

Ofcom Broadcast Bulletin

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Contents

<u>Introduction</u>	4
Standards cases	
<u>In Breach</u>	
Appeal for Manchester Muslim Centre and Mosque <i>NTV, 27 August 2009, 19:20</i>	5
Appeal for Somers Town Islamic Cultural & Education Centre <i>Bangla TV, 27 August 2009, 17:15</i>	7
Formula 1 Brazilian Grand Prix Competition <i>ITV1, 2 November 2008, 16:00</i>	9
News Today <i>Radio Faza, 25 September 2009, 09:15</i>	11
People from Space <i>The Unexplained, 30 October 2009, 15:00</i>	13
Flashing images in programme content <i>DM Digital, 22 September 2009, 12:06 and 12:17</i>	15
Advertising minutage cases	
<u>In Breach</u>	
Advertising minutage <i>Q, 30 October 2009, 22:00</i>	17
Note to Broadcasters	
Guidance on Rule 9.13	19
Fairness & Privacy cases	
<u>Partly Upheld</u>	
Complaint by the Kennel Club made on its behalf by Schillings <i>Pedigree Dogs Exposed, BBC1, 19 August 2008</i>	20
Complaint by the Rhodesian Ridgeback Club of Great Britain made on its behalf by Mrs Kirsteen Maidment <i>Pedigree Dogs Exposed, BBC1, 19 August 2008</i>	58

Complaint by Mrs Virginia Barwell <i>Pedigree Dogs Exposed, BBC1, 19 August 2008</i>	75
Complaint by Mr Andrew Flynn <i>Mischief – Your Identity For Sale, BBC3, 11 September 2008</i>	85
Complaint by Miss Autumn Bryan <i>Mischief – Your Identity For Sale, BBC3, 11 September 2008</i>	93
<u>Not Upheld</u>	
Complaint by the Cavalier King Charles Spaniel Club made on its behalf by Mrs Lesley Jupp <i>Pedigree Dogs Exposed, BBC1, 19 August 2008</i>	101
Complaint by Mr Michael Randall <i>Pedigree Dogs Exposed, BBC1, 19 August 2008</i>	131
Complaint by Ms Penny Mellor <i>Panorama: A Very Dangerous Doctor, BBC1, 1 June 2009</i>	138
Complaint by Miss Sandeep Bhardwaj <i>London Tonight, ITV1, 3 June 2009</i>	156
Other programmes not in breach	160

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 16 December 2009 and covers all programmes broadcast on or after 16 December 2009. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>.

Note: Programmes broadcast prior to 16 December 2009 are covered by the 2005 Code which came into effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). The 2005 Code can be found at http://www.ofcom.org.uk/tv/ifi/codes/bcode_2005/.

- 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

Appeal for Manchester Muslim Centre and Mosque

NTV, 27 August 2009, 19:20

Introduction

NTV provides a general entertainment television service in Nepali and English for the Nepalese community in the UK and other European countries.

While monitoring NTV's output, Ofcom noted that, during an extended broadcast appeal, the following text was repeatedly scrolled across the screen in a banner for over two and a quarter of the four hours of material we monitored:

"PLEASE DONATE GENEROUSLY ... Supported by JALALABAD MONEY TRANSFER & CARGO LTD MANCHESTER/OLDHAM/HYDE/LOUGHBOROUGH/LONDON; JMG CARGO SERVICES, FORDHAM STREET, LONDON; CRESENT OVERSEAS, BURNLEY; G. K. TRAVEL SERVICES LTD. JABIN MONEY TRANSFER LTD, BRADFORD; IMTINAN MONEY SERVICES, SECPTRE STREET, NEWCASTLE; AL-AMIN FINANCE (MEMBER BASED HALAL INVESTMENT) HAMILTON ROAD, MANCHESTER; KSAM TOURS 7 TRAVEL, MANCHESTER; MIZAN LEGAL SERVICES, BIRCH LANE, MANCHESTER, M13 0NW"

NTV stated that the message was not a sponsorship credit, advertising or paid-for.

We sought the broadcaster's comments with regard to the following Code rules:

- 10.3 – Products and services must not be promoted in programmes; and
- 10.4 – No undue prominence may be given in any programme to a product or service.

Response

NTV said the message was shown "for the sole purpose of giving reference points to viewers of businesses they use or know of to verify the nature of service provided by the organisation in question." The broadcaster added that it would ensure such a message was not broadcast in future.

Decision

Broadcasters may choose to transmit charity appeals free of charge, and generally, in such circumstances, they may briefly acknowledge by name individuals' or organisations' donations to a broadcast appeal, without this raising Code issues. However, broadcasters should note that the provision of such brief acknowledgements should not be a condition of making a donation, and any acknowledgements remain subject to relevant Code rules – in particular, Rule 10.4.

In this case, it was unclear to Ofcom whether NTV's reference to "the organisation in question" referred to the Manchester Muslim Centre and Mosque or the businesses that had made donations to the appeal. In any event, Ofcom was unclear how

crediting the donations of the specific businesses verified the nature of the service(s) provided by either.

In Ofcom's view, there appeared to be no editorial justification for screening donation credits repeatedly in a 'loop' for well over two and a quarter hours during the four hour period that we monitored. The organisations listed in these credits were therefore given undue prominence, in breach of Rule 10.4 of the Code.

In addition, there appeared to be no editorial justification for screening either full or partial postal addresses of the organisations concerned, which merely promoted them in the programme, in breach of Rule 10.3 of the Code.

Ofcom therefore welcomed NTV's assurance that it would not broadcast similar messages in future. However, we noted that the broadcaster had previously been found in breach of Rule 10.4 of the Code, as recorded in Broadcast Bulletin 138 on 20 July 2009¹. In light of the repeated breach recorded in this Finding, Ofcom is putting the broadcaster on notice that it has serious concerns about NTV's compliance procedures.

Breach of Rules 10.3 and 10.4

¹ Finding available at: http://www.ofcom.org.uk/tv/obb/prog_cb/obb138/Issue138.pdf.

In Breach

Appeal for Somers Town Islamic Cultural & Education Centre *Bangla TV, 27 August 2009, 17:15*

Introduction

Bangla TV provides a general family entertainment television service – principally in Bangla and occasionally in English – for the Bengali community in the UK.

While monitoring Bangla TV's output, Ofcom noted that during an extended broadcast appeal, the following text was repeatedly scrolled across the screen, in a banner, throughout over two and a quarter of the three and three-quarter hours of material we monitored.

*"PLEASE DONATE ... Sponsor By : ** Aid & Care Trust (Moulana A . Malik – 07904278050), ** Seasons Weedings & Management (0208 478 8877), *** Al – Qibla Hajj Service (0207 247 2272), ***Euston Station Car (0207 388 9494), ***High Way Assist (0208 985 3681), ***"*

Later in the appeal, the following text was also added to the message:

*****Al Safa hajj Group (0208 555 5526, 07949 295667) *****"* and

*"Loyla Urgent Poor Help ****"*

Bangla TV stated that the message was not a programme sponsorship credit, advertising or paid-for.

We sought the broadcaster's comments with regard to the following Code rules:

- 10.3 – Products and services must not be promoted in programmes; and
- 10.4 – No undue prominence may be given in any programme to a product or service.

Response

The broadcaster said that, prior to the broadcast of the extended appeal programme, Somers Town Islamic Cultural & Education Centre ("the Centre") had taken out an advertising campaign on Bangla TV.

The Centre had sought donations off-air to pay for these advertisements the charity had broadcast on the channel.

Subsequently, and separately from these advertisements, Bangla TV broadcast the extended charity appeal for the Centre, free of charge. During this appeal, a scroll displayed references to the businesses that had made donations to fund the previously broadcast advertisements [referred to in the scroll as sponsors].

Bangla TV confirmed that the donors' funding of advertising for the Centre was not a pre-condition of being featured in the broadcast appeal programme on the channel.

Further, it confirmed that the references in the scroll it had broadcast were not subject to any agreement between Bangla TV and the businesses concerned.

Decision

Broadcasters may choose to transmit charity appeals free of charge, and generally, in such circumstances, they may briefly acknowledge by name individuals' or organisations' donations to a broadcast appeal, without this raising Code issues. However, broadcasters should note that the provision of such brief acknowledgements should not be a condition of making a donation, and any acknowledgements remain subject to relevant Code rules – in particular, Rule 10.4.

In this case, however, Bangla TV did not acknowledge in the programme donors to the broadcast appeal, but businesses that had previously funded the featured charity's advertisements on the channel. Ofcom also noted that some sponsors of Somers Town Islamic Cultural & Education Centre's advertising campaign appeared to have been given less broadcast exposure in the programme than others (in the material we monitored, the organisations were Al Safa Hajj Group and Loyla Urgent Poor Help), the reason for which was unclear.

In Ofcom's view, there appeared to be no editorial justification for featuring in a programme, funders of a third party's activities (i.e. a charity's advertising campaign) or for screening repeated credits over such an extended period. The businesses credited on screen in this way were therefore given undue prominence, in breach of Rule 10.4 of the Code.

In addition, there appeared to be no editorial justification for screening the contact details of the businesses, which merely promoted them in the appeal programme, in breach of Rule 10.3 of the Code.

Breach of Rules 10.3 and 10.4

In Breach

Formula 1 Brazilian Grand Prix Competition

ITV1, 2 November 2008, 16:00

Introduction

ITV Broadcasting Ltd, the holder of 11 ITV licences, which was responsible for the compliance of this competition on behalf of the ITV network (“ITV”) notified Ofcom in August 2009 of a problem it had identified with a competition run as part of ITV1’s coverage of the 2008 Formula 1 (“F1”) season.

Over the course of the 2008 F1 season 19 separate viewer competitions were offered by ITV – one for each of the 18 F1 races, and a final end-of-season competition. Entry to the competitions was by premium rate telephony (including text message and ‘red button’ routes) at £1 premium charge per entry and for free via ITV’s website.

In July 2009, on reviewing the work of a producer within ITV’s Interactive division who was leaving the company, ITV discovered that the prize for the competition run for the Brazilian Grand Prix, held on 2 November 2008, had not been awarded.

Further, on taking steps to gather the necessary entries so as to complete the unresolved competition ITV found out that the records of ‘IVR’ calls – calls made by voice connection, i.e. not SMS (text), internet or ‘red button’ entries – were no longer available from the telephone network for data protection reasons. Of 139,000 entries to the affected competition, about 18,000 could not be recovered.

When it contacted Ofcom, ITV supplied details of the system used and reasons for the failure to award the prize and retain the data. Ofcom asked for further information in respect of Rule 2.11 of the Code, which states:

“Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known”.

Ofcom also sought comment from ITV in respect of the licensee’s arrangements in respect of its specific licence obligations to ensure the proper administration of PRS competitions.

Response

ITV told us that the competitions were administered by ITV with the services of a premium rate telephony service provider. When the F1 season began in March 2008 ITV was preparing to set up its own in-house service provision, but the existing third party service provider was retained for the duration of the competition as ITV considered a change in service provider during the series of competitions would introduce risk to the system.

ITV confirmed that all of the other 18 competitions were run without problem. The problem was therefore not a systemic one, ITV argued, and had happened as a result of human error on a single occasion.

ITV had also made arrangements by which all entrants – by whichever method – could be provided with refunds. Where refunds could be effected automatically for entrants this was done; other entrants were contacted for refunds to be enabled; and ITV appointed a call centre to handle refunds for IVR entrants whose details were not available. An on-air announcement about the refund process was made on ITV1 on Saturday 5 September 2009 between the end of coverage of the England v Slovenia football match and the start of *The X Factor*, to reach as broad an audience as possible. ITV also posted details of the refund process in various prominent places on its website, itv.com.

