with the impression that he was gay.

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

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

In considering this head of the complaint, Ofcom took account of Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom considered whether Mr M had a legitimate expectation of privacy in the circumstances in which the Substituted Message with his pseudonym and box number were broadcast in the programme.

Ofcom observed that Mr M was not named in the broadcast, nor was his address or phone number shown, rather he had provided a pseudonym and used a box number through which he could be contacted by other contributors to the Service.

Ofcom also noted that Mr M had actively chosen to submit text messages to the Service. It was Ofcom view that Mr M had consented to Teletext broadcasting on the Service any text messages or photographs which he submitted together with his pseudonym and/or box number.

However, as noted in the Decision at head a) above, Ofcom also considered that the Original Message submitted by Mr M was unfairly edited in a way which replaced the Original Message with the Substituted Message. It was clear to Ofcom that the Substituted Message was not a text message submitted to the service by Mr M and that he had not consented to the broadcast of the Substituted Message with his pseudonym and box number.

Given the reference to sexual preferences in the Substituted Message and the absence of consent from Mr M to its broadcast with his pseudonym and box number, Ofcom considered that he had a legitimate expectation of privacy in relation to the material broadcast.

Ofcom then considered whether Mr M's privacy had been infringed in the broadcast. It noted Teletext had argued that Mr M's privacy was not infringed because he was identified solely by his pseudonym and box number. However, as noted in the Decision at head a) above, Mr M's photograph together with his box number and possibly his pseudonym was broadcast 18 minutes before the broadcast of the Substituted Message. Given the nature of the Service, Ofcom considered that there was a reasonable chance that some viewers may have seen the broadcast photograph of Mr M, recognised him, noted his box number and/or pseudonym and waited for a text message from 103646 or Goodchoice to be broadcast.

In the circumstances, when the Substituted Message with the pseudonym Goodchoice and box number 103646 was broadcast 18 minutes after the broadcast of Mr M's photograph, those viewers would have associated the Substituted Message with Mr M and thought that he was seeking responses from gay men.

Ofcom then went on to consider whether this infringement of Mr M's privacy was warranted.

In Section 8 of the Code "warranted" has a particular meaning. It means that where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

Ofcom did not consider that the content of the broadcast itself provided any evidence that the infringement of Mr M's privacy in the circumstances described above was warranted, for example by any public interest in the material.

Ofcom therefore found that Mr M's privacy was unwarrantably infringed in the broadcast of the programme.

Accordingly, Ofcom has upheld Mr M's complaint of unfair treatment and unwarranted infringement of privacy in the broadcast of the programme.

Upheld

Complaint by Dr Parvinder Singh Garcha and others

Sunrise Radio Network News, Sunrise Radio, 23 September 2008

Summary: Ofcom has upheld this complaint of unfair treatment made by Dr Parvinder Singh Garcha and others.

On 23 September 2008, an edition of *Sunrise Radio Network News* broadcast at 13:00 included an item that referred to forthcoming elections to the ruling committee of the Sri Guru Singh Sabha Gurdwara Sikh Temple in Southall. Mr Gurminder Singh Thind, the leader of an opposition group contesting the elections, raised questions about professional fees of £4 million that had been paid in connection with the building of the Gurdwara.

Dr Garcha, the General Secretary of the Committee of the Gurdwara at the time of the broadcast, and other members of the Committee of the Gurdwara at the time complained that they had been treated unfairly in the broadcast.

Ofcom found that the item made serious allegations about the complainants and that, as a result, it was incumbent upon Sunrise Radio, in the interests of fairness, either to provide the complainants with an appropriate and timely opportunity to respond or to include information about the complainants' previous rebuttals to the allegations. Sunrise Radio's failure to do either, resulted in unfairness to Dr Garcha and the members of the Committee.

Introduction

On 23 September 2008, Sunrise Radio, a local radio station in Southall which serves West London's Asian community, broadcast an edition of *Sunrise Radio Network News*.

In this edition, the presenter read out the following news story concerning the Sri Guru Singh Sabha Gurdwara ("the Gurdwara"), a Sikh Temple in Southall:

"Concerns have been raised over money paid to companies to carry out work for the Sri Guru Singh Sabha Gurdwara in Southall. A member of an opposition group wants an independent audit of the temple's accounts to find out what has happened to members' donations. Three groups are standing for election to the temple's ruling committee on 5 October: the Bulls, the Falcons and the Lions. Gurminder Singh Thind from the Lion group explains his concerns."

The programme then included Mr Gurminder Singh Thind, a representative from the Lion group (one of the opposition groups standing for election to the Gurdwara's Committee) saying:

"£17 million was given as the cost of the project and professional fees together. Only through pressure we got to know the professional fees were £4 million. Now, that, if you look at the total cost of the project, works out to be between 20 and 30% depending on which way you look at it. Which then compares to the Royal Institute of

Chartered Surveyors' guidelines for similar projects. The fees should be between 8-12%. Where have these fees gone? Who were they paid to?"

Ofcom received a complaint from Dr Parvinder Singh Garcha, the General Secretary of the Committee of the Gurdwara at the time of the broadcast, that he and Mr B S Keila, Mr H S Kalsi, Mr A Singh, Mr H S Sohi, Mr D S Dokal and Mr S S Johal, members of the Gurdwara's Committee at the time of the broadcast ("the members of the Committee"), were treated unfairly in the programme as broadcast.

The Complaint

Dr Garcha's case

By way of background, Dr Garcha said that he and the members of the Committee were part of the group that voted on and made the decisions in respect of the financing and construction of the Gurdwara.

In summary, Dr Garcha complained that he and the members of the Committee were treated unfairly in the programme as broadcast in that:

- a) The programme, which took place in the run up to elections to the Committee of the Gurdwara, was unfair in that it portrayed the complainants as unable to manage the Gurdwara's finances properly, in spite of the following available information:
 - i) the expenditure on the Gurdwara was monitored by quantity surveyors appointed by the Gurdwara and by the Allied Irish Bank (which made finances available for the project);
 - ii) an independent audit was carried out by Blackstone Franks, a leading firm of city auditors, who had reported to the trustees of the Gurdwara that the audit had been satisfactory;
 - iii) although the Gurdwara was aware of the RICS' guidelines, the construction of the Gurdwara was a very unusual project due to the design and procurement changes which the audit confirmed. The Gurdwara was opened in March 2003 at a total cost of £18.7 million. However there was a settlement reached for the construction of the project to be £13.35 million;
 - iv) the Gurdwara was probably the largest development project in Southall;
 - v) the loan outstanding for the construction of the Gurdwara was now £2.5 million, which was a remarkable achievement; and
 - vi) full accounts had been published on the Gurdwara's website.
- b) The programme did not give them an opportunity to respond to the allegations concerning expenditure on construction of the Gurdwara.

Dr Garcha said that the broadcaster ought to have been aware from its records that at the time of broadcast and since October 2000 he was the General Secretary of the Gurdwara. However, at no time did the programme makers contact him.

Sunrise Radio's case

Sunrise Radio responded to heads a) and b) of Dr Garcha's complaint that he and the members of the Committee were treated unfairly in the programme as broadcast together. In summary, Sunrise Radio responded as follows:

a) and b)

Sunrise Radio said the background to the programme was the Committee elections to the Gurdwara. The elections were of relevance and interest to the local Sikh community and Sunrise Radio had decided to cover them. Part of the public interest in the elections was the ongoing public debate over the building costs and the financial management of the Gurdwara building project.

Sunrise Radio explained that the elections for the Committee of the Gurdwara were scheduled for 5 October 2008 and its coverage would be ongoing, allowing all groups to air their manifestos. The coverage culminated on 3 October 2008 with two news stories which included interviews with all the three groups standing. While it was the station's intention to give equal coverage to all the groups standing for election, the news editor did not feel that each broadcast needed to reflect all perspectives. Sunrise Radio explained that it did not set out to favour any group standing in the elections and believed that it did not do so.

Sunrise Radio said that the item complained of was drawn from a press release issued by Mr Thind's Lion opposition group on the evening of 22 September 2008. The press release repeated allegations that had been made before and that were already in the public domain. Sunrise Radio explained that the story raised allegations that had been raised before, but which were being raised again because they had resonance within certain parts of the community.

Sunrise Radio said that immediately after the broadcast of the programme, Dr Garcha contacted the station's news desk objecting to the story on the basis that it was biased against his group. He said that he should have been given the opportunity to respond.

Sunrise Radio said that Dr Garcha's complaint was escalated immediately and that, following various conversations, Dr Garcha provided an interview rebutting the allegations made regarding the financial management of the building project. Two extracts from the interview were broadcast during Sunrise Radio's news the following day, 24 September 2008, in bulletins at 06:00 and 09:00. Sunrise Radio said it had therefore provided a specific opportunity for Dr Garcha to rebut the allegations made by Mr Thind, which he had done and which had been broadcast. Sunrise Radio said that Dr Garcha would have been given the opportunity to respond anyway, however his complaint provided an opportunity to respond the very next day.

Sunrise Radio said that it was very aware of the strength of feeling in the community on issues such as the one aired on the programme complained of. This was why Sunrise Radio covered this type of story and, in over 20 years of broadcasting to the Asian community, Sunrise Radio said that it had always remained neutral and achieved a fair balance on difficult issues of religion and politics.

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.

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

a) and b)

Ofcom considered together the complaint at head a) that the programme, which took place in the run up to elections to the Committee of the Gurdwara, was unfair in that it portrayed the complainants as unable to manage the Gurdwara's finances properly in spite of available information and the complaint at head b) that the programme did not give the complainants an opportunity to respond to the allegations concerning expenditure on construction of the Gurdwara.

In considering the complaints, Ofcom had regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Ofcom Broadcasting Code ("the Code"). Ofcom took account of Practice 7.9 of the Code, which states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. It also took account of Practice 7.11, which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

In Ofcom's view, the clear inference arising from the broadcast was that the complainants had not managed the Gurdwara's finances properly. This was a serious allegation of wrongdoing or incompetence on the part of the Committee and was made more serious because of the sensitive time it was broadcast, namely the build up to the elections to the Committee of the Gurdwara. Ofcom noted that the item was broadcast with no other information to counter the allegations being included.