The refund process stayed open for three months. ITV gave to charity any monies that had not been claimed after that period.

Further, ITV organised a new draw from scratch to award the outstanding prize. The draw, open to all, was publicised within the on-air announcement, on itv.com and communicated to previous entrants in the course of making individual refunds.

ITV also confirmed that it had tightened its procedures for prize allocation in light of the incident.

Having taken all these steps, ITV believed it had acted as fully and thoroughly as possible to remedy the problem.

Decision

Ofcom welcomed the broadcaster's action in uncovering the problem, establishing its cause, arranging refunds and running a substitute competition. Ofcom accepts that ITV acted in good faith at all times.

We also acknowledge ITV's notification of the matter to Ofcom and the openness and efficiency with which the broadcaster dealt with Ofcom's further enquiries. It is clear that the technical deficiencies and their consequences were regretted by the broadcaster, and that it had taken a wide range of steps to mitigate these.

However, Ofcom believes that this is a case in which a breach of the Code should be recorded. The error in not awarding a prize did not emerge for some months and affected a relatively large competition. To that extent the licensee's systems, requirements for which exist within its licence, could not have been sufficient in this particular case.

However, in light of ITV's submissions on this case and on the basis of other information made available, Ofcom is satisfied that ITV complies with the commitments in its licences in respect of PRS competitions.

Ofcom reminds television licensees that it is a condition of their licences that they notify Ofcom of any significant problems encountered in the use of PRS for audience voting and competitions.

Breach of Rule 2.11

In Breach

News Today

Radio Faza, 25 September 2009, 09:15

Introduction

Radio Faza is a community radio station in Nottingham, for the South Asian community. It has been on air since 2002 and is presented by volunteers. During the programme *News Today*, broadcast on weekdays between 09:00 and 10:00, the presenter read out the following text from a listener, which he described as a “joke”:

“Jewish kid next door just asked me for a water fight...thought I would text while the kettle is boiling...”

The presenter then repeated the text message again for the benefit of listeners who may not have understood the “joke” the first time.

Ofcom received a complaint from a listener who considered the presenter’s comments were offensive. Ofcom wrote to Radio Faza for comments under Rule 2.3 of the Code (material which may cause offence must be justified by the context).

Response

The broadcaster acknowledged that the comments made by the volunteer presenter were unacceptable and offensive.

Radio Faza said that as soon as practicable the Station Manager/Director initiated disciplinary action against the presenter who was called into a meeting to explain his comments. During the meeting the presenter acknowledged that his comments were offensive and expressed his deep regret that they were broadcast. The presenter was also required to make an on-air apology which was broadcast on 16 October 2009 during his radio programme. Radio Faza also stated that in response to this incident it was improving the training of all presenters to ensure compliance with the Code.

Decision

Ofcom notes the broadcaster’s acknowledgment that listeners would have been offended by the comments made by the presenter, the broadcast of the on-air apology, and the improvements in compliance training.

However, Ofcom was concerned that the broadcast of a “joke” against the Jewish community, made on an Asian radio service, was likely to be perceived as hostile and inflammatory. Ofcom considered that the broadcast of this material was highly offensive and was not justified by the context. Therefore the material went beyond generally accepted standards for this type of service and breached Rule 2.3 of the Code.

Ofcom appreciates that volunteer presenters are a fundamental part of ensuring that community radio meets its requirement for “access and participation”. However, it is essential that community radio broadcasters provide volunteers with the appropriate

training and guidance before they commence broadcasting to ensure compliance with the Broadcasting Code and to meet the requirements of their licence.

Breach of Rule 2.3

In Breach

People from Space

The Unexplained, 30 October 2009, 15:00

Introduction

The licence for The Unexplained channel is held by Monster Pictures Limited (“Monster Pictures”). The channel is dedicated to the paranormal and broadcasts a variety of programmes including news, documentaries, entertainment shows and films.

People from Space is a satirical science fiction film about two couples who set off in search of an alien crash site in a nearby woods. During the search the characters encounter some bizarre people, places and things, which in turn result in their own strange behaviour. The film contained varying levels of offensive language, including frequent use of the word “*fuck*” together with frequent references to milder language such as “*asshole*” and “*dick*”. The film also contained sexual language such as “*I just came*” and “*I totally sprayed my shorts*”. In addition, it included two female characters talking about sexual fantasies, with one character saying she wanted to be “*spanked*”, and two male characters talking about the contents of a pornographic video which they said included girls “*fucking their brains out*”.

Ofcom received a complaint from a viewer who considered that the offensive language and sexual content was unacceptable for broadcast at 15:00.

When reviewing the material Ofcom also noted that the film contained a sequence, lasting approximately 19 seconds, which included rapid cuts between various characters’ faces and background scenery. Certain types of flashing images may trigger seizures in viewers who are susceptible to photosensitive epilepsy (“PSE”).

Ofcom therefore asked Monster Pictures for its comments with regard to the following Rules of the Code:

- Rule 1.3 – Children must be protected by appropriate scheduling from material that is unsuitable for them;
- Rule 1.14 – The most offensive language must not be broadcast before the watershed or when children are particularly likely to be listening; and
- Rule 1.16 – Offensive language must not be broadcast before the watershed, or when children are particularly likely to be listening, unless it is justified by the context; and
- Rule 2.13 – Television broadcasters must take precautions to maintain a low level of risk to viewers who have PSE.

Response

Monster Pictures accepted that the film was unsuitable to broadcast before the watershed. It apologised for this error and explained that the film was compiled incorrectly by a channel manager who has since left. It stated that it is now reviewing all of its material for broadcast to make sure it complies with the Code. The broadcaster also stated that the film will not be broadcast again at a similar time.

Decision

Offensive and sexual language

Rule 1.14 of the Code states unequivocally that “the most offensive language must not be broadcast before the watershed...” Ofcom research on offensive language¹ identified that the word “fuck” and its derivatives were considered by viewers to be very offensive. Therefore the broadcast of such language before the 21:00 watershed is a breach of Rule 1.14. With regard to Rule 1.16, Ofcom considered that the frequency and nature of the offensive language used was not justified by the context and was therefore in breach of Rule 1.16 of the Code.

With regard to the sexual and offensive language used in the programme, Ofcom noted Monster Pictures’ acknowledgement that the programme was broadcast at an inappropriate time. Ofcom also considered that the frank sexual language, including characters talking about sexual fantasies and pornographic films, was unsuitable to be shown during daytime and was not appropriately scheduled. This content therefore contravened Rule 1.3, which requires that “children must...be protected by appropriate scheduling from material that is unsuitable for them”.

Flashing images

Ofcom’s Guidance Note² advises on the technical limits for flashing images and is intended to minimise the level of risk to photosensitive viewers. All broadcasters should ensure that their technical teams are familiar with Ofcom’s published guidance as regards flashing images.

Ofcom tested this segment of the film against its published Guidance concerning PSE. It found that for a total of four seconds the film contained flashing where the brightness, frequency and screen areas exceeded the “intensity” limits as set out in the Guidance. Ofcom Guidance also states that a prolonged sequence of flashing images below these “intensity” limits lasting more than five seconds may pose a risk to viewers with PSE. Given that this particular sequence lasted 19 seconds in total, Ofcom considered that this presented a further risk to viewers with photosensitive epilepsy.

The broadcast of this material was therefore in breach of Rule 2.13.

Breach of Rules 1.3, 1.14, 1.16, and 2.13

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

² <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/guidance2.pdf>

In Breach

Flashing images in programme content

DM Digital, 22 September 2009, 12:06 and 12:17

Introduction

DM Digital is a free-to-air general entertainment channel, broadcasting mainly in Urdu to the UK Asian community. During routine monitoring of the channel, Ofcom noted two sequences of flashing images (“the Sequences”) in separate music videos at the above times. No warning was broadcast before or during either sequence.

Certain types of flashing images present a danger of triggering seizures in viewers who are susceptible to photosensitive epilepsy (“PSE”). Rule 2.13 of the Code therefore states that:

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

Ofcom therefore asked DM Digital how the content complied with this Rule.

Response

DM Digital apologised for broadcasting this material but stated that the content, which consisted of separate music videos incorporating ‘Bollywood’ songs, was shown on “other Bollywood channels...without any flash warning”. The broadcaster said that: in its opinion, the flashing images were “very minimal”; and that, as such “we were under the impression that no warning is required”. However, DM Digital said that, after being initially contacted by Ofcom about the content, it had ceased broadcasting it.

Decision

Ofcom’s Guidance Note¹ on Rule 2.13 advises on the technical limits necessary for flashing images and is intended to minimise the level of risk to viewers with PSE. All broadcasters should ensure that their technical teams are familiar with the Guidance Note as regards flashing images.

A technical assessment of the Sequences by Ofcom found that: at 12:06 there were six distinct sequences of flashing images; and at 12:17 there was a seven second sequence of flashing images. In both these Sequences, the rate, intensity and screen area occupied by the flashing images clearly breached the technical limits set out in Ofcom’s Guidance on Rule 2.13. In addition, Ofcom noted that DM Digital did not provide: any editorial justification for these breaches of the technical limits set out in the Guidance Note; nor any warning or warnings to viewers about the flashing images.

¹ See: <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/guidance2.pdf>

We remind all television broadcasters that it is their responsibility to ensure that all material they transmit complies with the Code. This responsibility is particularly important where there is potential for harm to viewers.

The flashing images in the Sequences were therefore clearly in breach of Rule 2.13.

Breach of Rule 2.13

Advertising minutage cases

In Breach

Advertising minutage

Q, 30 October 2009, 22:00

Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”), states: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”. This rule derives directly from a requirement of the Audiovisual Media Services (AVMS) Directive.

As part of Ofcom’s routine monitoring of broadcasters’ compliance with COSTA, Ofcom noticed that the music channel Q transmitted a total of 13 minutes 18 seconds of advertising during one clock hour (one minute and 18 seconds more than allowed).

Ofcom wrote to Box Television Limited (“Box Television”), the licence holder for Q, to ask whether there had indeed been a breach, and, if so, how the breach had occurred and what steps it intended to take to avoid a recurrence.

Response

Box Television said that it took its responsibility to comply with COSTA seriously, and acknowledged that in this instance Q had not complied with the rule.

The broadcaster explained that it has recently introduced new ‘long-form’ programmes to the channel, which had previously just played music videos. Its advertising play-out system inserts 12 frames of black between commercials which can add a few seconds to the duration of advertising breaks. Cumulatively over the day, this led to slippage of the 21:00 hour commercials into the 22:00 hour on 30 October.

The broadcaster has since reduced the advertising minutage it allows in long-form programme hours to 9 minutes per hour to ensure such slippage does not re-occur and has reiterated the necessity for ‘water-tighting’ the transmission schedules so any potential issues are raised well in advance of transmission.

Decision

Ofcom notes that Box Television has taken further steps to ensure compliance with COSTA.

However, this failure followed an earlier overrun on another of Box Television’s channels, in October 2009. In that case, Box Television had informed Ofcom that its scheduling and transmission departments had been reminded of the importance of complying with Rule 4 of COSTA, and that it would endeavour to ensure a similar error would not re-occur.

Ofcom is concerned that Box Television's procedures were not robust enough to prevent this second overrun (in one month) from occurring, and in the circumstances has found the channel in breach of Rule 4 of COSTA.

Breach of Rule 4 of COSTA

Note to Broadcasters

Guidance on Rule 9.13

Following Ofcom's recent sponsorship credits monitoring exercises, we issued further guidance on compliance with Rule 9.13 of the Code to accompany related findings in the Bulletin. For broadcasters' ease of reference, this additional guidance has today been incorporated in the guidance to Section Nine of the Code, which you can access here: <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/guidance9.pdf>.

Fairness and Privacy cases

Partly Upheld

Complaint by the Kennel Club made on its behalf by Schillings

Pedigree Dogs Exposed, BBC1, 19 August 2008

This Adjudication was originally published on 9 December 2009.

Summary: Ofcom has found that there was no unfairness to the Kennel Club in four aspects of the BBC programme *Pedigree Dogs Exposed* about which the Club complained to Ofcom. The Club's fifth area of complaint was that it was not given an appropriate opportunity to respond to 15 specific allegations. Ofcom has found that the Club was treated unfairly in four of those 15.

The BBC broadcast a documentary that examined health and welfare problems in pedigree dogs. The programme argued that pedigree dogs were "dangerously inbred" and that many of the problems were caused by competitive dog showing. The programme alleged that, because of the Kennel Club's rules, some breeds were "paying a terrible price in genetic disease".

The Kennel Club complained to Ofcom that it was treated unfairly in the programme. The Kennel Club's complaint was considered by Ofcom's Fairness Committee, its most senior decision making body in matters of Fairness and Privacy.

In summary the Committee found the following:

- The Kennel Club was in a position to give informed consent for its participation in the programme and was given enough information during the lengthy production process to alert it to a change in the emphasis of the proposed programme. The Kennel Club was not deceived about the nature and purpose of the programme.
- Mr Ronnie Irving, the Chairman of the Kennel Club, was able to state his position that there was a distinction between dog breeding and any analogy with humans.
- Footage of an interview with Dr Jeff Sampson, of the Kennel Club, did not fairly represent his views, but this did not result in any overall unfairness to the Kennel Club itself.
- The Kennel Club was given an appropriate and timely opportunity to respond to some of the serious allegations included in the programme. However it was not given such an opportunity in respect of an allegation regarding eugenics, a comparison with Hitler, and association with Nazi racial theory; or an allegation that it covered up an operation carried out on a Crufts Best in Show winner. The programme was unfair in respect of these allegations.

Introduction

On 19 August 2008, the BBC broadcast *Pedigree Dogs Exposed* on BBC1. The documentary programme examined the extent of health and welfare problems in pedigree dogs. The programme argued that pedigree dogs were "dangerously

inbred” and that the cause of certain health and welfare problems was competitive dog showing. The programme’s director and reporter, Ms Jemima Harrison, said:

“The Kennel Club is widely accepted as the guardian of pedigree dogs... The Kennel Club has two main roles: first it is a registry which records the lineage of pure-bred dogs... It regulates most dog shows in the UK.”

The programme alleged that, because of the Kennel Club’s rules, *“today’s dogs [are] very inbred”* and some breeds are *“paying a terrible price in genetic disease”* because of this. It alleged that because the Kennel Club *“continued to embrace Eugenicist principles”*, breeders sometimes culled healthy puppies that deviated from a Breed’s Standard.

The programme included distressing scenes of a Cavalier King Charles Spaniel (“CKCS”) with syringomyelia (a condition where the brain is too large for the skull) and a boxer suffering an epileptic fit. It also included footage from various dog shows, including Crufts; and extracts of interviews with representatives of the Kennel Club; the RSPCA’s Chief Vet; several pedigree dog owners; and pedigree dog breeders.

The Kennel Club complained that it was treated unfairly in the programme as broadcast.

Ofcom’s Fairness Committee (“the Committee”), its most senior decision making body with regard to fairness and privacy complaints, considered, and provisionally adjudicated on, this complaint. It found that there was some unfair treatment of the Kennel Club in the broadcast of the programme.

The BBC requested a reconsideration of the provisional finding under heads d) and e) xv) on the grounds that it contained insufficient reasoning, it contained a material mistake of fact and that undue weight was given to certain factors.

The Committee reconvened to consider afresh the Kennel Club’s complaint of unfair treatment under heads d) and e) xv) only (details of these heads of complaint are set out below).

The Complaint

The Kennel Club’s case

In summary, the Kennel Club complained that it was treated unfairly in the programme as broadcast in that:

- a) Mr Ronnie Irving (Chairman of the Kennel Club) had been asked by Ms Harrison in the programme if he would consider having a baby with his daughter. She then claimed that this was the *“same issue”* as inbreeding pedigree dogs. This was unfair because it inferred that because Mr Irving might have in- or line-bred pedigree dogs, he would approve of the same in humans.

By way of background, the Kennel Club said that other animals such as horses, or mice bred for laboratory testing, were in- or line-bred.

- b) The Kennel Club did not give informed consent for its participation in the programme in that:

- i) The Kennel Club had agreed to take part in the programme, encouraged others amongst its members and registered breed clubs also to do so, and provided considerable information to the programme makers. This was on the basis that the programme would be a documentary on canine genetics, which would include some history of the Kennel Club and its plans to maintain and improve the health of pedigree dogs. The BBC, which had described the message of the programme to be “a hopeful one, showing how science and breeders can combine to preserve purebreds for the future”, was not straightforward, open and honest with the Kennel Club.

By way of background, the Kennel Club said that if the BBC had been open and honest about its true intentions the Kennel Club would not have been so forthcoming with the information and interviews it gave and encouraged others to give. It would not have contributed to the programme, had it known of its negative message. The Kennel Club had been severely damaged as a result of its treatment in the programme. This was likely to impact extremely negatively on the good work that it did researching and providing solutions for health problems in pedigree dogs.

- ii) The message of the programme had changed at some point during production from a “hopeful one” to one which attacked the Kennel Club. It was unfair for the programme makers not to have told the Kennel Club of this shift, which would reasonably have affected the Kennel Club's consent to participate.
- c) The Kennel Club had been deceived as to the intention of the programme makers and what the full purpose of the programme was to be. It was also deceived as to the relevance of its contributions to the programme.

By way of background, the Kennel Club said that its dealings were neither illegal nor anti-social and that there could be no justification for the deception used on the Kennel Club.

- d) The programme was unfairly edited. The programme makers had told the Kennel Club that the programme would contain a fair and truthful representation of what they had said. However, the programme had not contained a fair representation of the Kennel Club's responses. Quotes from senior members of the Kennel Club were also taken out of context to make it appear as though the Kennel Club did not appreciate the health and welfare problems that were faced by pedigree dogs.

By way of example, the Kennel Club said that its geneticist, Dr Jeff Sampson, was made to look flippant on a number of occasions in the programme in a deliberate attempt to discredit him. The programme makers used brief comments made by him, which were short summings up of longer and more complex threads of argument. Dr Sampson and the Kennel Club had been under the impression that much fuller coverage would be given to the positives, or he would not have made the short summary comments, which were then used out of context to discredit his views.

- e) The programme made several allegations of iniquity and wrongdoing, to which the Kennel Club was not given an appropriate and timely opportunity to respond. The Kennel Club and, by implication, those in charge of running it, were accused of:

- i) having formed out of the Eugenics movement;
- ii) sharing the same ideologies as Adolf Hitler;
- iii) hiding a “*dark and dirty secret*”;
- iv) approving of the culling of healthy puppies which did not conform to the breed standard;
- v) being responsible for the very high levels of disability, deformity and disease in pedigree dogs;
- vi) being responsible for “*the greatest animal welfare scandal of our time*”;
- vii) being responsible for pedigree dog owners spending £10 million a week in vets' fees;
- viii) inbreeding;
- ix) “*breeding in deformities and disabilities*”;
- x) not taking health and welfare into consideration when judging dog shows;
- xi) being responsible for the breeding of mutants;
- xii) not considering health and welfare when registering new pedigree puppies;
- xiii) not doing enough to combat the health and welfare problems of pedigree dogs;
- xiv) accusing pet owners of overreacting about syringomyelia; and
- xv) covering up and brushing aside the operation on Danny the Peke, who won Crufts Best in Show in 2003.

The Kennel Club had responded in detail to each of these accusations, but its response was not fairly and accurately reflected in the programme. A disproportionately small amount of the hour-long programme concerned the Kennel Club's response to some of the accusations. Its quotes were taken out of context and deliberately made to look weak against some strong counter-statements. Its response to some of the allegations did not appear. In addition, Professor Michael Herrtage, a specialist in small animal medicine at the University of Cambridge and currently Vice-President of the European College of Veterinary Internal Medicine, had been interviewed for over three hours by the programme-makers and was complimentary of the Kennel Club and the work it had been doing to improve the health of pedigree dogs. The programme had not included any footage of his interview.

The BBC's case

By way of background, the BBC said that the programme was the result of an in-depth investigation carried out over two years into the extent of the health and welfare problems of the nation's pedigree dogs. It uncovered growing concerns that decades of inbreeding of pedigree dogs had led to an increase in serious genetic diseases in many breeds. The BBC said that the programme featured contributions from many involved in the world of pedigree dogs, including the Kennel Club, who recognised that there were serious health concerns.

The BBC said there was a clear public interest in the making of the programme, which highlighted the lack of effective action to tackle a problem affecting hundreds of thousands of dogs. The BBC said that the Kennel Club was the guardian of pedigree dogs, whose primary objective was “*to promote in every way, the general improvement of dogs*”. However, the programme uncovered evidence that the breed standard – which explained what each pedigree breed should look like, was used by all registered breed clubs and formed the criteria for judging dogs in shows – frequently encouraged breeders to breed purely on the basis of physical appearance with little or no regard to the effect this had on their health and wellbeing. It also found that persistent inbreeding to produce dogs that most closely resembled the

breed standard had increased the prevalence of inherited diseases, causing long-term detrimental effects on many breeds.

The BBC said that the Kennel Club had said publicly that it welcomed the programme's highlighting of the issue but maintained the programme failed to reflect the measures it had taken to address the issue. However, the BBC said that within two months of the broadcast, the Kennel Club had introduced a series of wide-ranging new measures to try to improve the health and welfare of pedigree dogs, indicating that the Kennel Club had recognised the validity of the major criticisms made in the programme.

The BBC said that many other organisations had also taken action to highlight their concern about the health of pedigree dogs and the lack of effective action that had been taken by the Kennel Club, which showed the strength of informed opinion about the failure of the Kennel Club to meet its own objectives and demonstrated that the programme makers were justified in bringing this failure to the public's attention.

In summary, the BBC responded to the Kennel Club's complaint of unfair treatment as follows:

- a) It first responded to the complaint that the Kennel Club was portrayed unfairly in that Mr Irving was asked if he would consider having a baby with his daughter, inferring that because he might have in-bred or line-bred dogs, he would approve of the same in humans.

The BBC said that it was generally accepted by scientists and medical experts that inbreeding in any species led to an increase in the prevalence of hereditary illnesses and other health problems. The programme investigated the effect of intensive inbreeding in pedigree dogs and in order to put this practice in context, and give the audience a clear understanding of the nature and consequence of pedigree dog breeding, the programme makers frequently used a human analogy. This was first mentioned in the programme by eminent geneticist, Professor Steve Jones. He said:

"In dogs, things have gone completely out to lunch. I mean people are carrying out breeding which would be first of all illegal in humans and secondly, is absolutely insane from the point of view of the health of the animals".

Later in the programme, Professor Jones explained that severe inbreeding meant some dogs were paying *"a terrible, terrible price in genetic disease"* and that, in his view, this was made worse because of the Kennel Club's willingness to register the mating of very close relatives:

"I think it's not a coincidence that all over the world that is looked at with revulsion in human societies and I defy anybody to say that they would approve of brother-sister mating or father-daughter mating. It's simply, we see that it's wrong. Yet, if you speak to dog breeders, father-daughter breeding in particular, father-granddaughter breeding even is common. They must know that this is going to cause problems".

This was the context in which the subject of father-daughter breeding was put to Mr Irving: Ms Harrison asked the question precisely because Mr Irving would not condone such a practice. The BBC said that Ms Harrison did not imply that Mr Irving would approve of inbreeding of humans but that the question highlighted

the fact that many dog breeders believed inbreeding was beneficial to dogs. Mr Irving did not appear to be offended by the question, and the tone of the conversation was cordial throughout.