Ofcom noted that Dr Garcha said the allegations had been raised during the 2006 elections and had been answered, with a Q&A document being sent out to all members of the Gurdwara. Ofcom also noted the information listed at head a)i) to vi) in the complaint, which Dr Garcha said was in the public domain.

Ofcom also took into account Sunrise Radio's acknowledgment that the allegations had been raised before and were the subject of ongoing public debate; that this was a long running and difficult topic that had generated considerable interest and polarised views; and that the matter had been raised before and was being raised again because of its resonance in certain parts of the community.

In Ofcom's view it was clear from the information provided by both parties that the arguments on both sides of the debate had already been well rehearsed and were easily available to Sunrise Radio at the time of broadcast.

In the circumstances, Ofcom was concerned that when airing the allegations against the complainants, the programme made no reference to the complainants' previous responses. By omitting to do so, in Ofcom's view, Sunrise Radio did not take reasonable care to satisfy itself that material facts had not been disregarded or omitted in a way that was unfair to the complainants and that its failure to do so resulted in unfairness to the complainants.

Ofcom noted Sunrise Radio's explanation that the programme was part of its ongoing coverage of the elections and that the news editor had decided each programme need not reflect all perspectives. However, as set out above, Ofcom took the view that as serious allegations were made in the broadcast about Dr Garcha and the members of the Committee, it was incumbent on Sunrise Radio to provide them with an appropriate and timely opportunity to respond to the allegations. In Ofcom's view, Sunrise Radio failed to provide either an opportunity for Dr Garcha or other members of the Committee to respond or to include other information that was relevant to the issue and, by Sunrise Radio's own admission, already in the public domain. Ofcom noted Sunrise Radio's statement that the complainants were always going to be given an opportunity to respond to the allegations, but that by contacting Sunrise Radio on the day of broadcast, Dr Garcha was given an immediate opportunity to respond on behalf of the complainants, which resulted in two broadcasts the following morning. Ofcom noted that in that context and, particularly given the rebuttal broadcasts the following day, overall Sunrise Radio considered its coverage had been fair. However, in Ofcom's view, given the seriousness of the allegations, the potential impact and the timing in relation to the imminent elections, the failure to achieve fairness in the original broadcast was not remedied by the two broadcasts the following day when different people were likely to be listening.

Taking into account all of the above, Ofcom considered that the programme included serious allegations about Dr Garcha and the members of the Committee. As a result of Sunrise Radio's failure either to take reasonable care to satisfy itself that material facts had not been disregarded or omitted in a way that was unfair to the complainants or to provide them with an appropriate and timely opportunity to respond to the allegations, the programme resulted in unfairness to the complainants.

Accordingly, Ofcom has upheld Dr Garcha's complaint on his own behalf and on behalf of Mr B S Keila, Mr H S Kalsi, Mr A Singh, Mr H S Sohi, Mr D S Dokal and Mr S S Johal of unfair treatment in the broadcast of the programme.

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

Not Upheld

Complaint by Mrs Suzie Coleman

The Jeremy Kyle Show, ITV1, 1 December 2008

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

On 1 December 2008, ITV broadcast an episode of *The Jeremy Kyle Show* which included an item entitled “*I won’t let you have a black boyfriend – I don’t want black grandchildren*”. Mrs Suzie Coleman contributed to this part of the programme. She said that she was a racist and defended her views by saying that her feelings about different races stemmed from one of her family members being assaulted by someone from an ethnic minority.

Mrs Coleman complained that she was treated unfairly in the programme and that her privacy was unwarrantably infringed in the making of the programme.

In summary Ofcom found the following:

- Ofcom found that Mrs Coleman was aware of the general nature and purpose of the show. She initiated contact with the programme makers and discussed racism with them prior to the programme being filmed. Furthermore, Ofcom considered that this edition was consistent with the programme’s established theme and format.
- Ofcom found that the programme was edited fairly and used Mrs Coleman’s own words to explain that she was racist and why.
- Ofcom found that Mrs Coleman was given several opportunities to respond to the allegations of racism made against her. She explained the basis of her views and the fact that she was not happy with the way she felt.
- Ofcom found that Mrs Coleman had no legitimate expectation of privacy, having volunteered private information to the programme makers in the knowledge that the information was given with a view to broadcast.

Introduction

On 1 December 2008, ITV broadcast an episode of *The Jeremy Kyle Show*, a chat show programme hosted by Jeremy Kyle in which guests from the general public are invited to participate. This edition of the programme included an item entitled “*I won’t let you have a black boyfriend – I don’t want black grandchildren*”. Mrs Suzie Coleman contributed to this part of the programme. She said that she was a racist and defended her views by saying that her hatred of different races stemmed from one of her family members being assaulted by someone from an ethnic minority.

Mrs Coleman’s daughter, Jodie, also contributed to the programme and defended her relationship with a black man to her mother and discussed other times when her

mother's racism had affected her. Jodie stated that her mother had tried to break up her relationship several times in the past and that she feared that racist insults would be shouted by her mother whenever she was on the phone to her boyfriend. During this part of the programme, Jeremy Kyle told Mrs Coleman to leave the stage and stated that he had "*spent twenty minutes trying to understand her*", but didn't want to listen to her any more. Shortly afterwards, Mrs Coleman was shown returning to the stage where she remained until the end of the item.

Mrs Coleman complained to Ofcom that she was treated unfairly in the programme and that her privacy was unwarrantably infringed in the making of the programme.

The Complaint

Mrs Coleman's case

In summary, Mrs Coleman complained that she was treated unfairly in the programme in that:

- a) She was misled as to the nature and purpose of the programme.

Mrs Coleman said that she had agreed to contribute to the show under false pretences. In particular, Mrs Coleman said that:

- i) She would not have taken part in the programme if she had known that it was to be about racism.
- ii) She was under the impression that she would get a fair chance to air her views, which did not happen.
- iii) Jeremy Kyle's behaviour towards her was intimidating, unnerving and contrary to her expectations.

- b) The programme was edited unfairly to portray Mrs Coleman as a racist, which she was not. Mrs Coleman said that the programme depicted her as a "complete racist" and was edited in such a way as to make her "look worse".

- c) She was not given an opportunity to respond to the allegations made against her.

Mrs Coleman said that, in addition to the assault on a member of her family, which resulted in her holding racist views, she had also explained to a researcher for the programme her own violent past, which added to her anxieties. She was told that Jeremy Kyle would know about this and that he would prompt her to get her side of the story across. Mrs Coleman said that this did not happen and that she was judged on the programme and not given the chance to tell her side of the story.

- d) She withdrew her consent to appearing in the programme.

Mrs Coleman said that she had told the programme makers not to broadcast the programme because she had not been able to get her side across. The programme was broadcast nevertheless.

In summary, Mrs Coleman complained that her privacy was infringed in the making of the programme in that:

- e) She was asked very private questions about her past and her family by the programme makers.

ITV's case

By way of background, ITV Limited ("ITV"), responsible for the compliance of the programme on behalf of the ITV network ("ITV1"), said that the theme of this episode of the programme was racism. The first part of the programme had focused on a contributor called Shah, who gave details of the long-term racist abuse that he had suffered. The second and third parts of the programme were about the complainant, Mrs Coleman, and the problems in her relationship with her 16 year old daughter, Jodie, caused by Mrs Coleman's racist attitudes.

In summary, ITV responded to Mrs Coleman's complaint of unfair treatment as follows:

- a) In relation to Mrs Coleman's complaint that she was misled as to the nature and purpose of the programme ITV responded as follows:
 - i) ITV said that Mrs Coleman had initiated contact with the programme makers and said she wanted to appear on the programme to discuss her unhappiness about her teenage daughter's relationship with a black man.

ITV said that the programme's researchers contacted Mrs Coleman's son and her neighbour prior to the recording of the programme. Both confirmed that they knew Mrs Coleman was appearing on the show on account of her views about Jodie's boyfriend being black.

ITV said that Mrs Coleman had spoken openly about her racist views to one of the programme researchers the night before the programme and that after this discussion she could not have been left in any doubt as to what the key issue in the programme would be. Mrs Coleman had also confirmed that everything she had told the programme researcher could be relayed to Jeremy Kyle and could be discussed on the programme and that none of it needed to be kept private.
 - ii) ITV said that Mrs Coleman was given the opportunity to air her views on the programme and she explained her reasons for holding her particular views about black people.
 - iii) ITV said that before the recording of the programme, the producer told Mrs Coleman that Jeremy Kyle would take a very tough stance against her racist views and had made sure that she had seen previous editions of the programme. Mrs Coleman was also told in advance what format the programme would take. In particular, she was told a debate would be encouraged and that there would be a surprise element to the programme. ITV said that Mrs Coleman signed all the relevant consent forms.

ITV said that, in the context of Mrs Coleman's views, which would have been offensive to most viewers, Jeremy Kyle's treatment of her was warranted. ITV said that it did not accept this was done in an intimidating way. Furthermore, as Mrs Coleman was a regular viewer of the programme ITV said that she would

have been aware of how Jeremy Kyle behaved towards participants who held controversial and offensive opinions.

- b) In relation to Mrs Coleman's complaint that footage of her was edited unfairly to portray her as a racist, ITV said that the unedited footage of her contribution to the programme contained no material that contradicted the position taken by Mrs Coleman in the broadcast. The views expressed by her during the course of the programme could fairly be described as racist and she herself accepted that categorisation.
- c) In response to Mrs Coleman's complaint that she was not given an opportunity to respond to the allegations made against her, ITV said that Mrs Coleman explained the history behind her racist views to the programme makers. She had made it clear on two occasions that she was not happy about the way she felt since she had not felt that way prior to the assault on a member of her family. Furthermore, ITV said that after Mrs Coleman was asked to leave the stage by Jeremy Kyle she was able to return so that she could bring her friend on stage to support her and make the point that she was "*not a bad person*". Mrs Coleman also made it clear that she did not condone the sort of violent abuse that had been suffered by Shah, the previous guest on the programme. ITV also said that Mrs Coleman expressed no link between her own violent past and her reasons for holding the views she did or her reasons for wanting to appear on the programme. Consequently, Jeremy Kyle was under no requirement to ask her about her own violent past or for it to be referred to in the programme.
- d) In response to Mrs Coleman's complaint that she withdrew her consent to appear in the programme, ITV said that Mrs Coleman contacted the programme makers on two occasions after the recording of the programme but she did not seek to withdraw her consent to appear in the programme. ITV said that she had made enquiries about whether the programme would be repeated and had requested that her place of work not be mentioned in the programme. However, at no time did Mrs Coleman mention to the programme makers that she wanted to withdraw her consent.