The BBC noted the Kennel Club's reference to inbreeding in other species and said that inbreeding between close relatives, as occurred in pedigree dogs, was widely condemned by the vast majority of those involved in farming and animal welfare because of the recognised detrimental effects on health. It said that the Swedish Kennel Club, for example, had banned mating between parents and offspring or between siblings and recommended breeding no closer than between first cousins.

- b) The BBC next responded to the complaint that the Kennel Club did not give informed consent for its participation in the programme.

Throughout the two years that it took to produce, the programme was consistently presented as an investigation into canine health and genetics. The first contact with the Kennel Club was in February 2006 in an email to the Kennel Club's press office, which said "We're researching a documentary film on canine genetics". The correspondence to which the Kennel Club referred in its complaint was an email sent in September 2006, which described the programme as "an in-depth documentary on canine genetics" and went on to say:

"As part of the film, we're keen to tell the history of the Kennel Club, its principles and aims and how the ever-increasing knowledge of genetics affects the pedigree dog world. We are particularly keen to hear about the KC's plans to maintain/improve the health of pedigree dogs for the future. Although we will be examining the problems, the film's ultimate message is intended to be a hopeful one, showing how science and breeders can combine to preserve our purebreds for the future".

This was an accurate and honest summary of the intention of the programme-makers, which made it clear that the programme would be considering both the positive and the negative aspects of canine health. It said that the reference to the programme's "ultimate message" did not imply that it would endorse the Kennel Club's role in overseeing breeding practices. The evidence uncovered by the programme showed that the most effective way to improve the health of pedigree dogs was for breeders to adopt an entirely different approach to breeding and canine genetics from that advocated by the Kennel Club.

The BBC said that Ms Harrison began her investigation with an open mind, but that it became clear that the Kennel Club had failed to recognise the severity of the threat to dogs' health and was not doing enough to tackle the problem. It was legitimate to shift the emphasis of the documentary as a result of the evidence uncovered. The BBC said that the Kennel Club was aware of this shift in emphasis, since there were numerous email and letter exchanges between the Kennel Club and the programme makers which asked a series of challenging and probing questions. These included:

- An email to Mr Irving on 10 December 2007, which provided a detailed guide to areas of questioning prior to on-camera interview.
- An email to Mr Irving and Dr Sampson on 24 January 2008, which followed a lengthy on-camera interview referring to 10 breeds on a watch list re exaggeration/welfare issues.

- An email to a representative in the Kennel Club Press Office on 14 May 2008, which explained that the programme would explore problems caused by inbreeding and possible solutions.
- An email to Caroline Kisko, Secretary of the Kennel Club, on 31 July 2008 asking for details of the number of breeds which had had changes made specifically to improve health.

Representatives from the Kennel Club took part in five on-camera interviews between November 2006 and January 2008. On each occasion, they were interviewed at length and would have been aware from the nature of the questioning that the Kennel Club's role in safeguarding the health of purebred dogs, and the action it had taken, were being subjected to scrutiny. Ms Harrison provided detailed information about the main areas of questioning prior to the interview with Mr Irving and Dr Jeff Sampson, the Kennel Club's Genetics Co-Ordinator in January 2008.

The BBC said that the Kennel Club's agreement to this series of interviews, in which the nature of the problem and the organisation's role in addressing it became increasingly prominent, showed that the Kennel Club had a clear understanding of the charges being put to it and could not claim it was misled as to the nature of the programme. At no stage did the Kennel Club give any indication it wished to withdraw its consent to contribute to the programme and continued to engage in correspondence with Ms Harrison. Furthermore, on 2 July 2008, six weeks before the programme was transmitted, Mr Irving sent an email to the Executive Producer of the programme in which he said:

“...we have been aware throughout of an apparently very biased line being taken by the producers, and only took part in the film in an endeavour to balance the extremely biased view apparently being painted of pedigree dogs”.

The BBC said that this proved that the Kennel Club was well aware of the editorial thrust of the programme and contributed in the full knowledge that the Kennel Club was facing criticism from many parties with an interest in the breeding of pedigree dogs.

- c) The BBC next responded to the complaint that the Kennel Club had been deceived as to the intention of the programme makers, what the full purpose of the programme was to be, and the relevance of its contributions to the programme.

The BBC said that, as set out under its response to head b) above, the Kennel Club was not deceived as to the intention of the proposed programme. The programme was a thoroughly researched investigation into the health of the nation's pedigree dogs, which raised legitimate concerns about the Kennel Club's failure to address the detrimental effects caused by inbreeding and adherence to the Kennel Club's breed standards. The programme based its conclusions on numerous in-depth interviews with experts in the field of canine health, many of whom believed the Kennel Club had failed to address the issue effectively and was pursuing policies which had made the situation worse.

Actions taken by numerous organisations following the programme (including the Kennel Club, which had ordered a review of the Breed Standard for all pedigree dogs and imposed a mandatory code of ethics on all breed clubs) showed that the conclusions of the programme were justified and supported by the evidence.

- d) In response to the complaint that the programme was unfairly edited, the BBC said that the programme accurately and fairly represented the contributions of members of the Kennel Club and that the Kennel Club was given an appropriate opportunity to respond. The programme included several contributions from Kennel Club representatives which ensured that the views of the organisation were given due weight and prominence. The programme also made numerous references to the actions and policies of the organisation in relation to the health and welfare of pedigree dogs, to ensure that no material facts were disregarded or omitted.

Within the first minute of the programme, there was a comment from Dr Sampson, which accurately reflected the Kennel Club's assessment of the problem facing pedigree dogs:

"The vast majority of dog breeds are, and dogs in those breeds are healthy, healthy dogs".

The programme included a number of interviews with representatives of the Kennel Club in which they made the following points:

- It was unequivocally opposed to the culling of healthy puppies.
- It believed the vast majority of pedigree dogs that it registers *"will live long, happy, healthy lives"*.
- It had worked hard with Cavalier King Charles Spaniel (CKCS) clubs to establish a heart screening programme for the breed, which had had a positive effect.
- It had changed the breed standard for certain dogs, such as bulldogs, to prevent exaggerations in the breed.
- It had stepped up training for show judges so that health and welfare are now part of the curriculum.
- It planned to introduce more health tests for dogs before they could be used for breeding.

There were also references in the script to the positive steps that the Kennel Club had taken to address issues of canine health, such as:

- Its funding of scientific research into dogs via its Charitable Trust.
- Its Accredited Breeder Scheme, launched in 2003, which set a code of conduct for breeders and asked that they make use of health screening schemes.
- Its funding of the development of DNA tests which would allow breeders to check if their dogs were carrying certain hidden conditions.
- Its funding of research into the problem of syringomyelia in CKCS, one of the dogs most affected by inherited problems.

The BBC said that programme also included interviews with the President of the British Veterinary Association, a number of show judges and numerous Kennel Club registered breeders, all of whom supported the position of the Kennel Club. Their inclusion ensured that viewers were aware that many within the dog world backed the organisation and the actions it had taken.

The Kennel Club was given an appropriate right of reply at the end of the programme to accurately and fairly reflect its response to the core allegations being made against it:

Ms Harrison *“It is really hard for us not to come to the conclusion that many breeds are in big trouble, that the show ring is responsible for deforming dogs into caricatures in some instances, and that the Kennel Club is not doing enough to tackle the problems.”*

Mr Irving *“I wouldn’t accept your argument that many breeds are in extreme trouble. There are some breeds that are in some degree of trouble and the whole effort of Jeff’s department and the Kennel Club and our Charitable Trust is in trying to direct ourselves against these problems and to try to do good things for these breeds.”*

As to the complaint that comments by representatives of the Kennel Club were taken out of context, the BBC said that the edited sections of interviews with those representatives that were used in the programme were a fair and accurate representation of each contributor’s point of view. As regards the complaint that Dr Sampson was made “to look flippant”, the BBC said that Dr Sampson was featured on five separate occasions in the programme and that the transcripts of his interviews showed that the clips used were an accurate representation of the points he was making.

- e) The BBC finally responded to the complaint that the programme made several allegations of iniquity and wrongdoing to which the Kennel Club was not given an appropriate and timely opportunity to respond and said that the Kennel Club was given an appropriate opportunity to respond to the allegations of wrongdoing and incompetence that were laid against it and its response was fully and fairly reflected in the programme. The BBC dealt with each specific allegation:

- i) The Kennel Club was formed out of the Eugenics movement

The programme explained that the Kennel Club was formed in 1873 in response to the growing popularity in Victorian times for breeding and showing dogs. This was at a time when there was growing interest and support for the principles of what came to be known as eugenics, an idea now totally discredited. The BBC said that the Kennel Club mirrored these principles by endorsing selective breeding in dogs to produce defined characteristics based on appearance, and opposed any cross breeding. The chairman of the Kennel Club confirmed in an interview with the programme-makers that the organisation still followed the principles of eugenics.

Mr Irving I take it that eugenicist means that we are actually trying to breed dogs following a certain pattern and that is certainly what the Kennel Club’s people are trying to do because they were, they are, they were and still are trying to breed dogs that could do the jobs of work that they were designed to do.

Ms Harrison I think it is more the idea that you can improve on nature by you having control of the breeding rather than nature.

Mr Irving Indeed in the short term, you can, not necessarily improve on nature but you can create a situation where a dog is

more suited to do a particular job of work. That's why we have your beloved breed which is Flat Coats, that's why Flat Coats are different from Border Terriers in fact because people decided that they wanted to produce a dog that was able to do the kind of job of work that a Flat Coat can do and other people decided they wanted to produce a dog that could do a job of work a Border Terrier could do. So the, to that extent, if that's what eugenicist means, well the Kennel Club was and still is a bit like that.

The BBC said that the programme therefore included an accurate statement of fact on this point and did not lead to any unfairness to the Kennel Club.

- ii) The Kennel Club shared the same ideologies as Adolf Hitler.

The BBC said that the programme did not intend to suggest, nor did it suggest, that the Kennel Club shared the same ideologies as Adolf Hitler and the Nazi Party. The only reference was to a common commitment to the principles of eugenics. The programme explained that the Kennel Club was born out of the eugenics movement and this was then put in an historical context.

Ms Harrison *"In the 1930's, the eugenics movement found its ultimate champion."*

Professor Jones *"Adolf Hitler was a very keen geneticist and he really was, uh, he believed there was a pure race, the Aryans, which were different from every other race and you should breed from that race and kill off all the others."*

Ms Harrison *"The Holocaust exposed eugenics as morally flawed. Its ideas about purity make no scientific sense either. And yet one organisation, almost unnoticed, has continued to embrace eugenicist principles."*

The BBC said that the Kennel Club promoted selective breeding to produce dogs with a particular appearance, removing traits or characteristics which it regarded as unacceptable, often without regard to health or welfare. Viewers would have understood that this was following the principles of eugenics, a point which the chairman of the Kennel Club confirmed. This was also a view held by many in the world of pedigree dogs and one reflected in the programme by experts such as Professor Jones and Professor James Serpell, Professor of Humane Ethics and Animal Welfare at University of Pennsylvania.

The BBC said that it was reasonable to refer to the Nazi Party, to explain to viewers that eugenics was a failed concept in humans, on both moral and scientific grounds, and to question why it was still practiced by the Kennel Club in relation to dogs. It also gave viewers the context in which to consider the moral justification of breeders who knowingly culled healthy puppies because they did not conform to the Kennel Club's breed standard.

The BBC accepted that any kind of comparison to the Nazi Party ran the risk of causing insult or affront and said that it regretted any offence that may have been caused. However, it said that the vast majority of viewers would

have understood the broad point being made and recognised the clear distinction between the extreme aspirations and policies of the Nazi Party, insofar as they referred to humans, and the aims and intentions of the Kennel Club.

iii) The Kennel Club was hiding a *“dark and dirty secret”*.