In summary, ITV responded to Mrs Coleman's complaint of unwarranted infringement of privacy in the broadcast programme as follows:

- e) ITV said the very nature of *The Jeremy Kyle Show* involved participants talking about personal aspects of their lives. At no point in the research process did Mrs Coleman object to answering any of the questions put to her by the programme's researchers. In addition, ITV said that Mrs Coleman confirmed that there was no information that she had provided which could not be given to Jeremy Kyle. She had, therefore, given informed consent. Although the details of Mrs Coleman's story and her relationship with her daughter were clearly personal and private, ITV said that such information was entirely relevant to the programme, since Mrs Coleman wanted to address the difficulties she said had arisen between her and her daughter.

Mrs Coleman's Comments

In summary, Mrs Coleman commented on ITV's statement as follows:

- a) With reference to the complaint that she was misled, Mrs Coleman said that the concern she had actually wished to raise on the programme was that her daughter's boyfriend was ten years older than her daughter and married with a child, but it was not until the last moment before recording that she was informed she could not mention this. Furthermore, Mrs Coleman said that a researcher on the programme had lied to her in saying that Jodie wanted to participate in the show to resolve matters with her mother. She also complained that Jodie was kept apart from her before the show. Mrs Coleman said that at the time she was asked to sign the consent form for the programme, the only matter that was drawn to her attention was that she was not to participate in any other media before transmission.
- b) As regards her complaint that the footage of her was unfairly edited, Mrs Coleman said that she was "egged on" by the programme's researchers to express the views she did.

ITV's Comments

In summary ITV responded to Mrs Coleman's comments as follows:

- a) In response to the complaint that Mrs Coleman was misled, ITV said that in her detailed conversation with the programme's researcher before the programme, Mrs Coleman focused only on the fact that her daughter's boyfriend was black. ITV said that Mrs Coleman was told by a researcher for the programme that her daughter would like to work on improving her relationship with her mother, but that first she wanted to discuss her mother's racism. ITV confirmed that Mrs Coleman and her daughter were not together and that they had been kept apart before recording at the request of Jodie.

ITV said that the programme's producer recalled that she took Mrs Coleman through the consent form and explained that the contract meant she could not take part in any other media before transmission, talked her through the remainder of the form and explained its contents. Mrs Coleman was left with the form so that she could look over the document herself.

- b) In response to Mrs Coleman's complaint of unfair editing, ITV said that while backstage the programme's researchers would talk through the main parts of a guest's story with them and in order to put them at ease before they went on stage, but that Mrs Coleman was not "egged on" to say anything she had not already said herself to the production team.

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.

Mrs Coleman'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 recordings of the programmes as broadcast and transcripts, both parties written submissions and recordings and transcripts of unedited material.

Unfair Treatment

- a) Ofcom first considered Mrs Coleman's complaint that she was misled as to the nature and purpose of the programme.

In considering this complaint, Ofcom took into account Rule 7.1 of the Ofcom Broadcasting Code ("the Code"), which states that broadcasters must avoid unjust or unfair treatment of individuals in programmes. Ofcom also took into account each of the measures set out in Practice 7.3 of the Code. This provides that, where a person is invited to contribute to a programme, they should normally, at an appropriate stage:

- be told the nature and purpose of the programme, what the programme is about, and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first broadcast;
- be told what kind of contribution they are expected to make;
- be informed about the areas of questioning and, wherever possible, the nature of other likely contributions;
- be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness
- be told the nature of their contractual rights and obligations and those of the programme maker and broadcaster in relation to their contribution; and
- be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it.

Practice 7.3 of the Code goes on to set out that taking these measures listed above is likely to result in the consent that is given being "informed consent".

It is important to note that potential contributors to a programme should be given sufficient information about its nature and purpose to enable them 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 not only look at the information that was available to the contributor before the recording of the contribution but also consider the contribution itself.

In making a decision on this head of complaint, Ofcom considered in turn each of the three allegations specified by Mrs Coleman in her complaint.

- i) As regards the complaint that Mrs Coleman would not have taken part in the programme if she had known it was to be about racism, Ofcom noted first that Mrs Coleman had initiated contact with the programme and engaged in

considerable dialogue with a programme researcher in which racism was discussed at length and in detail, including Mrs Coleman's explanation of why she felt the way she did about black people. Ofcom also noted Mrs Coleman's complaint that the concern she really wished to raise on the programme was that Jodie's boyfriend was 10 years older than her and married. Ofcom considered that Mrs Coleman, having engaged in a comprehensive discussion with the researcher, was fully aware of the topics to be discussed on the programme. Ofcom also considered that it was apparent from the programme itself that, although Mrs Coleman was at times clearly uncomfortable, she was an active and willing participant in the discussion. In these circumstances, Ofcom was satisfied that Mrs Coleman had a sound understanding of the topics to be discussed in the programme.

- ii) As regards the complaint that Mrs Coleman did not get a fair chance to air her views, Ofcom noted that Mrs Coleman was given numerous opportunities to express her views and considered that these were given ample prominence in the programme itself. She was also afforded the opportunity to explain the basis of her views. At one point in the programme, Mrs Coleman said by way of explanation of her views:

"Basically an ethnic minority assaulted a member of family so therefore I do not like them at all."

Ofcom noted that Mrs Coleman volunteered this explanation freely and that she continued to rely on this rationale throughout. Ofcom noted she said:

"I have my rights, I have my opinions, I can't help the way I feel."

Later in the programme there was the following dialogue between Mrs Coleman and her daughter:

Jodie: *"You don't need to be racist but you are!"*

Mrs Coleman: *"You know perfectly well why I am. You know perfectly well why."*

Ofcom noted that Mrs Coleman repeatedly said she could not help the way she felt about black people. Consequently, it appeared to Ofcom that Mrs Coleman was given sufficient opportunity to explain her position and her reasons for feeling the way she did.

- iii) Ofcom next considered the complaint that Jeremy Kyle's behaviour towards Mrs Coleman was intimidating, unnerving and contrary to her expectations. Ofcom took into account the usual format of the programme and considered that Mrs Coleman, who had viewed previous editions of the programme, might well have expected her views to be challenged, and potentially aggressively so. Ofcom also noted that, in addition to her general awareness of the programme, Mrs Coleman was given specific prior warning of this prospect by the programme makers before filming, as a result of the views she was going to express on the programme. Ofcom noted that at one point Jeremy Kyle said to her:

"Let me tell you something lady, when they told me about this show I couldn't in my wildest dreams have thought that I would have anything to say to somebody who I consider to be uneducated, vile mouthed and at best, ok, a stain on this country, so I've had it, why don't you get your racist backside off my stage and away from this building. Get lost."

Later he said:

"I'm surprised you've got any friends at all whatever colour of their skin."

Ofcom considered that Jeremy Kyle's behaviour towards Mrs Coleman, both in relation to the above examples and other comments he made in the programme, was robust and, at times, very challenging. However, Ofcom also considered that the views Mrs Coleman was expressing would be likely to be considered by many viewers to be offensive and unpalatable and noted the warning she was given by the programme researcher that Jeremy Kyle would be likely to take a tough stance regarding her views. In all the circumstances, Ofcom found that Jeremy Kyle's behaviour towards Mrs Coleman did not result in unfairness to her.

Taking all the above factors into account, Ofcom found that Mrs Coleman was not misled about as to the nature and purpose of the programme and was not treated unfairly in this respect.

- b) Ofcom then considered whether the programme was edited unfairly so as to portray Mrs Coleman as a racist.

In considering this part of the complaint Ofcom took account of Practices 7.6 and 7.9 of the Code. Practice 7.6 states that when a programme is edited, contributions should be represented fairly. 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 examined both the programme as broadcast and the unedited version and took the view that the broadcast programme did not omit any footage of Mrs Coleman that was likely to have materially altered the viewers' perception of her.

Ofcom noted the following comments made by Mrs Coleman during the course of the broadcast programme:

Jeremy Kyle: *"You said, I'm, I want to apologise to the audience, actually, you said, "if my daughter brought a black grandchild back to my house I'd rather keep a monkey in my kitchen."*

Mrs Coleman: *"Yeah."*

Jeremy Kyle: *"That is deliberately abusive and racist and just vile."*

Mrs Coleman: *"You asked me my opinion. I told you."*

Mrs Coleman repeated views of this nature throughout the programme and, in Ofcom's view, the programme therefore portrayed Mrs Coleman as being racist on the basis of her own confirmation that this was the case.

In these circumstances Ofcom found that the programme was not unfair to Mrs Coleman in this respect.

- c) Ofcom then considered Mrs Coleman's complaint that she was not given an opportunity to respond to the allegations made against her.

In considering this part of the complaint Ofcom took account of Practice 7.11 of the Code, which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom considered that the allegation of racism was a serious one to which Mrs Coleman was entitled to an opportunity to respond.

Ofcom noted the following extract from the programme:

Jeremy Kyle: *"What's your stance on this? What's your story?"*

Mrs Coleman: *"Basically an ethnic minority assaulted a member of family so therefore I do not like them at all."*

Later in the programme there was the following exchange:

Jeremy Kyle: *"Why on earth would you then lead yourself to judge everybody who's not the colour that you are and label them the same?"*

Mrs Coleman: *"Because unfortunately the situation that it left me in was the way I felt, cannot help the way I feel."*

Although, as set out under decision head a) iii) above, Mrs Coleman was questioned very robustly about her views, Ofcom considered that the allegation of racism was put to her a number of times, both by Jeremy Kyle and by her daughter, and she was able to give her explanation as to why she felt the way she did and the fact that she was not happy about the way she felt. Ofcom found therefore that Mrs Coleman was given an appropriate opportunity to respond to the allegation made against her.

Ofcom found no unfairness to Mrs Coleman in this respect.

- d) Ofcom then considered Mrs Coleman's complaint that she withdrew her consent to appear in the programme.

In considering this complaint, Ofcom took into account Practice 7.3 of the Code, as set out under decision head a) above.

Ofcom considered, as noted above, that the broadcast of the programme was in line with the information she was given before agreeing to take part and that no significant changes had subsequently arisen. Ofcom concluded that it was

reasonable for the programme makers to have believed that the consent provided by Mrs Coleman was informed consent and that, in the absence of any significant changes to the programme or her contribution, that consent remained valid.

Privacy

- e) Ofcom finally considered Mrs Coleman's complaint that her privacy was unwarrantably infringed in the making of the programme in that she was asked very private questions about her past and her family by the programme makers.

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

Ofcom first considered whether Mrs Coleman had a legitimate expectation of privacy in relation to her discussions with the programme makers before the programme was recorded. Ofcom noted that Mrs Coleman volunteered information about herself and her family, some of which was sensitive and of a private nature, to the programme makers prior to the programme being filmed. However, Ofcom also noted that, as set out under decision head a) above, she gave informed consent for her participation in the programme. In these circumstances Ofcom considered that she did not have a legitimate expectation of privacy in relation to her conversations with the programme makers prior to the programme being recorded.

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

Accordingly, Ofcom has not upheld Mrs Coleman's complaint of unfair treatment in the programme and unwarranted infringement of privacy in both the making and broadcast of the programme.

Not Upheld

Complaint by Mrs Tina Jenkins

The Murder of Billie-Jo: Siôn Jenkins' Story, Channel 4, 15 August 2008

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

This programme looked at the new life of Mr Siôn Jenkins, who was convicted for the murder of his foster daughter, Billie-Jo, in 1988. Mr Jenkins was released in 2006 after two appeals and two retrials which had failed to return a verdict. Mr Jenkins and his wife, Mrs Tina Jenkins, contributed to the programme and footage of Mrs Jenkins was shown. Both Mr and Mrs Jenkins were shown asking the programme makers to stop filming and to leave their home. Footage of the interior of their home, taken after the request to stop filming, and of the programme makers leaving, was included in the programme as broadcast.

Mrs Jenkins complained that she was treated unfairly in the programme and that her privacy was unwarrantably infringed in the making and broadcast of the programme.

Ofcom found as follows:

- Ofcom considered that Mrs Jenkins had given her informed consent for her participation in the programme and that the contributions of others in the programme, while some reflected contrary viewpoints to those of Mr Jenkins, created no unfairness to Mrs Jenkins.
- Ofcom considered that the programme portrayed Mrs Jenkins as being supportive to Mr Jenkins and showed them as a close and committed family unit.
- Ofcom was satisfied that Mrs Jenkins had given informed consent for the filming in her home and her contribution to the programme. In these circumstances, Ofcom concluded that Mrs Jenkins did not have a legitimate expectation of privacy with regard to the information filmed and later disclosed in the programme.

Introduction

On 15 August 2008, Channel 4 broadcast a documentary entitled *The Murder of Billie-Jo: Siôn Jenkins's Story*. Mr Siôn Jenkins was convicted of the murder of his foster daughter, Billie-Jo Jenkins in 1998. He was released in 2006 after two appeals and two retrials had failed to return a verdict. The programme followed Mr Jenkins over a period of four months as he prepared to tell his story of the events surrounding Billie-Jo's murder by publishing a book. The programme also explored Mr Jenkins's new life in Portsmouth with his second wife, Mrs Tina Jenkins, and what had led him to decide to tell his story for the first time.

Footage of Mrs Jenkins' contribution to the programme was included which showed her and her husband in their home and talking about how they met. Towards the end of the programme, the programme's producer stated that she had felt uneasy about an aspect

of Mr Jenkins' story which concerned his belief that a man he claimed to have seen in his hallway at time of Billie-Jo's murder was a suspect. The producer was shown in the programme asking Mr Jenkins about the new suspect and why he had changed his mind about who was responsible for Billie-Jo's murder. Mr Jenkins was shown in the programme telling the reporter that he wished the filming to stop. He and Mrs Jenkins were then shown asking the programme makers to stop filming and for them to leave their home. Footage of the interior of Mr and Mrs Jenkins's home, taken after their request to stop filming was made, and of the programme makers leaving the house was included in the programme as broadcast.

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

The Complaint

Mrs Jenkins' case

In summary, Mrs Jenkins complained that she was treated unfairly in the programme in that:

- a) She had not given her "informed consent".

In particular, Mrs Jenkins said that the programme makers had given her an assurance that other contributors to the programme would not be contacted without her knowledge or consent. However, Mrs Jenkins said that this was not adhered to by the programme makers.

- b) Her family life was ignored to misrepresent her husband. Mrs Jenkins said that she would not have participated in the programme other than to support her husband.

In summary, Mrs Jenkins complained that her privacy was unwarrantably infringed in the making and broadcast of the programme in that:

- c) Footage of the interior of her home was filmed and broadcast "deceitfully" by the programme makers. She said that when the programme makers were leaving her house and after it had been made clear to them that she wished filming to stop, the programme makers continued to film and included this footage in the programme.

In summary, Mrs Jenkins complained that her privacy was unwarrantably infringed in the broadcast of the programme in that:

- d) Footage of Mrs Jenkins' first letter sent to Mr Jenkins when he was in prison was included in the programme despite Mrs Jenkins's request for the footage to be withdrawn.
- e) The programme makers had told her that they wished to portray a miscarriage of justice in the programme when this was not the case. Mrs Jenkins said that on no other basis would she have consented to the programme makers entering her home. She also said that she would not have taken part in the programme other than to support her husband.

Channel 4's case

Unfair treatment

- a) In response to the complaint that Mrs Jenkins did not give informed consent for her participation in the programme, Channel 4 said that the programme makers denied that any assurance was given to her that no other contributor would be contacted without her consent. Such a condition would be contrary to the need for editorial independence in the making of broadcast programmes. Channel 4 said that it was clear from the correspondence between Mr Jenkins and the programme makers during the making of the programme that the producer had kept Mr Jenkins informed of any filming that took place with other individuals, such as his publisher and his agent. However, Channel 4 said that this was for the purpose of timing appropriate filming opportunities with Mr Jenkins. In addition, Channel 4 said that the producer had discussed with Mr Jenkins the possibility of interviewing other members of his family, such as his parents, but that Mr Jenkins or Mrs Jenkins were not given any assurance that their knowledge or consent would be sought prior to contacting other contributors.

Channel 4 said that the producer maintained that she explained to Mrs Jenkins in some detail the programme she intended to make and that her explanation tallied with the programme description supplied on the release form¹ and other forms relating to the programme making process which Mrs Jenkins had signed.

- b) In response to the complaint that Mrs Jenkins family life was ignored to misrepresent her husband, Channel 4 said that the programme makers had asked Mrs Jenkins to participate in a programme which was accurately described in the release form she signed.

Channel 4 said that it did not accept that Mrs Jenkins' family life was ignored in the programme or that it was ignored to misrepresent her husband. In the programme, Mrs Jenkins was shown in the kitchen while Mr Jenkins was cooking and later in the garden while he was gardening. She was seen with Mr Jenkins as they discussed the ways in which they believed that they had been unfairly treated by the media. Channel 4 said that Mrs Jenkins was also shown accompanying Mr Jenkins at his publisher's office and in archive footage outside the Royal Courts of Justice. Mrs Jenkins was also shown discussing how she had contacted Mr Jenkins while he was in prison.

Channel 4 said that filming was carried out in the Jenkins's family home and that Mrs Jenkins conducted a guided tour of the home. Although this material did not feature in the programme as broadcast, Mrs Jenkins was, nevertheless, shown as being supportive and the scenes of cooking and gardening illustrated a routine family environment. Mr Jenkins was shown as having made a second marriage with Mrs Jenkins in Portsmouth and the scenes included in the programme of them in their home demonstrated their mutual support and respect towards each other. It was clear from the programme that a happy family life existed.

¹ Channel 4 informed Ofcom that the release form signed by Mrs Jenkins had been mislaid. However, the content of the form as described by Channel 4 was not disputed by Mrs Jenkins.

Channel 4 said that the reason for Mr Jenkins' return to the public eye was the publication of his book "The Murder of Billie- Jo" on the cover of which it was declared: "After three murder trials, my quest to establish the truth of what really happened". In this context, Channel 4 said that it was not unfair for the programme makers to have concentrated in the programme on Mr Jenkins's interviews and the proposals he had made for his publication rather than on his family life with Mrs Jenkins.

Privacy

- c) In response to the complaint that footage of the interior of her home was filmed and broadcast deceitfully, Channel 4 said that the relevant sequence in the programme referred to by Mrs Jenkins in her complaint was nine seconds in duration and showed the producer and the cameraman leaving Mr and Mrs Jenkins's house with the accompanying commentary:

"Things ended badly between Siôn and I."

Channel 4 said that no other material was included in the programme which could be construed as an infringement of privacy. Channel 4 said that the interior filming of Mr and Mrs Jenkins' home complained of, on 4 August 2008, was not carried out deceitfully, as Mr Jenkins had agreed to a final interview and the producer and the cameraman had gone to the Jenkins family home to film it. Furthermore Channel 4 said that Mrs Jenkins had consented to the interior of her home being filmed on several occasions previously and that she had signed a Location Agreement form for filming in the house from "2 May to August 2008". Channel 4 said that Mrs Jenkins was fully aware of the programme makers' presence in her home on 4 August 2008 and that she knew that Mr Jenkins was being interviewed.

Channel 4 said that the interview with Mr Jenkins lasted approximately 40 minutes. Mr Jenkins had requested that the interview be prematurely terminated after the producer said she had one final question to ask. Mr Jenkins's wish to terminate the interview was reiterated after an intervention from Mrs Jenkins, who also asked for the interview to be stopped. Channel 4 said that Mr and Mrs Jenkins's unhappiness stemmed from the producer's line of questioning about the "man in the hall".

After the interview had been terminated, Channel 4 said that the cameraman had left the camera running initially in order to record images of the interior of the house to use as incidental footage. Mrs Jenkins observed that the cameraman was filming and the cameraman responded that he was "getting cutaways" and that "the sound is off, if Siôn presses the button" (that is, the button on his radio microphone transmitter he was wearing). Channel 4 said that it was clear that the camera was still running at this time. Mrs Jenkins' further request that the camera be switched off was acceded to by the cameraman.