This was a reference to the Kennel Club’s policy of following eugenicist principles in breeding dogs, based primarily on appearance rather than health or purpose. This had led to an increase in genetic disease and encouraged breeders to cull healthy puppies simply because their appearance does not match the criteria set out in the Kennel Club’s breed standard. For example, the BBC said that the Doberman Club website said it “does not condone or promote the breeding of white Dobermans” and advocated that “substandard or inferior animals should be destroyed”. The BBC said that it did not believe such practices were widely known by the general public and it was legitimate to describe them as a *“dark and dirty secret”*, as borne out by the widespread condemnation of the Kennel Club following the programme.

iv) The Kennel Club approved of the culling of healthy puppies which did not conform to the breed standard.

The BBC said that, during the course of her investigations, Ms Harrison obtained conclusive evidence that some breeders were prepared to cull healthy puppies if they did not meet the Kennel Club breed standard. The programme gave a detailed explanation of what happened with one breed, the Rhodesian Ridgeback.

“True to the Kennel Club’s eugenicist principles, breeders discard dogs born that deviate from the breed standard. The ridge on a Rhodesian Ridgeback serves no useful purpose. In fact it has been known for decades that the ridge is a mild form of Spina Bifida that can cause serious health problems. But the ridge is enshrined in the Kennel Club’s breed standard as the defining feature of the breed and so every Ridgeback must have one. The problem is that one in 20 Rhodesian Ridgebacks is born without a ridge”.

The BBC said that the programme included interviews with Ms Ann Woodrow, a breeder of Rhodesian Ridgebacks, and Ms Kirsteen Maidment, the chair of the Rhodesian Ridgeback Club of Great Britain (“RRCGB”), who both confirmed that they regarded dogs born without a ridge as suffering from a *“genetic fault”*, and should be put to sleep or neutered. Ms Maidment also alleged that the Kennel Club was aware of this practice because she understood the Kennel Club ratified the breed club’s code of ethics every year, and the Code explicitly said “Ridgeless puppies shall be culled”.

However, the BBC said that programme included the Kennel Club’s rejection of the practice of culling healthy puppies and of any knowledge that this was taking place:

Mr Irving *“No. Should healthy puppies be culled? Absolutely not. There is no reason in my view to cull puppies on cosmetic grounds, absolutely not. And I wouldn’t want the Kennel Club associated with such an idea.*

Ms Harrison *Such a practice happens all the time.*

Mr Irving *Well, I wasn't aware of that until you told me that this morning. I'm appalled by that and I'll, I will do what I can to prevent it but I'm not sure what I can do to prevent it."*

The programme also quoted a letter from the Kennel Club to the RRCGB:

"We have several concerns about the inclusion of the phrase 'ridgeless puppies shall be culled at birth', in the code of ethics of one of our registered societies. We would therefore request that this is removed at the earliest possible opportunity from the club's code as the Kennel Club cannot condone euthanising healthy puppies for a breed point and we must if necessary publicly dissociate ourselves from this practice".

The BBC said that this ensured that the programme fairly and accurately reflected the Kennel Club's publicly stated position on the culling of puppies which did not conform to the breed standard.

- v) & vi) The Kennel Club was responsible for the very high levels of disability, deformity and disease in pedigree dogs and for *"the greatest animal welfare scandal of our time"*.

The BBC said that the central assertion of the programme was that pedigree dogs were suffering from a growing number of genetic diseases and conditions which had created a severe threat to the health and wellbeing of many breeds. The policies of the Kennel Club contributed to the growing crisis facing pedigree dogs because they perpetuated inbreeding, inherited health problems and a focus on breeding dogs on the basis of physical appearance, with insufficient regard to the effect on health.

The Kennel Club was responsible for the breed standard for all pedigree dogs; licensed the vast majority of dog shows in the UK; and registered the vast majority of breed clubs and societies in the country and oversaw their codes of ethics. The BBC said that the Kennel Club had the power and influence to effect change in breeding practices but had failed to take effective action. The programme gave examples of numerous breeds which were suffering serious health issues and the programme makers interviewed dozens of experts who confirmed that pedigree health problems were a direct result of efforts to breed dogs that conformed as closely as possible to the breed standard.

Mr Mark Evans, the Chief Vet of the RSPCA, said:

"We have to encourage those involved in the industry to do a complete top to bottom review of both breed standards and the rules and regulations of dog showing, to move it away from its obsession beauty through to quality of life. But unless we start now, the pedigree dog hasn't got a chance".

Ms Beverley Cuddy, editor of *Dogs Today*, said:

"The dogs are falling apart, and the number of genetic problems are increasing at a frightening pace".

This was followed by Professor Serpell saying:

“People love these animals you know. It’s like seeing a close relative falling apart. In many ways I think that’s just criminal to allow that to happen”.

The programme referred to a report by the Companion Animal Welfare Council (“CAWC”) issued in 2006 which raised serious concerns about the way pedigree dogs were bred and called for wholesale change. A member of CAWC, animal welfare expert Mr James Kirkwood, told the programme:

“This is a big problem compared with many other animal welfare issues because it involves a lot of animals, for large parts of their lives, for generation after generation after generation...”.

The programme also quoted from a report called The Geneticist’s View on Dog Breeding written in 2004 by the Kennel Club’s own genetics expert Dr Sampson in which he concluded:

“Unfortunately the restrictive breeding patterns that have developed as part and parcel of the purebred dog scene have not been without collateral damage to all breeds...Increasingly, inherited diseases are imposing a serious disease burden on many, if not all, breeds of dog”.

The BBC said that in these circumstances it was justified to raise concerns about the plight of pedigree dogs and report the concerns of many experts, vets, scientists and breeders that the Kennel Club had failed to take the necessary action to address the problem. As set out under head d) above, the Kennel Club was given an appropriate right of reply to these allegations.

- vii) The Kennel Club was responsible for pedigree dog owners spending £10 million a week in vets’ fees.

The BBC said that the programme reported that the owners of pedigree dogs spent on average £10 million on vets’ fees every week. The Kennel Club was not responsible for the fees charged by vets or for the willingness of pet owners to pay such fees, and the programme did not suggest that it was. Viewers would not have been given the impression that the Kennel Club was responsible for the figure in question.

- viii) & ix) The Kennel Club was accused of inbreeding and “breeding in deformities and disabilities”.

The BBC said that, in addition to the points made in its responses to heads v) and vi), Mr Irving told the programme that he supported inbreeding in dogs, including the mating of grandparents and grandchildren. The reference in the programme to deformities and disabilities was made by Mr Evans, a recognised expert, who said:

“The RSPCA is extremely concerned about the very high levels of disability, deformity and disease in pedigree dogs”.

- x) & xi) The Kennel Club was accused of not taking health and welfare into consideration when judging dog shows and of being responsible for the breeding of mutants.

The BBC said that the programme explained that the Kennel Club “*regulates most dog shows in the UK*”, including Crufts, and said it was legitimate to report the concerns of many experts, such as Mr Evans, that dog shows did not pay sufficient attention to health:

“When I watch Crufts, what I see in front of me is a parade of mutants. It’s some freakish, garish beauty pageant that has nothing, frankly, to do with health and welfare”.

The BBC said that the section of the Kennel Club’s website on Dog Showing made no mention of judges considering canine health:

“The most popular form of canine competition in this country is the dog show - the formal beauty contests for Kennel Club registered pure-bred dogs, such as those seen at Crufts. The Kennel Club has set a breed standard for every breed of pedigree dog that it recognises, which represents the ideal conformation and characteristics for that breed. At shows, the judge must compare each dog with the breed standard to find the dog nearest to that ideal picture of the breed”.

The BBC also said that the Kennel Club’s website said that “judges are educated so that dogs displaying visible health problems will not win at dog shows”. This appeared to imply that serious inherited diseases which may not be “visible”, such as mitral valve disease or syringomyelia in Cavalier King Charles Spaniels, were not taken into consideration when judging competitive dog shows. However, the programme was fair to the Kennel Club by explaining the efforts it had made to address the issues:

“The Kennel Club has also stepped up training for its judges. Not just anatomy, but health and welfare, is now part of the judges’ curriculum”.

- xii) The Kennel Club did not consider health and welfare when registering new pedigree puppies.

The BBC said that the programme accurately reported the Kennel Club’s rule that it would only register the offspring of two dogs of the same breed. This often involved the kind of close breeding widely regarded as causing many of the genetic problems facing pedigree dogs. Professor Jones said in the programme:

“If the dog breeders insist on going further down that road, I can say with confidence really that there is a universe of suffering waiting for many of these breeds – and many if not most of these breeds will not survive. They will get so inbred that they will be unable to reproduce and their genes will come to a dead end”.

However, the programme explained that the Kennel Club had taken action to improve the health of future generations of dogs, by introducing an Accredited Breeder Scheme in 2003, which urged breeders to make use of health screening schemes, and funding the development of DNA tests designed to allow breeders to check if their dogs were carrying certain hidden conditions.

- xiii) The Kennel Club was not doing enough to combat the health and welfare problems of pedigree dogs.

The BBC said that its response under head d) listed the actions taken by the Kennel Club to tackle health problems which were included in the programme. The BBC also said that the Kennel Club required only two pedigree breeds (the Irish Setter and the Irish Red and White Setter) to pass a health test before dogs could be used for breeding. In relation to all 207 other breeds, the Kennel Club did not require that any dog passed any health test before it could be bred, in effect allowing breeders to continue to breed from dogs with known genetic diseases.

Although the Kennel Club's Accredited Breeder Scheme did require some breed-specific health tests, the dog did not have to actually pass the test before it could be used for breeding. The Kennel Club's website said:

"At present, the requirements are simply to **participate** in the health screening programmes so that information is available to breeders and puppy buyers".

- xiv) The Kennel Club was accused of accusing pet owners of overreacting about syringomyelia.

The claim that the Kennel Club accused pet owners of overreacting about syringomyelia was made by Ms Carol Fowler, a CKCS owner. Ms Fowler had carried out research for the past three years into syringomyelia, an inherited neurological condition which was known to affect some breeds of dog and in particular the CKCS. The programme said that Ms Fowler contacted her MP and that they met with the Kennel Club in 2006. Ms Fowler said.

"They disputed that syringomyelia was a widespread problem in the Cavalier breed and suggested that it was a case of pet owner over reaction".

The BBC said that it was clear that Ms Fowler's comment was directly related to the meeting she attended at the Kennel Club with her MP, Mr Geoffrey Clifton-Brown. Ms Fowler had confirmed that she recalled Ms Caroline Kisko, Secretary of the Kennel Club, suggesting concerns about syringomyelia were "pet owner overreaction". The BBC said that Mr Clifton-Brown had issued a statement which supported Ms Fowler's understanding of the Kennel Club's response to syringomyelia.

It was apparent that Ms Fowler and Mr Clifton-Brown's understanding was that the Kennel Club did not, at this stage, regard syringomyelia as a significant problem. It was therefore fair and reasonable to include Ms Fowler's comments.

The BBC also said that, since the meeting in 2006, the Kennel Club and CKCS breed clubs had taken action to address the problem of syringomyelia. The CKCS Club had funded research into the condition and backed breeding recommendations agreed by specialist vets "to reduce the incidence of symptomatic syringomyelia in the breed". The Kennel Club's website confirmed that "Large amounts of time, effort and money continue to be invested to establish the precise modes of inheritance of both Syringomyelia and the heart condition Mitral Valve Disease". The programme reflected this action by saying *"the Kennel Club is now funding research into the disease"*.

- xv) The Kennel Club was accused of covering up and brushing aside the operation on Danny the Peke, who won Crufts Best in Show in 2003.

The BBC said that the programme accurately reported the allegation that the winner of Crufts in 2003 had undergone cosmetic surgery, in breach of the Kennel Club's rules. It also accurately reported that the Kennel Club carried out an investigation into the allegations and found that the dog had undergone a legitimate medical operation and so it had no reason to strip the dog of its title.

As regards the complaint that it was unfair for the programme not to include a contribution from Professor Herrtage, the BBC said that he was one of many potential contributors interviewed by the programme makers and that the programme did include a contribution from another vet who spoke in favour of the Kennel Club. Mr Nick Blayney, President of the BVA, said:

"We must cherish the Kennel Club. It's the only thing we've got. And therefore if it becomes too reactionary and loses the support of the majority, it will cease to have any influence. And I know there are plenty of people in the Kennel Club who would like to improve dog breeding considerably if they were... if they have the support and the agreement of their membership. They're doing the best they can in a very difficult situation".

The BBC said that this ensured that viewers were aware that there was support for the Kennel Club within the veterinary world, in this case at the very highest level.

The Kennel Club's comments in response

In response to the background information given by the BBC, the Kennel Club said that at the heart of the complaint was the BBC's failure to adequately portray the Kennel Club's side of the story and that it was not acceptable for the BBC to rely on the Kennel Club's post-broadcast actions to validate the criticisms of the Kennel Club in the programme.

As regards the Kennel Club's response following the broadcast, it was left with little option but to publicly defend itself and was forced to make public announcements of the positive measures that it was taking to improve dogs' health in order to redress the balance. However, the Kennel Club said that nearly all of the initiatives referred to by the BBC in their response were conceived prior to the broadcast. Furthermore, the Kennel Club was undertaking a number of other initiatives before the broadcast. The Kennel Club said that the contributions given by its representatives were not reflected in the programme as broadcast. The Kennel Club also provided a breakdown of time spent on various topics in the rushes compared to the actual footage used in the programme as broadcast.

In response to the BBC's statement on the specific heads of complaint, the Kennel Club made the following representations:

- a) As regards the footage of Mr Irving discussing inbreeding, the untransmitted footage showed clearly that the issue of inbreeding was extremely complex. The Kennel Club provided almost 20 minutes of considered interviews on the subject, none of which was broadcast. The only material broadcast was a 19 second comment by Mr Irving, filmed at an informal outdoor function when Mr Irving was

not informed in advance that he would be interviewed, let alone the nature of the questioning. Mr Irving had previously given his consent to be interviewed by Ms Harrison and therefore the “ambush” interview was wholly inappropriate.

The Kennel Club also said that Ms Harrison attempted to persuade Mr Blayney to condemn inbreeding but that he refused to do so. This was not included in the broadcast and was an important omission.

- b) & c) As regards informed consent, the Kennel Club maintained that it was not fully aware of the nature of the programme. Mr Irving set out his concerns when Ms Harrison asked him in an interview in January 2008 what he would hate to see in the film, to which he replied “All I ask is that you make a balanced view of what you have found out then I will watch the programme with great interest. If it's not balanced, I'll be appalled”.

In an interview in November 2006, Ms Harrison told Dr Sampson “I think you are a tremendous asset to the Kennel Club...”. She later asked Dr Sampson to restate positive issues because she liked what he was saying.

In an interview with Ms Kisko in March 2007, Ms Harrison stated that the last thing she wanted was for the programme to alienate people and later made statements to Ms Kisko such as “there has been a real change at the Kennel Club. I have to say that talking to you and talking to Dr Sampson, it feels that there has been a sea change almost”.

The Kennel Club said that these reassuring statements, taken along with the written evidence previously supplied, indicated continued deception of the Kennel Club as to the nature of the programme. None of these statements was used in the programme. It was only during the last stages of filming that the Kennel Club became aware of the true nature of the programme and clearly did not give informed consent to the programme as broadcast.

- d) The Kennel Club said that the BBC, when stating that the programme makers conducted many in-depth interviews with “experts”, many of whom believed that the Kennel Club had failed to address the issue effectively and was pursuing policies which had made the situation worse, had unfairly ignored the following points:
- The complexity of the issues surrounding inbreeding.
 - The fact that the Kennel Club had no statutory powers to force breeders to comply with its requirements. This was afforded only 18 seconds in the programme.
 - The part played by the Kennel Club in funding and stimulating research into canine health problems – see further at head d) v) below. The untransmitted footage showed that the programme makers were well aware of many Kennel Club initiatives in this sphere.
 - The work done by the Kennel Club over a number of years to change breed standards (see further at head d) iii) below).
 - The work done by the Kennel Club to educate judges to improve canine health (see further at head d) iv) below).
 - The introduction of the successful Kennel Club Accredited Breeder Scheme (see further at head d) vi) below).

- The positive attitude of the Kennel Club to outcrossing as a means of providing added genetic diversity, which was given no coverage in the programme.
- The work done by the Kennel Club on funding DNA and other health screening programmes (see head d) vii) below).

The Kennel Club maintained that the programme was not edited fairly for the following reasons:

- i) The BBC's coverage in relation to culling left the viewer with the impression that the Kennel Club was covering something up, when untransmitted footage of the interview with Mr Irving and Dr Sampson in January 2008 made it clear that this was not the case.
- ii) A great deal of serious interview was given on the Kennel Club's position that pedigree dogs live long, happy, healthy lives, but the programme gave only 34 seconds to this subject. The footage was edited to make the Kennel Club response look flippant and the comments were inserted between disturbing views of sick dogs.
- iii) The subject of changes to breed standards was given only seven seconds, delivered by the narrator, despite a total of 529 seconds of detailed and informative interviews by Kennel Club officials.
- iv) There was only 15 seconds of coverage of the increase in training and monitoring of judges, delivered by the narrator, despite a total of 458 seconds of detailed and informative interviews by Kennel Club officials on this subject.
- v) The coverage of scientific research funded by the Kennel Club amounted to two seconds, narrator delivered, despite a total of 863 seconds of detailed and informative interviews by Kennel Club officials.
- vi) The coverage given to the Accredited Breeder Scheme amounted to 11 seconds, narrator delivered, despite many detailed descriptions of the advantages of the Kennel Club scheme given in 520 seconds of unused interview material.
- vii) Coverage of funding for DNA tests amounted to nine narrator-delivered seconds, despite a total of 667 seconds of interviews by Kennel Club officials, on the extent of what had been done.

With respect to the complaint that Dr Sampson was made to look flippant, the Kennel Club said at the beginning of the programme, immediately following the narrator's comment that "*in the dock as the guardian of pedigree dogs, is a great British institution*", Dr Sampson appeared, smiling, to state that "*the vast majority of dog breeds are... and dogs in those breedsare healthy, healthy dogs*". This was immediately followed by pictures of a grotesque bulldog being dragged on to the operating table. Later in the programme, Dr Sampson was quoted as saying:

"The vast majority of dogs we register, we register 250,000 dogs a year, the vast majority of these dogs will live happy healthy lives".

This was deliberately edited to follow a statement attempting to discredit Dr Sampson, and was immediately followed by a picture of a sick Pug, inserted to make Dr Sampson's statement look at best foolish, at worst dishonest.

The programme was edited to make it look as though there were only two or three available health tests, when in fact there were hundreds. Dr Sampson was allowed to make a brief comment about not pushing breeders away from the Kennel Club despite many hours of interview on that subject. In an interview on the way to a meeting, Dr Sampson was shown smiling and saying "*Good morning*

guys!”, again in an attempt to make him look flippant. On the way out of the meeting, Dr Sampson was shown saying “*not you again*”.

The Kennel Club said that this was almost the entire extent of the programme's coverage of Dr Sampson's important and expert views, despite two significant interviews given by him in a proper office setting. This was in contrast to the serious and much more sympathetically treated “experts” on genetics who took the opposing view. Furthermore, Dr Sampson's portrayal in the programme was to be contrasted with Ms Harrison's overly complimentary manner towards him during interviews.

- e) The Kennel Club maintained that it was not given an appropriate and timely opportunity to respond to several allegations of iniquity and wrongdoing. Many of the allegations were not even put to the Kennel Club in their extreme form. The Kennel Club made the following points:
- The issue of eugenics was discussed briefly in the interview with Mr Irving in January 2008. Mr Irving was asked whether the Kennel Club was founded on racist and eugenicist principles and asked Ms Harrison for her definition of eugenics. This was because it was a very wide concept that permeated science today, for example in research into disease, without such practices being branded as Nazi inspired. However, Mr Irving did not anticipate that the programme makers would draw an analogy with Hitler and the Nazi party. Mr Irving had responded that cross breeds, or non-purebred, dogs could compete at Crufts and become champions, but this was omitted from the programme.
 - The editing of the programme implied that the Kennel Club approved of, or deliberately chose to ignore, the practice of culling puppies that did not conform to their breed standard. The Kennel Club made it perfectly clear that this was not the case and that it was genuinely surprised by the practice. This could be seen in untransmitted footage of Mr Irving's interview.
 - As set out in its comments under head c) above, the Kennel Club said that the programme largely ignored the information supplied in unused interviews on: the complexity of inbreeding issues and the Kennel Club's positive stance on outcrossing to widen gene pools; the Kennel Club not having authority to do any more than influence breeders; the Kennel Club's contribution to canine health research; changes made to Kennel Club breed standards to improve canine health; Kennel Club monitoring and training of judges to reward only healthy dogs; achievements of the Kennel Club Accredited Breeders' Scheme; Kennel Club work on DNA tests and other Kennel Club health screening schemes; the Kennel Club's contention that most dogs are healthy; and the positive effect of Kennel Club Dog Shows and Kennel Club Rules to ensure dogs are healthy.
 - The Kennel Club said that the programme makers did not raise the allegation that the Kennel Club was responsible for the breeding of “mutants”, and therefore the Kennel Club did not have an opportunity to respond to the term, which was used to sensationalise the issue.
 - In her email to Geoffrey Clinton-Brown's PA, Ms Harrison asked whether Mr Clinton-Brown specifically recalled the phrase “pet owner overreaction” and, if not, whether it was possible for him to recall the phrase, effectively seeking to put words in Mr Clinton Brown's mouth. The throw away remark in the programme that the Kennel Club believed that syringomyelia “*was a case of pet owner over reaction*” was misleading and grossly unfair.

- Danny the Peke was not discussed in interviews with the Kennel Club and the programme presented a very biased and inaccurate version of events.

The BBC's comments

In summary, the BBC said that the programme makers had not relied on the actions of the Kennel Club following broadcast to justify or validate the claims made in the programme. The fact that the Kennel Club had acknowledged that it was necessary to increase the efforts it was making to safeguard canine health since the broadcast confirmed the programme's conclusion that not enough was being done prior to the situation being brought to the public's attention.

In respect of the breakdown of the rushes compared to broadcast material provided by the Kennel Club, the BBC said that it did not consider it to be relevant to the complaint as there was no correlation between material shot and material used in the manner suggested by the Kennel Club. It was a matter of editorial discretion for programme makers to decide what material to include in a programme, so long as it did not result in unfairness. The BBC also said that the statistics provided by the Kennel Club did not include the interviews conducted with people other than Kennel Club representatives.