Channel 4 said that cameraman had felt justified in turning the camera on again and keeping it on for evidential purposes, as the situation had become increasingly tense and threatening between Mr and Mrs Jenkins and the producer as they expressed their displeasure at the interview with one of the other contributors to the programme

and the erroneous title for the programme that Mrs Jenkins said she had seen on the internet.

Channel 4 said that nothing of the volatile exchange was broadcast in the final programme. The nine seconds of footage used in the programme was of the programme makers leaving the house primarily to cover the producer's comment that things had ended badly. Channel 4 said that the reason for including this footage was to factually reflect what had happened in the final interview without any risk of compromising Mr and Mrs Jenkins's privacy in including any part of the heated exchange itself. Channel 4 said that in line with the assurance given to Mrs Jenkins during the exchange, there was no accompanying sound.

Channel 4 said that it was important for the programme to show that, although "*things ended badly...*", the denouement was peaceful and courteous, as otherwise the viewer would have been left with an abrupt ending to the interview. Channel 4 said that brief footage of the front door being held open as the programme makers left the house was warranted in this context. There was nothing intrinsically private in the footage shown of the hallway and a similar view could be seen by any caller to the Jenkins family's front door. Channel 4 said that, in these circumstances, there was no infringement of privacy in the material as broadcast and if it was, then it was warranted.

- d) As regards the complaint about the inclusion of footage of Mrs Jenkins' first letter to Mr Jenkins while he was in prison, Channel 4 said that Mrs Jenkins had volunteered while being filmed to get the letter and had watched Mr Jenkins read from it. Channel 4 said that Mrs Jenkins had clearly consented on film to its use and this sequence was shown in the programme. It also said that the letter was referred to, albeit not quoted from, in Mr Jenkins's book. Therefore, its existence was already in the public domain prior to the broadcast of the programme.

Channel 4 said that in order to fairly represent Mr and Mrs Jenkins' relationship it was important to explain how they met and that this sequence, filmed in response to Mrs Jenkins' suggestion, handled this issue sensitively and fairly. Channel 4 said that it was clear that any privacy in the letter was waived by Mrs Jenkins when she allowed it to be filmed and quoted from. The letter and its contents, Channel 4 said, ceased being private once and for all when the initial consent was granted.

- e) Channel 4 finally responded to Mrs Jenkins' complaint that she consented to the programme makers entering her home because they told her the programme would portray a miscarriage of justice. Channel 4 said that the producer had explained to Mr and Mrs Jenkins in some detail the programme she intended to make and that the broadcast programme did not deviate from the programme description on the release forms. Channel 4 said that the programme did not contradict the fact that Mr Jenkins suffered a miscarriage of justice. The details of his arrest, trials, imprisonment and acquittal were narrated in the programme and Mr Jenkins was shown attending a Miscarriage of Justice Conference in Glasgow. Channel 4 said that it would have been clear to viewers that Mr Jenkins considered himself to be part of the miscarriage of justice "fight".

Channel 4 said that the programme showed Mr Jenkins in the process of producing his book and the interviews discussed with him the potential suspects he wrote

about. It showed the final stages of preparation leading to the publication of his book and his arrival at a conclusion that “the man in the hall” murdered his foster daughter. All of this, Channel 4 said, was consistent with the programme description given to the Jenkins family and consistent with a programme about a miscarriage of justice case.

Mrs Jenkins’ comments in response

In response to the broadcaster’s statement, Mrs Jenkins made the following comments that were relevant to her complaint:

Unfair treatment

- a) Mrs Jenkins said that the reason for her dissatisfaction with the programme was that she had been told that no other contributor would be consulted for the programme without her husband’s consent. She said that she was not made fully aware of the nature of the programme and was, at all times, led to believe that the programme was about how someone who had suffered a miscarriage of justice rebuilt their life. Mrs Jenkins said that Mr Jenkins’ book was not the reason for contributing to the programme.

Privacy

- b) Mrs Jenkins said that she had given the programme makers a guided tour of the family home at the beginning of the filming process as a gesture of goodwill. She said that when she asked the programme makers to stop filming during the final interview with Mr Jenkins and to leave the house, they had refused. The producer continued to question aggressively and filming continued deceitfully, with the camera at the cameraman’s side so it appeared that he had stopped.

Mrs Jenkins said that she was totally unaware of the programme maker’s presence in her house on 4 August 2008. She said that they were not invited in, but had persuaded her “emotionally drained husband” to be interviewed. Mrs Jenkins said that the cameraman had used a ploy as he said that he was in desperate need to use the toilet.

Mrs Jenkins said that her unhappiness did not stem from the line of questioning, but that she had been shocked to see the programme makers in her house and to hear the producer’s tone of voice to her husband. She said that the cameraman had enough incidental footage of the house and she added that there was something “intrinsically private” in the pictures shown of the hallway.

Channel 4’s final statement

In summary, Channel 4 responded as follows:

Unfair treatment

- a) Channel 4 reiterated that Mrs Jenkins was fully aware of the nature of the programme.

Privacy

- b) Channel 4 said that it was clear from Mrs Jenkins' response that Mr Jenkins agreed to the final interview, which was a lengthy one for which Mr Jenkins required to be wired up with a microphone. It was clear from the footage filmed that Mr Jenkins agreed to the filming of the interview.

Channel 4 said that Mrs Jenkins had seen the producer outside the house before the interview with Mr Jenkins and so she had been aware of the programme makers' presence. The producer had arranged with Mr Jenkins earlier in the day to continue filming and he had agreed to a final interview. When the programme makers arrived at the house, the producer had suggested that they waited in the car to give Mr Jenkins a few minutes while he got refreshed and ready. The cameraman had asked to use the toilet because he genuinely needed to use it and he had then returned to the car. Mr Jenkins had followed moments later and invited them into the house to continue the filming.

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.

Mrs Jenkins'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, a transcript and recording of the unedited footage of Mrs Jenkins' contribution and Mr Jenkins' interview with the producer, and the written submissions from both parties.

Ofcom found as follows:

Unfair treatment

- a) Ofcom first considered Mrs Jenkins' complaint that she did not give her informed consent for her participation in 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 Mrs Jenkins as a potential contributor to the programme (as outlined in Practice 7.2 of the Code). In particular, Ofcom considered whether Mrs Jenkins 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; be informed about the areas of questioning and wherever possible, the nature of other likely contributions; and, any changes to the programme that might affect their decision to contribute.

Ofcom noted that Channel 4 was unable to provide it with a copy of the release form that Mrs Jenkins had signed. However, it is important to note that consent does not rest on the signing of a consent or release form. Rather, Ofcom assessed the type and degree of information available to Mrs Jenkins when consenting to participate. Having assessed this information, Ofcom considered whether it was reasonable for the programme makers to have believed that the consent provided by Mrs Jenkins was informed consent. In considering this, Ofcom took account of all relevant factors including, for example, whether or not Mrs Jenkins had been an active and willing participant throughout the filming process and whether any significant change in circumstances subsequently arose which would have affected her original consent.

Ofcom first considered what information Mrs Jenkins was given by the programme makers about her contribution to the programme that resulted in her giving her informed consent in taking part.

Ofcom noted the release forms signed by Mr Jenkins and Mrs Jenkins (on behalf of her son) and the other forms relating to the filming process. Each form contained the same wording in the opening paragraph, which stated the programme's purpose:

"This observational film will follow Siôn Jenkins (who was acquitted of the murder of his foster daughter Billie-Jo in February 2006) in the period surrounding the publication of his book 'The Death of Billie-Jo' on August 4th 2008. This film explores Siôn's story as he continues to rebuild his life and shattered reputation after 10 years of exposure to the public, the media and the legal system."

Ofcom accepted that this wording would have appeared on the mislaid release form signed by Mrs Jenkins in relation to her own contribution to the programme. Although the description given of the nature and purpose of the programme was, in Ofcom's view, broad in its scope, Ofcom considered nevertheless that it fairly represented the content of the programme as broadcast. Ofcom concluded that in a programme in which the programme makers stated purpose was to explore "Siôn's story as he continues to rebuild his life and shattered reputation after 10 years of exposure of the public, media and the legal system", it was reasonable for Mrs Jenkins to have expected that such a programme would include, to some extent, debate on the circumstances of the case. This was linked, in Ofcom's view, through the publication of his book and his quest to find who was responsible for Billy-Jo's murder, to Mr Jenkins and the new life he was leading after being released from prison.

As a result of the information provided to Mrs Jenkins by the programme makers before filming started, Ofcom considered that she was fully informed about the programme when agreeing to participate in it and that she gave informed consent to participate.

Ofcom went on to consider the issue of Mrs Jenkins' and the programme makers' recollection as to whether she was given any assurances that no other contributors to the programme would be contacted without her (and her husband's) knowledge

and consent. Ofcom recognised that there was a conflict of evidence between the complainant and the programme makers and that there was no documentary material provided in the written submissions that assisted it in as to whether any such assurances were given. Ofcom is not required to resolve conflicts of evidence as to the nature or accuracy of particular accounts of events but to adjudicate on whether a complainant has been treated unfairly in a programme.

In the particular circumstances, it was not possible for Ofcom to conclude whether or not Mrs Jenkins was aware that particular contributors would appear in the programme and whether or not the programme makers had assured her that no other contributors would be contacted without her knowledge and consent. The issue for Ofcom was to consider whether the inclusion of particular contributors led to unfairness to Mrs Jenkins. Ofcom recognised that there was no obligation on programme makers or broadcasters to disclose the identity of other contributors, or the substance of their contribution, unless it was likely to create unfairness to other contributors. Mrs Jenkins did not specify which contributions she was concerned about, however, Ofcom was satisfied that the content of the contributions of others in the programme, while some reflected contrary viewpoints to those of Mr Jenkins, consisted of nothing that could have arguably created the situation that would lead to unfairness to Mrs Jenkins. Ofcom took the view that it was therefore reasonable to include the comments of other contributors in the programme and found no unfairness to Mrs Jenkins in this respect.

- b) Ofcom considered Mrs Jenkins's complaint that her family life was ignored to misrepresent her husband.

In considering this head of complaint, Ofcom had regard to whether the portrayal of Mrs Jenkins's family life was consistent with the broadcaster's obligation to ensure that material facts had not been presented in a way which was unfair (as outlined in Practice 7.9 of the Code).