- a) As regards the clip of Mr Irving speaking about inbreeding, the BBC said that this was a fair and accurate summary of his views on the subject. Mr Irving spoke to Ms Harrison freely and at length on this occasion and the interview could not be described as an "ambush" or wholly inappropriate. Furthermore, the BBC said that it did not accept that there was any unfairness to the Kennel Club in omitting an aspect of an interview with Mr Blayney. The BBC referred to the Kennel Club's statement on close mating and inferred that it was issued to placate public criticism rather than because the Kennel Club disapproved of the practice. The BBC also referred to the Kennel Club's press release on 12 January 2009 and said that the use of the words "crack down" on a practice implied disapproval of that practice, and to that extent the terms of the press release appeared disingenuous.
- b) & c) As regards informed consent and deception, the BBC said that the nature of the programme and the relevance of the Kennel Club's contributions to it were clearly and repeatedly explained to the Kennel Club. The Kennel Club was given an appropriate right of reply. The BBC said that the programme fairly and accurately represented the issues around inbreeding, the impact this had on the health and wellbeing of dogs and the Kennel Club's actions.
- d) As regards the editing of the programme, the BBC said that the programme was a fair and accurate representation of the contributions made by the Kennel Club. In response to some of the specific points raised in the Kennel Club's comments, the BBC said:
 - The Kennel Club had provided no evidence to support its assertion that the programme left viewers with the impression that it was "covering something up" in relation to culling of health puppies. The programme accurately reported that some breeders knowingly culled healthy puppies which did not meet the breed standard, but made it clear that the Kennel Club did not support this practice. However, the programme also pointed out that some breed clubs, such as the RRCGB, believed that the Kennel Club was well aware that its code of ethics advocated the culling of such puppies. The BBC

- said that it was left to viewers to draw their own conclusions based on the differing versions put forward.
- The programme accurately and fairly represented the view of the Kennel Club that the majority of pedigree dogs live long and healthy lives. It also included interviews with scientists, vets and breeders who had reached a different conclusion.
 - The editing of Dr Sampson's contributions was fair and accurate.
- e) In response to the Kennel Club's comments on opportunity to respond to some of the issues raised in the programme, the BBC responded as follows:
- The Kennel Club did promote selective breeding, a practice regarded by many scientists and geneticists as scientifically and morally flawed. The majority of viewers would have understood the distinction between the aims of the Kennel Club in relation to dogs and the extreme policies of the Nazi party in relation to humans.
 - As acknowledged by the Kennel Club, the programme did reflect its role in addressing health issues in pedigree dogs.
 - The Kennel Club is not responsible for the fees charged by vets or the willingness of owners to pay such fees, so there was no unfairness in not putting the statistic quoted in the programme to the Kennel Club.
 - The programme fairly and accurately reflected the Kennel Club's position on health issues related to inbreeding.
 - As regards dog shows and show rules that encourage breeders to breed dogs based primarily on appearance, the BBC noted that the Kennel Club had introduced new show regulations.
 - It was fair and reasonable to include the concerns of Mr Evans, of the RSPCA, in the context of a programme about animal welfare.
 - As regards the Kennel Club's concerns about driving breeders away, this was included in the programme with contributions from Dr Sampson and Mr Blayney. The programme did refer to the Accredited Breeders Scheme. The BBC noted that the scheme was voluntary, had only 2500 members and pointed to evidence provided to it by breeders that in their opinion it was ineffective.
 - It was legitimate to include Ms Fowler's recollection of her meeting with the Kennel Club.

The BBC again drew attention to the significant changes it said the Kennel Club had introduced since the programme was broadcast and asked why the Kennel Club did not explain to the programme makers that it was planning to make sweeping changes prior to the broadcast of the programme if such changes were genuinely under consideration.

The Committee's Provisional Decision

After these representations were all received, the Fairness Committee met, considered and reached a provisional decision on the Kennel Club's complaint. Included in this was the decision to uphold heads d) and head e) xv). The Committee found, under head d), that the Kennel Club was unfairly portrayed in the programme as broadcast because an interview given by one of its representatives, Dr Sampson, was unfairly edited and his views unfairly represented in the programme. In head e) xv), the Committee found in its Provisional Decision that the Kennel Club had been treated unfairly in that it had not been given an opportunity to respond to a serious

allegation that the Club was aware of and made an attempt to cover up the true nature of a Crufts' winner's medical condition.

The BBC requested a reconsideration of these two heads of the provisional decision, arguing that the decision contained insufficient reasoning, contained a material mistake of fact, and that undue weight was given to certain factors) as set out below.

The Fairness Committee then gave the Kennel Club the opportunity to respond to these arguments before going on to consider afresh their complaint of unfair treatment under heads d) and e) xv).

The BBC's request for reconsideration

In summary, the BBC said that:

- d) In respect of the complaint of unfair editing, the Provisional Decision had provided insufficient reasoning:

The BBC said that the Provisional Decision needed to supply examples to support its statement that Dr Sampson had been "meticulous and methodical in his responses", and that this was not conveyed by the programme. The BBC outlined a number of examples, taken from the complete interviews with Dr Sampson, which it said showed that he had been wrong on a number of occasions, for example the number of DNA tests available to identify single gene disorders in dogs. The BBC argued that the Provisional Decision needed to identify the "number of valuable and serious points" Dr Sampson has made which were not reflected in the programme and also to detail examples of how he had "refuted some of [the programme maker's] arguments with scientific data".

The BBC also said that Dr Sampson held some views which differed from those held by the Kennel Club. It said that the programme makers had been careful to select only those points which they understood to correspond with the Kennel Club's position. The BBC argued that it could not have been unfair to the Kennel Club for the programme makers to have omitted points raised by Dr Sampson which the Kennel Club did not share.

The BBC went on to say that the Committee had failed to give sufficient weight to the evidence which demonstrated the Kennel Club's limited response to the problems it knew existed. The BBC explained that, due to the time taken by the programme-maker, there had been a 14 month gap between the initial interview with Dr Sampson and the subsequent interviews with him and Mr Irving. The BBC argued that the claims made on behalf of the Kennel Club in the first interview therefore stood to be judged by the record of intervening events. The BBC provided examples which it felt showed that there had been virtually no progress over this period, including the failure to introduce any rules to prevent breeding from a dog with an inherited condition and the slow increase in the number of DNA tests available for inherited diseases. In the BBC's opinion, Dr Sampson's interview should have been judged in this context.

The BBC argued that the Committee had given insufficient weight to a number of factors when it considered that the programme's comment following an extract from Dr Sampson's report, 'The Geneticist's View on Dog Breeding', that "*Miraculously, the problems appear to have been resolved since then*", ultimately resulted in unfairness to the Kennel Club. The BBC said that Dr Sampson's interview manifestly contradicted his earlier report, as had interview comments

from other Kennel Club representatives. The BBC added that it was clear from the programme that Dr Sampson and the Kennel Club did not take the view that problems of the kind identified by Dr Sampson's paper did not affect pedigree breeds.

- e) xv) In respect of the complaint that the Kennel Club was not given an appropriate opportunity to respond to the allegations against it, the BBC said that the Provisional Decision included a material mistake of fact. The BBC said that the Committee had incorrectly interpreted the differences between comments made by Professor Brockman and Mr Martin Sullivan respectively, with respect to an operation conducted on Crufts 2003 Best in Show winner, Danny the Peke. The BBC said that despite the apparent difference between the descriptions of the problem – Mr Sullivan referred to “acquired problems” while Professor Brockman described the problem as “clearly inherited” – the two experts had actually been in agreement about the condition. The BBC provided a statement from the University of Glasgow, where the procedure was conducted, which it said clarified the matter.

The BBC argued that, while it did accept that the programme's treatment of the case of Danny the Peke may have given the impression that the Kennel Club was “content to be complicit” in a dog with a clearly inherited problem becoming the supreme champion at Crufts, this could only result in unfairness to the Kennel Club if the impression were untrue or if, irrespective of its truth, it constituted a serious allegation which the Kennel Club did not have due opportunity to respond to. The BBC said that the truth of the impression was verified by its earlier evidence. It added that the example of Danny the Peke was used to illustrate the point that there was no bar on dogs with serious inherited conditions competing for, or winning prestigious prizes. Since the absence of such a bar was a matter of undisputed fact it therefore did not in itself constitute an allegation, and there was no requirement to provide an opportunity to respond. The BBC said that the example of Danny the Peke formed part of the basis for this criticism of the Kennel Club. It added that this was properly put to Dr Sampson, as a representative of the Kennel Club, and that his responses were included at two points in the programme.

The BBC accepted that the programme paraphrased the Kennel Club's press release as announcing that Danny's operation was for “a chronic throat infection” whereas this phrase had not appeared in the press release. The BBC pointed out that the Kennel Club's final press release used the phrase “respiratory tract condition”, which the BBC said was commonly used by vets to refer to throat infections. The BBC also referred to press articles at the time in which the owners of Danny the Peke were reported as saying that the operation was for a throat infection, and where a representative of the Kennel Club was quoted as stating “we investigated and found that Danny had had a severe throat infection and an operation to explore it”.

The BBC said that it did “not dispute that it can be inferred from what the programme said that the Kennel Club had ‘covered up’ the truth about Danny's condition. In the context, however, [it did] doubt whether this is an inference which viewers would have drawn” (BBC's emphasis). The BBC argued that the terms of the press statement about Danny the Peke's operation were not the target of any criticism, and the allegation was actually that the Kennel Club was content to allow dogs, like Danny the Peke, with such conditions to compete, and win, at Crufts. This was part of the broader line of criticism which was put to Dr Sampson as a representative of the Kennel Club.

In summary, the Kennel Club said in response:

- d) The Kennel Club reiterated its earlier arguments and responded to some specific issues raised by the BBC. The Kennel Club disputed the BBC's claims that Dr Sampson had misled the programme makers about the number of DNA tests available for single gene disorders, which it said the BBC had made on the basis of its own misunderstanding. The Kennel Club also said that the BBC's claims that Dr Sampson's comments on the inevitability of a shallow gene pool in a purebred population were incorrect and misleading, and that contrary to the BBC's claims, the Kennel Club did encourage outcrossing. The Kennel Club also argued that the BBC had incorrectly asserted that Dr Sampson's more recent views and position on the Kennel Club's response contradicted his earlier report. The Kennel Club said that he was referring to the specific context of the disease burden, and was making the point that inherited disease imposed a serious burden on most of the dogs that are ill, not on most dogs in the total population of dogs. The Kennel Club also argued that the BBC's request for reconsideration had ignored everything else the Kennel Club had done and all of the various difficulties and challenges which would exist in trying to introduce the preventative rules listed and in respect of which the Kennel Club provided information at length to the programme makers.
- e) xv) The Kennel Club said that the material mistake of fact the BBC claimed the Committee had made in its Provisional Decision was irrelevant to the core complaint. It said that the central allegation against the Kennel Club was that it was content to be complicit in a dog with a clearly inherited problem becoming the supreme champion at Crufts. The Kennel Club said that it had immediately investigated this matter and had been advised at the time (in April 2003) by Mr Martin Sullivan that the procedure had not altered the natural conformation or physical appearance of the dog and was not cosmetic in nature. The Kennel Club said that it understood the problem to have been "acquired", by which it felt it reasonably believed that it was not an inherited condition. On this basis, the Kennel Club said, it could not restrict or prevent Danny the Peke's involvement in Crufts or disqualify him from his win, and believed that it would have been subject to likely successful challenge at law had it done so. The Kennel Club said that the new evidence supplied by the BBC did not support the contention that it had acted irresponsibly at the time. It added that it had not been given the opportunity to answer the charge that it had acted irresponsibly, as the programme had suggested by implying that the Kennel Club had deliberately ignored a condition which it could have used to prevent the dog from winning at Crufts. The Kennel Club said that it uses, and has for many years used, its rule which prevents dogs which have had an operation to alter their natural conformation from being shown, more severely against problems with a high degree of heritability than against problems it does not believe to be hereditary. By way of example it said that dogs that have undergone entropion operations (to correct an hereditary condition) are banned from the show ring, while dogs that have had operations to remedy acquired problems are not barred. It also said that the claim that a Kennel Club press release had referred to a chronic throat infection added to the inference that the Kennel Club was engaged in a cover up exercise in disguising the true nature of the operation.