Ofcom again noted the wording that appeared in the release and other forms related to the filming process which were signed by Mrs Jenkins (see decision head a) above). Ofcom took the view that it was clear from this wording that the main focus of the programme would be to explore "Siôn's story as he continues to rebuild his life and shattered reputation after 10 years of exposure of the public, media and the legal system" in the lead up to the publication of his book.

However, Ofcom also noted the parts of the programme in which Mrs Jenkins appeared and the accompanying commentary. Mrs Jenkins was shown sharing a home with Mr Jenkins and appeared engaged in domestic activities such as cooking and gardening. In this footage, Ofcom noted that Mrs Jenkins discussed what had led her to write to Mr Jenkins while he was in prison and that Mr Jenkins stated that "*Tina has stood by me...*". Later in the programme, Mrs Jenkins was shown coming to the aid of her husband when he terminated the interview with the producer and told the cameraman to stop filming.

In Ofcom's view, although the focus of the programme was not the representation of the family life enjoyed by Mr and Mrs Jenkins, it considered that the footage included in the programme portrayed Mrs Jenkins as being supportive to Mr Jenkins and that it portrayed them as being a close and committed family unit. In these

circumstances, Ofcom was satisfied that Mrs Jenkins' family life was not ignored so as to misrepresent Mr Jenkins in the programme. Ofcom found no unfairness to Mrs Jenkins in this respect.

Privacy

- c) Ofcom considered Mrs Jenkins' complaint that her privacy was unwarrantably infringed in the making and broadcast of the programme in that footage of the interior of her home was filmed deceitfully and included in the programme after it had been made clear to the programme makers to stop 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 unwarranted infringement of privacy both in relation to the making and the broadcast of a programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? This is in accordance with Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

Ofcom first considered whether Mrs Jenkins had a legitimate expectation of privacy in relation to the footage filmed inside her home and subsequently broadcast in the programme. The Code explains that "legitimate expectations of privacy will vary to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and where the individual concerned is already in the public eye".

Ofcom recognised that the nature of the information revealed by Mrs Jenkins, such as the interior of her home may be understood to be personal and sensitive and may therefore attract an expectation of privacy. It was therefore important that her consent was obtained, so as to prevent her privacy being infringed by the obtaining of and subsequent broadcast of material revealing personal (and potentially private) information. Ofcom noted that Mrs Jenkins alleged that the material of the interior of her home was obtained by deceit. However, for the reasons already stated in the decision at head a) above, Ofcom was satisfied that Mrs Jenkins had understood the nature of the programme and her contribution to it and that the consent that she had given to the programme makers to film her and the inside of her home during the filming process was informed.

Ofcom was also satisfied that there were no significant developments or changes to the programme during the programme making process which would have affected her consent. In these circumstances, Ofcom took the view that Mrs Jenkins did not have a legitimate expectation of privacy with regard to the information filmed and later disclosed in the programme.

Having concluded that that Mrs Jenkins did not have a legitimate expectation of privacy in this regard, Ofcom found that her privacy was not infringed in the making or broadcast of the programme and that it was therefore not necessary for it to further consider whether any infringement of privacy was warranted or not.

- d) Ofcom considered Mrs Jenkins' complaint that her privacy was unwarrantably infringed in the broadcast of the programme in relation to the inclusion of the footage the first letter that she had sent her husband while in prison.

In considering this complaint, Ofcom had regard to Rule 8.1 of the Code and to the explanation given in it regarding legitimate expectations of privacy (set out at decision head c) above).

Ofcom considered whether Mrs Jenkins had a legitimate expectation of privacy in respect of the inclusion of footage of the letter. Ofcom recognised that the nature of the information revealed in the programme, that is the contents of Mrs Jenkins' first letter to Mr Jenkins when he was in prison, was personal and sensitive and may therefore attract an expectation of privacy. As such, consent would normally be required before revealing the information. For the reasons already given above in decision head a) above, Ofcom was satisfied that Mrs Jenkins had understood the nature of her contribution to the programme and had given her consent to the programme makers to film the letter and its contents being read out by Mr Jenkins.

Ofcom was also satisfied that there were no significant developments or changes to the programme during the programme making process which would have affected her consent. In these circumstances, Ofcom took the view that Mrs Jenkins did not have a legitimate expectation of privacy with regard to the letter and its contents being disclosed in the programme.

Having concluded that that Mrs Jenkins did not have a legitimate expectation of privacy in this regard, Ofcom found that her privacy was not infringed in the broadcast of the programme and that it was therefore not necessary for it to further consider whether any infringement of privacy was warranted or not.

- e) Ofcom then considered Mrs Jenkins' complaint that she consented to the programme makers entering her home because they told her the programme would portray a miscarriage of justice.

In considering this complaint, Ofcom had regard to Rule 8.1 of the Code and to the explanation given in it regarding legitimate expectations of privacy (set out under decision head c) above).

For the reasons already stated in the decision at decision head a) above, Ofcom was satisfied that Mrs Jenkins had understood the nature of the programme and her contribution to it and that the consent that she had given to the programme makers to film her and the inside of her home during the filming process was informed. Ofcom was also satisfied that no significant changes had subsequently arisen which affected her consent. In these circumstances, Ofcom took the view that Mrs Jenkins did not have a legitimate expectation of privacy with regard to the information filmed and later disclosed in the programme.

Having concluded that that Mrs Jenkins did not have a legitimate expectation of privacy in this regard, Ofcom found that her privacy was not infringed in the broadcast of the programme and that it was therefore not necessary for it to further consider whether any infringement of privacy was warranted or not.

Accordingly, Ofcom has not upheld Mrs Jenkins' complaint of unfair treatment and unwarranted infringement of privacy in the making and broadcast of the programme.

Not Upheld

Complaint by Mrs Tina Jenkins on behalf of Oscar Ferneyhough (her son)

The Murder of Billie-Jo: Siôn Jenkins' Story, Channel 4, 15 August 2008

Summary: Ofcom has not upheld this complaint of unwarranted infringement of privacy in the making of the programme.

This programme looked at the new life of Mr Siôn Jenkins who was convicted of the murder of his foster daughter, Billie-Jo, in 1988. Mr Jenkins was released in 2006 after two appeals and two retrials which had failed to return a verdict. Mr Jenkins and his wife, Mrs Tina Jenkins, contributed to the programme and footage of their house was shown. Mrs Jenkins' son, Oscar Ferneyhough (who was 15 years old at the time of the filming), was interviewed and filmed during the making of the programme. However, none of the footage taken of him was used in the programme as broadcast and the programme did not make any reference to him or the fact that Mrs Jenkins had any children.

Mrs Jenkins complained on her son's behalf that his privacy was unwarrantably infringed in the making of the programme.

Ofcom considered that Mrs Jenkins had given her consent for her son to participate in the making of the programme and for the family home to be filmed. Ofcom was satisfied that there was no evidence to suggest that there had been any significant developments or changes to the programme during the programme making process which would have affected her consent in either allowing her son to participate in the making of the programme or allowing the programme makers to film in the house. Therefore, Ofcom found that Oscar Ferneyhough did not have a legitimate expectation of privacy in this regard, and that his privacy was not unwarrantably infringed in the making of the programme.

Introduction

On 15 August 2008, Channel 4 broadcast a documentary entitled *The Murder of Billie-Jo: Siôn Jenkins's Story*. Mr Siôn Jenkins was convicted of the murder of his foster daughter, Billie-Jo Jenkins in 1998. He was released in 2006 after two appeals and two retrials had failed to return a verdict. The programme followed Mr Jenkins over a period of four months as he prepared to tell his story of the events surrounding Billie-Jo's murder by publishing a book. The programme also explored Mr Jenkins' new life in Portsmouth with his second wife, Mrs Tina Jenkins, and what had led him to decide to tell his story for the first time.

Mrs Jenkins contributed to the programme, which included footage of her and her husband in their home. During the making of the programme, Mrs Jenkins' son, Oscar Ferneyhough (who was 15 years old at the time of filming), was interviewed and filmed for the programme. However, none of the footage taken of him was used in the programme as broadcast. The programme did not make any reference to Oscar Ferneyhough or the fact that Mrs Jenkins had any children.

Mrs Jenkins complained to Ofcom on her son's behalf that his privacy was unwarrantably infringed in the making of the programme.

The Complaint

Mrs Jenkins' case made on behalf of Oscar Ferneyhough

In summary, Mrs Jenkins complained on her son's behalf that his privacy was unwarrantably infringed in the making of the programme in that his home, social life and important memories were infringed under false pretences.

Channel 4's case

Channel 4 said that the programme makers decided not to use the footage of Oscar Ferneyhough in the programme as broadcast on editorial grounds. It said that the programme contained no material which could be construed as an infringement of Oscar Ferneyhough's privacy. He was not featured in the programme or referred to in it.

Channel 4 said that there had been no infringement of Oscar Ferneyhough's privacy in connection with obtaining material included in the programme. It said that he did not feature in the programme and that the other contributors to the programme were adults who had consented to their involvement. Channel 4 said that, to the programme makers' knowledge, the fact that Oscar Ferneyhough was interviewed did not lead to the obtaining of any other material included in the programme. Therefore, any purported infringement of Oscar Ferneyhough's privacy did not operate in connection with obtaining any material included in the programme.

Furthermore, Channel 4 denied that any false pretence was employed by the programme makers in making the programme. Channel 4 said that Mrs Jenkins had consented to the interior of her home being filmed on several occasions previously, including a time when Mr and Mrs Jenkins were filmed giving the programme makers a tour of the house. Mrs Jenkins had signed a Location Agreement for the period between "2 May to August 2008" in which she consented for the programme makers to film in the family home.

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 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.

Mrs Jenkins' complaint on her son's behalf 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.

Ofcom considered Mrs Jenkins' complaint on behalf of her son that his privacy was unwarrantably infringed in the making of the programme that his home, social life important memories were infringed under false pretences.

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

Ofcom considered whether Oscar Ferneyhough had a legitimate expectation of privacy in relation to the obtaining of material included in the programme. The Code explains that "legitimate expectations of privacy will vary to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and where the individual concerned is already in the public eye".

Ofcom recognised that the nature of the information revealed by participants in a programme of this nature may be understood to be personal and sensitive and may therefore attract an expectation of privacy. As such, it is important that consent is obtained from those whose privacy may otherwise be infringed by the obtaining of and subsequent broadcast of material revealing personal (and potentially private) information.

In this particular case, Ofcom noted that Oscar Ferneyhough was neither featured nor referred to in the programme as broadcast. Ofcom took note that, to the programme makers' knowledge, although Oscar Ferneyhough was interviewed, it did not lead to the obtaining of other material included in the programme.

In assessing whether or not informed consent had been obtained for the filming Ofcom noted that Mrs Jenkins had signed a release form giving parental consent for her son to take part in the making of the programme and that she had consented to the programme makers filming in the family home. In particular, Ofcom noted that the release form and the forms relating to the filming process stated the programme's purpose as:

"This observational film will follow Siôn Jenkins (who was acquitted of the murder of his foster daughter Billie-Jo in February 2006) in the period surrounding the publication of his book 'The Death of Billie-Jo' on August 4th 2008. This film explores Siôn's story as he continues to rebuild his life and shattered reputation after 10 years of exposure to the public, the media and the legal system."

While the description given of the nature and purpose of the programme was, in Ofcom's view, broad in its scope, Ofcom considered nevertheless that it fairly represented the content of the programme as broadcast. Ofcom concluded that in a programme in which the programme makers stated purpose was to explore "Siôn's story as he continues to rebuild his life and shattered reputation after 10 years of exposure of the public, media and the legal system", it was reasonable for Mrs Jenkins to have expected that such a

programme would include, to some extent, debate on the circumstances of the case. This was linked, in Ofcom's view, through the publication of his book and his quest to find who was responsible for Billy-Jo's murder, to Mr Jenkins and the new life he was leading after being released from prison.

As a result of the information provided to Mrs Jenkins by the programme makers before filming started, Ofcom was satisfied that Mrs Jenkins had understood the nature of the programme and the potential contribution her son would make to it when contenting to his participation in it. Ofcom therefore considered that Mrs Jenkins had given her consent to the programme makers to film inside the family home during the filming process.

There was no evidence to suggest that there had been any significant developments or changes to the programme during the programme making process which would have affected Mrs Jenkins' consent in either allowing her son to participate in the making of the programme or allowing the programme makers to film in the house. In these circumstances, the programme makers were entitled to believe that they had informed consent to film Oscar Ferneyhough and, in Ofcom's view, Oscar Ferneyhough did not have a legitimate expectation of privacy with regard to the information filmed.

Having concluded that Oscar Ferneyhough did not have a legitimate expectation of privacy in this regard, Ofcom found that his privacy was not infringed in the making of the programme and that it was therefore not necessary for it to further consider whether any infringement of privacy was warranted or not.

Accordingly, Ofcom has not upheld Mrs Jenkins' complaint made on behalf of her son, Oscar Ferneyhough, that his privacy was unwarrantably infringed in the making of the programme.

Not Upheld

Complaint by Mr Zak Owen

South East Today, BBC1, 29 January 2009

Summary: Ofcom has not upheld this complaint of unfair treatment made by Mr Zak Owen.

An edition of *South East Today* included a news item about the number of police officers from the Sussex and Kent police forces who had been arrested and convicted for a variety of offences. One of the officers referred to was Mr Zak Owen, a former police sergeant, who the reporter said had been sentenced to seven years for *“theft and the possession of a gun”*.

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

In summary, Ofcom noted that Mr Owen was convicted of possession of a firearm and not a “gun”. The actual weapon used by Mr Owen which led to his conviction was a CS-type police issue incapacitating spray. Ofcom considered that the programme’s factual inaccuracy in referring Mr Owen’s conviction as being for *“possession of a gun”* was unfortunate. However, Ofcom found that, taken in the overall context of Mr Owen’s convictions for various criminal offences, the inaccuracy was unlikely to materially alter the viewer’s perception of Mr Owen in a way that was unfair to him.

Introduction

On 29 January 2009, the BBC broadcast an edition of its regional news programme *South East Today*, which included a report about the number of police officers from the Sussex and Kent police forces who had been arrested and convicted for a variety of offences.

One of the officers referred to in the programme was Mr Zak Owen, a former police sergeant. During the report, the programme’s reporter stated that:

“Former sergeant Zak Owen from Chatham was sentenced to seven years, guilty of theft and the possession of a gun.”

The programme went on to discuss whether or not police officers were automatically dismissed if convicted of a criminal offence. The programme’s reporter stated:

“Now take Zak Owen, who lived here in Chatham and worked as a custody sergeant with Kent Police, committed some serious crimes. Now he was automatically dismissed from his position but interestingly we have learned that two Kent police officers were found guilty of drink driving remained in their positions...”

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

The Complaint

Mr Owen's case

In summary, Mr Owen complained that he was treated unfairly in the programme as broadcast in that the programme incorrectly stated that he was convicted of "*theft and possession of a gun*". This portrayed him unfairly as a dangerous armed criminal. Mr Owen said that he was convicted of being in possession of a firearm.

The BBC's case

In summary, the BBC said that the programme makers had made an assumption that the charge of possession of a firearm involved possession of a gun and conceded that the weapon in Mr Owen's case was a CS-type police issue incapacitating spray. The BBC accepted that this assumption resulted in the programme inaccurately reflecting Mr Owen's convictions. However, the BBC said that, in the context of Mr Owen's original offences, this factual inaccuracy was of a minor nature. The BBC detailed his offences, one of which included Mr Owen trapping a family in their car for more than two hours and threatening them with PAVA spray, a type of CS gas classed as a firearm. The BBC said that Mr Owen was imprisoned for seven years after being convicted of theft, false imprisonment, fraud, misconduct in a public office and possession of a firearm whilst committing an offence. Only the firearms offence was mentioned in the report. The BBC said that the description of "a dangerous armed criminal" was fair, accurate and did not rest solely upon the reference to a gun. Given the offences which he committed, the BBC said that he was, at the time, both dangerous and armed, and that his subsequent conviction rendered him, unarguably, a criminal.

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

In considering Mr Owen's complaint that he was portrayed unfairly as a "dangerous armed criminal" because the BBC described his conviction as for "possession of a gun" rather than for "possession of a firearm", Ofcom took into account Rule 7.1 of the Ofcom Broadcasting Code ("the Code"). This sets out that broadcasters must avoid unjust or unfair treatment of individuals in programmes. Ofcom also took into account each of the measures set out in Practice 7.9 of the Code, which provides that before broadcasting a factual programme, including a programme examining past events, broadcasters should take reasonable care to satisfy themselves that "material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation."

Ofcom noted that the programme inaccurately described one of Mr Owen's convictions as "possession of a gun" rather than "possession of a firearm" and that the actual weapon used was a CS-type police issue incapacitating spray. Ofcom considered that this was a regrettable inaccuracy that should not have occurred and was particularly unfortunate given the stigma attached to gun crime.

Ofcom went on to consider whether this inaccuracy, when examined in the context of the report as a whole, was likely to have led to an unfair portrayal of Mr Owen as a "dangerous armed criminal".

In doing so, Ofcom examined some of the details of his offences which it noted were of a serious nature. Mr Owen was given a seven year custodial sentence by a judge who had the benefit of a full consideration of the facts. Mr Owen's crimes included trapping a family in their car for more than two hours and threatening them with a type of CS gas classed as a firearm. Mr Owen was convicted of theft, false imprisonment, fraud, misconduct in a public office and possession of a firearm whilst committing an offence.

In these circumstances, Ofcom concluded that, notwithstanding the programme's inaccurate presentation of Mr Owen's conviction for possession of a firearm, the programme's portrayal of Mr Owen as a "dangerous armed criminal" was justifiable.

In Ofcom's view the factual inaccuracy was unlikely to have materially altered viewer's perception of Mr Owen in a way that was unfair to him.

Accordingly, Ofcom has not upheld Mr Owen's complaint of unfair treatment in the programme.

Other Programmes Not in Breach/Resolved

Up to 14 July 2009

Programme	Transmission Date	Channel	Category	Number of Complaints
8 Out Of 10 Cats	03/07/2009	Channel 4	Generally Accepted Standards	8
8 Out Of 10 Cats	03/07/2009	Channel 4	Sex/Nudity	3
Absolution With Tim Shaw	26/06/2009	Absolute Radio	Generally Accepted Standards	1
Afternoon Live With Kay Burley	05/06/2009	Sky News	Generally Accepted Standards	5
Alan Carr: Chatty Man	05/07/2009	Channel 4	Generally Accepted Standards	1
Animals do the Funniest Things	20/06/2009	ITV1	Animal Welfare	1
Ashes trailer	07/07/2009	BBC1	Generally Accepted Standards	1
BBC News	01/07/2009	BBC1	Substance Abuse	1
BBC News	05/07/2009	BBC News Channel	Generally Accepted Standards	1
BMLbaby.com sponsorship of ITV Weather	n/a	ITV1	Generally Accepted Standards	1
Big Brother 10	01/07/2009	Channel 4	Generally Accepted Standards	48
Big Brother 10	29/06/2009	Channel 4	Generally Accepted Standards	8
Big Brother 10	30/06/2009	Channel 4	Generally Accepted Standards	13
Big Brother 10	03/07/2009	Channel 4	Generally Accepted Standards	1
Big Brother 10	30/06/2009	Channel 4	Commercial References	1
Big Brother 10	n/a	Channel 4	Commercial References	1
Big Brother 10	24/06/2009	Channel 4	Generally Accepted Standards	1
Big Brother 10	05/07/2009	Channel 4	Other	1
Big Brother 10	23/06/2009	Channel 4	Offensive Language	1
Big Brother 10	03/07/2009	Channel 4	Offensive Language	1
Big Brother 10	02/07/2009	Channel 4	Generally Accepted Standards	1
Big Brother 10	23/06/2009	Channel 4	Generally Accepted Standards	9
Big Brother 10	25/06/2009	Channel 4	Generally Accepted Standards	1
Big Brother 10	14/06/2009	Channel 4	Commercial References	1
Big Brother 10	01/07/2009	Channel 4	Generally Accepted Standards	1
Big Brother 10	06/07/2009	Channel 4	Generally Accepted Standards	1
Big Brother 10	09/07/2009	Channel 4	Due Impartiality/Bias	1
Big Brother 10	22/06/2009	Channel 4	Generally Accepted Standards	5
Big Brother 10	26/06/2009	Channel 4	Generally Accepted Standards	3
Big Brother 10	19/06/2009	Channel 4	Generally Accepted Standards	1
Big Brother 10	22/06/2009	Channel 4	Commercial References	1
Big Brother 10	22/06/2009	Channel 4	Religious Offence	2
Big Brother 10	24/06/2009	Channel 4	Generally Accepted Standards	1
Big Brother 10	21/06/2009	Channel 4	Violence	1
Big Brother 10	15/06/2009	Channel 4	Generally Accepted Standards	5
Big Brother 10	19/06/2009	Channel 4	Generally Accepted Standards	3
Big Brother 10	20/06/2009	Channel 4	Generally Accepted Standards	1

Big Brother 10	23/06/2009	Channel 4	Generally Accepted Standards	1
Big Brother Launch Show	04/06/2009	Channel 4	Commercial References	2
Big Brother Live	05/07/2009	E4	Other	1
Big Brother Live	20/06/2009	Channel 4	Generally Accepted Standards	1
Big Brother Live	23/06/2009	E4	Generally Accepted Standards	1
Big Brother Live	12/07/2009	Channel 4	Generally Accepted Standards	1
Big Brother Live	08/07/2009	Channel 4	Generally Accepted Standards	1
Big Brother Live	21/06/2009	Channel 4	Generally Accepted Standards	1
Big Brother Live	04/07/2009	Channel 4	Generally Accepted Standards	1
Big Brother's Big Mouth	03/07/2009	E4	Generally Accepted Standards	8
Big Brother's Big Mouth	19/06/2009	E4	Generally Accepted Standards	1
Breakfast Show	n/a	BRMB	Competitions	1
Britain's Wildest	09/07/2009	Sky Three	Generally Accepted Standards	1
Can I Get High Legally?	02/07/2009	BBC Three	Substance Abuse	1
Channel 4 News	23/06/2009	Channel 4	Due Impartiality/Bias	1
Channel 4 News	09/07/2009	Channel 4	Due Impartiality/Bias	1
Channel AKA	22/06/2009	Channel AKA	Violence	1
Chris Moyles Show	30/06/2009	BBC Radio 1	Religious Offence	1
Coach Trip	03/07/2009	Channel 4	Sex/Nudity	1
Comment	08/01/2009	Press TV	Generally Accepted Standards	1
Comment	23/01/2009	Press TV	Due Impartiality/Bias	1
Coronation Street	26/06/2009	ITV1	Generally Accepted Standards	1
Coronation Street	01/07/2009	ITV1	Generally Accepted Standards	1
Countryfile	05/07/2009	BBC1	Dangerous Behaviour	1
Countryfile	28/06/2009	BBC1	Dangerous Behaviour	1
Daily Cooks Challenge	03/07/2009	ITV1	Use of Premium Rate Numbers	1
Danny Dyer's Deadliest Men	19/05/2009	Virgin1	Inaccuracy/Misleading	1
Dave (Advertising minutage)	15/06/2009	Dave	Advertising	1
Dickinson's Real Deal	10/07/2009	ITV1	Use of Premium Rate Numbers	1
Dispatches: Rape in the City	22/06/2009	Channel 4	Generally Accepted Standards	1
Doc Martin	03/07/2009	ITV1	Violence	3
Doctors	08/07/2009	BBC1	Violence	1
Dream Street	02/07/2009	ITV4	Sex/Nudity	1
Eastenders	19/06/2009	BBC1	Other	1
Eastenders	07/07/2009	BBC1	Sex/Nudity	1
Embarrassing Bodies	01/07/2009	Channel 4	Sex/Nudity	5
Embarrassing Teenage Bodies	08/07/2009	Channel 4	Sex/Nudity	3
Emmerdale	02/07/2009	ITV1	Generally Accepted Standards	1
Esure sponsorship of Channel 4 Weather	07/07/2009	Channel 4	Inaccuracy/Misleading	1
Fifth Gear	06/07/2009	Five	Generally Accepted Standards	3
GMTV	08/07/2009	ITV1	Due Impartiality/Bias	6

GMTV	03/07/2009	ITV1	Inaccuracy/Misleading	1
George Galloway	12/06/2009	Talksport	Generally Accepted Standards	1
Hirsty's Daily Dose	17/06/2009	Galaxy Yorkshire	Generally Accepted Standards	1
Holby City	30/06/2009	BBC1	Inaccuracy/Misleading	1
Hope Springs	05/07/2009	BBC1	Violence	3
Horne & Corden	03/07/2009	BBC2	Generally Accepted Standards	1
Hotel Babylon	26/06/2009	BBC1	Generally Accepted Standards	1
ICC World Twenty20	21/06/2009	Sky Sports1	Generally Accepted Standards	1
ITV News	07/07/2009	ITV1	Inaccuracy/Misleading	1
ITV News	29/06/2009	ITV1	Inaccuracy/Misleading	1
Isle of Wight Festival 2009	14/06/2009	ITV2	Offensive Language	1
James O'Brien	17/06/2009	LBC 97.3FM	Generally Accepted Standards	1
Jo Whiley	07/07/2009	BBC Radio 1	Commercial References	1
Katie Price: The Jordan Years	10/06/2009	BBC Three	U18's in Programmes	1
Loose Women	09/07/2009	ITV1	Generally Accepted Standards	1
Maltesers sponsorship of Loose Women	n/a	ITV1	Crime (incite/encourage)	1
Mars sponsorship of Friends	09/07/2009	E4	Sex/Nudity	1
Martina Cole's The Take	19/06/2009	Sky One	Violence	1
Martina Cole's The Take	24/06/2009	Sky One	Violence	1
Michael Jackson Memorial	07/07/2009	BBC2	Generally Accepted Standards	10
Michael McIntyre's Comedy Roadshow	27/06/2009	BBC1	Generally Accepted Standards	3
Michael McIntyre's Comedy Roadshow	27/06/2009	BBC1	Offensive Language	1
Mock the Week	12/07/2009	BBC2	Generally Accepted Standards	1
Mock the Week	09/07/2009	BBC2	Generally Accepted Standards	2
My Breasts Could Kill Me	07/07/2009	Sky One	Generally Accepted Standards	1
News	14/06/2009	CNN	Due Impartiality/Bias	1
News at Ten	07/07/2009	ITV1	Generally Accepted Standards	1
News at Ten	26/06/2009	ITV1	Due Impartiality/Bias	1
News at Ten	06/07/2009	ITV1	Generally Accepted Standards	1
Newsnight	08/07/2009	BBC1	Generally Accepted Standards	1
Pimp My Ride	17/06/2009	TMF	Undue Prominence	1
Question Time	18/06/2009	BBC1	Generally Accepted Standards	2
Quiz Call	21/06/2009	Five	Use of Premium Rate Numbers	1
Real Prison Breaks (trailer)	22/06/2009	ITV4	Crime (incite/encourage)	1
Saturday Kitchen	04/07/2009	BBC1	Generally Accepted Standards	1
Skins	08/07/2009	Channel 4	Dangerous Behaviour	1
Skins	01/07/2009	Channel 4	Generally Accepted Standards	1
Sky News	21/06/2009	Sky News	Generally Accepted Standards	1
Sky News	27/05/2009	Sky News	Commercial References	1
Sky News	09/06/2009	Sky News	Due Impartiality/Bias	1
Sky News	17/06/2009	Sky news	Inaccuracy/Misleading	1

Sky News	08/06/2009	Sky News	Due Impartiality/Bias	1
Snober Beauty Tips	14/03/2009	Venus TV	Inaccuracy/Misleading	1
Steve Allen	25/06/2009	LBC 97.3FM	Generally Accepted Standards	1
Strictly Come Dancing	20/12/2008	BBC1	Use of Premium Rate Numbers	2
T4	05/07/2009	Channel 4	Sex/Nudity	1
TNT Show	02/07/2009	Channel 4	Generally Accepted Standards	1
TNT Show	18/06/2009	Channel 4	Generally Accepted Standards	1
Test Match Special	09/07/2009	BBC Radio 4 (LW)	Generally Accepted Standards	1
The Adventures of Baron Munchausen	05/07/2009	Five	Sex/Nudity	1
The Bill	08/04/2009	ITV1	Violence	6
The Inbetweeners	30/06/2009	Channel 4	Animal Welfare	1
The Montel Williams Show	15/06/2009	ITV2	Generally Accepted Standards	1
The Pre-Raphaelites	30/06/2009	BBC4	Other	1
The Sex Education Show v Pornography	n/a	Channel 4	Due Impartiality/Bias	1
The Slammer	28/06/2009	CBBC	Sex/Nudity	1
The Wright Stuff	08/07/2009	Five	Generally Accepted Standards	3
The Wright Stuff	24/06/2009	Five	Generally Accepted Standards	1
The Wright Stuff	07/07/2009	Five	Generally Accepted Standards	3
Tony Horne in the Morning	18/06/2009	Metro Radio	Generally Accepted Standards	1
Tony Horne in the Morning	16/06/2009	Metro Radio	Generally Accepted Standards	1
Toolan In The Morning	n/a	Key 103	Competitions	1
Top Gear	21/06/2009	BBC2	Generally Accepted Standards	9
Top Gear	05/07/2009	BBC2	Offensive Language	1
Top Gear	28/06/2009	BBC2	Generally Accepted Standards	1
Torchwood - Children Of Earth	06/07/2009	BBC1	Generally Accepted Standards	4
Torchwood - Children Of Earth	07/07/2009	BBC1	Generally Accepted Standards	1
Torchwood - Children Of Earth	08/07/2009	BBC1	Crime (incite/encourage)	1
Torchwood: Children Of Earth	06/07/2009	BBC 1	Dangerous Behaviour	1
Trisha Goddard	30/06/2009	Five	Inaccuracy/Misleading	1
UTV Live Tonight	26/05/2009	UTV	Religious Offence	1
VW Passat sponsorship of documentaries on Channel 4	16/06/2009	More4	Dangerous Behaviour	1
Wife Swap	05/07/2009	Channel 4	Offensive Language	1
World's Best Diet	30/06/2009	ITV1	Religious Offence	1
You Have Been Watching	07/07/2009	Channel 4	Violence	1
You Have Been Watching	07/07/2009	Channel 4	Generally Accepted Standards	1