The Kennel Club disputed the BBC's ability to claim that "respiratory tract condition" means a throat infection in veterinary common parlance, and to impute intention as to what the Kennel Club actually meant when it used the term. The Kennel Club explained the difference between the remarks made to the press on

1 April 2003, which the BBC had referred to in its request for reconsideration, and its press release on 15 April 2003 by stating that the 1 April stories had been based on information available at the time. The Kennel Club maintained that there had been a very serious and untrue allegation in the programme and that the Kennel Club should have been given an opportunity to respond to it.

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.

The Kennel Club's complaint was considered by Ofcom's Fairness Committee ("the Committee") its most senior decision making body in matters of Fairness and Privacy. In reaching its decision, the Committee carefully considered all the relevant material provided by both parties. This included written submissions from both the complainant and the broadcaster; a recording and a transcript of the programme as broadcast; as well as recordings and transcripts of full interviews with representatives of the Kennel Club and others, much of which was untransmitted footage but which included material used in the programme.

- a) The Committee first considered the complaint that the Kennel Club was portrayed unfairly in that Mr Irving had been asked by Ms Harrison if he would consider having a baby with his daughter. She then claimed that this was the "*same issue*" as inbreeding pedigree dogs. The complaint was that this was unfair because it inferred that because Mr Irving might have in- or line-bred pedigree dogs, he would approve of the same in humans.

In considering this part of the complaint Ofcom took account of Practices 7.2 and 7.9 of the Ofcom Broadcasting Code ("the Code"). Practice 7.2 states that broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise. Practice 7.9 states that before broadcasting a factual programme a broadcaster 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.

The Committee noted that the programme looked at the question of inbreeding and the effect it could have on pedigree dogs, as quoted under head a) of the BBC's case (page 39 above).

The Committee considered that this was clearly relevant to the concerns raised by the programme in relation to the health of pedigree dogs. It was legitimate for Ms Harrison to put this to Mr Irving. The Committee noted that when she met Mr Irving at a dog show in Westminster she took the opportunity to conduct an interview with him. This was not arranged in advance but it appeared to the Committee (having viewed the untransmitted recording in full) that Mr Irving was content to be interviewed for around 50 minutes and willingly answered the

questions put to him. The Committee noted the following extract from the interview that was included in the programme:

Ms Harrison *“Have you got children? Have you got a daughter? Would you have a baby with her?”*

Mr Irving *No, of course I wouldn't, but that's an entirely different issue.*

Ms Harrison *It's the same issue.*

Mr Irving *It's an entirely different issue.”*

Mr Irving then went on in the programme to explain that he had never bred mother to son or brother to sister with his own dogs, but that he had bred grandfather to granddaughter. In these circumstances, the Committee took the view that Mr Irving was able to state his view, as both Chairman of the Kennel Club and an experienced dog breeder, that there was a clear distinction between breeding dogs and any analogy with humans.

The Committee therefore found no unfairness to the Kennel Club in this respect.

- b) The Committee next considered the complaint that the Kennel Club had not given informed consent for its participation in the programme. The Committee considered the two elements of this head of complaint together. (These are to be found at head b) of the Kennel Club's case, pages 21 and 22 above.)

The Committee assessed whether or not it could be satisfied that the programme makers had obtained the Kennel Club's informed consent to participate in the programme. Specifically, in accordance with Practice 7.3 of the Code, it considered whether it appeared that the BBC had taken sufficient measures to be entitled to assert that any consent given by the Kennel Club was *informed* consent for the purposes of the Code.

In so doing, the Committee noted that Practice 7.3 of the Code provides (amongst other things) that where a person is invited to make a contribution to a programme, they should normally, at an appropriate stage, be told about the nature and purpose of the programme; what the programme is about; and be given a clear explanation of why they have been asked to contribute. The Committee also considered whether the programme makers had followed any of the other measures set out in Practice 7.3. In particular it noted that the measures require that where a person is invited to make a contribution, they should normally (again, amongst other things), at an appropriate stage, also:

- 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; and
- be told the nature of their contractual rights and obligations and those of the programme maker and broadcaster in relation to their contribution.

The Committee noted that Ms Harrison first contacted the Kennel Club's press office by email in February 2006 and said "We're researching a documentary film on canine genetics". She then emailed the Kennel Club in September 2006 and described the programme as "an in-depth documentary on canine genetics" and said:

"As part of the film, we're keen to tell the history of the Kennel Club, its principles and aims and how the ever-increasing knowledge of genetics affects the pedigree dog world. We are particularly keen to hear about the KC's plans to maintain/improve the health of pedigree dogs for the future. Although we will be examining the problems, the film's ultimate message is intended to be a hopeful one, showing how science and breeders can combine to preserve our purebreds for the future".

The Committee also noted that in interviews with Kennel Club representatives Ms Harrison made a number of positive remarks about the Kennel Club and individual representatives. For example in an interview in November 2006, Ms Harrison told Dr Sampson "I think you are a tremendous asset to the Kennel Club...". In an interview with Ms Kisko in March 2007, Ms Harrison said that the last thing she wanted was for the programme to alienate people and later made statements to Ms Kisko such as "there has been a real change at the Kennel Club. I have to say that talking to you and talking to Dr Sampson, it feels that there has been a sea change almost".

The Committee took the view that the description given in the email of September 2006 and Ms Harrison's dealings with the Kennel Club up to December 2007 did not fully describe or reflect the programme that was broadcast. In particular the Committee noted Ms Harrison's reference to the "ultimate message" of the programme being "a hopeful one". Although the BBC had stated in its submissions to Ofcom that the emphasis of the programme changed as the investigation progressed, these early dealings gave no indication of the polemical line the programme would take in relation to concerns about the health and welfare of pedigree dogs.

In particular, the Committee noted with some concern that in untransmitted footage of an interview with Mr Irving in October 2007, Ms Harrison said:

"...when I started researching this I felt quite angry about it and I felt that there are a lot of things which are wrong and need to be put right..."

This suggested to the Committee that the initial emails to the Kennel Club in 2006 were somewhat disingenuous, in that they made no reference to Ms Harrison already being "angry". On the other hand, the Committee took into account that a number of communications with representatives of the Kennel Club beginning in December 2007 should have alerted them to the changing emphasis of the proposed programme. These included:

- An email to Mr Irving on 10 December 2007, which provided a detailed guide to areas of questioning prior to on-camera interview, including references to why the Kennel Club thought inbreeding was not necessarily a problem, what the Kennel Club's response was to a CAWC report that called for wholesale changes in dog breeding, how much damage had been done by the show ring's emphasis on looks and how breeds such as the Cavalier King Charles Spaniel had got into such a mess.

- An email to Mr Irving and Dr Sampson on 24 January 2008, which followed a lengthy on camera interview referring to 10 breeds on a watch list in relation to exaggeration/welfare issues.
- An email to a representative in the Kennel Club Press Office on 14 May 2008, which explained that the programme would explore problems caused by inbreeding and possible solutions.
- An email to Ms Kisko on 31 July 2008 asking for details of the number of breeds which had had changes made specifically to improve health.

The Committee also noted that Kennel Club representatives took part in five on-camera interviews between November 2006 and January 2008 and viewed untransmitted footage of the full interviews, during which a number of challenging questions were put to them. It also noted that on 2 July 2008, six weeks before the broadcast, Mr Irving emailed the programme's executive producer and set out some of his concerns, as follows:

“...we have been aware **throughout** [Ofcom emphasis] of an apparently very biased line being taken by the producers, and only took part in the film in an endeavour to balance the extremely biased view apparently being painted of pedigree dogs.”

In the Committee's view, while the Kennel Club was not informed at the outset of the polemical tone the programme would take and while Ms Harrison did make a number of statements that might have led the Kennel Club to feel reassured, it appeared that from the start Kennel Club participants had been aware of the producers' stance, and that they had been informed at an early stage that some challenging issues would be raised. Details of those issues had been provided. Taking into account the written communications between the Kennel Club and Ms Harrison and the unedited interviews, the Committee took the view that, although there was a significant change in the programme's emphasis as the investigation progressed and although Mr Irving had expressed his hope that the programme would be balanced, there were a number of ways in which the Kennel Club was alerted to and/or informed of the changing focus of the programme.

In all these circumstances, the Committee found that the Kennel Club had given its informed consent for its participation in the programme. The Kennel Club could have withdrawn its consent as the programme developed but, instead, they continued to participate and its representatives continued to be happy to talk to the programme makers at length.

- c) The Committee next considered the complaint that the Kennel Club had been deceived regarding the intention of the programme makers, what the full purpose of the programme was and the relevance of its contributions to the programme. By way of background, The Kennel Club said that its dealings were neither illegal nor anti-social and that there could be no justification for the deception used on The Kennel Club.

In considering this part of the complaint Ofcom took account of Practices 7.3 and 7.14 of the Code. In dealing with the question of informed consent, Practice 7.3 states that it may be fair to withhold all or some information where it is justified in the public interest or under other provisions of this section of the Code. Practice 7.14, which provides that broadcasters or programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception, but that it may be warranted to use

material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means.

As set out under decision head b) above, the Committee considered that, although the early emails to the Kennel Club may not have expressly informed the Kennel Club of the polemical tone of the programme and although Ms Harrison made some comments to Kennel Club representatives that were reassuring, it should have been clear to the Kennel Club after Ms Harrison's email to Mr Irving on 10 December 2007 that a number of serious allegations about the Kennel Club were being considered by the programme makers. The Kennel Club could have walked away at any time but continued to participate in the programme. With the exception of the allegations referred to under the Committee's decision at decision head e) (see i), ii), iii) and xv) below), these allegations were put to the Kennel Club and the Committee considered that the Kennel Club was not deceived about the programme and the fact that it would include some serious allegations about it.

Having found that the Kennel Club was not deceived, the Committee did not need to consider whether any deception was justified in the public interest.

- d) The Committee next considered the Kennel Club's complaint that the programme was unfairly edited. The programme makers had told the Kennel Club that the programme would contain a fair and truthful representation of what they had said. However, the programme had not contained a fair representation of the Kennel Club's responses. Quotes from senior members of the Kennel Club were also taken out of context to make it appear as though the Kennel Club did not appreciate the health and welfare problems that were faced by pedigree dogs. By way of example, the Kennel Club said that its geneticist, Dr Jeff Sampson, was made to look flippant on a number of occasions in the programme in a deliberate attempt to discredit him. The programme makers used brief comments made by him, which were short summings up of longer and more complex threads of argument. Dr Sampson and the Kennel Club had been under the impression that much fuller coverage would be given to the positives, or he would not have made the short summary comments, which were then used out of context to discredit his views.

In considering this head of the complaint the Committee took account of Practice 7.6 of the Code, which provides that when a programme is edited, contributions should be represented fairly.

The Committee noted that the programme contained a number of references to the Kennel Club's activities. These references included:

- that most pedigree dogs live long and healthy lives:

"The vast majority of dogs that we register, we register 250,000 dogs a year, the vast majority of those dogs will live long, happy, healthy lives".

- the Kennel Club's Accredited Breed Scheme:

"The Kennel Club has taken some action to tackle problems. In 2003, they launched their Accredited Breeder Scheme, which sets a code of conduct for breeders and asks that they make use of health screening schemes."

- funding for DNA tests:

“The KC is also funding the development of DNA tests which will allow breeders to check if their dogs are carrying certain hidden conditions.”

- scientific research funded by the Kennel Club:

“Today’s Kennel Club is involved in all kinds of canine activities...[including] funding scientific research in dogs via its charitable trust.”

- changes to breed standards:

“Recently, Ronnie Irving has also spoken out about exaggerations. And some breed standards have been changed.”

- culling of healthy puppies:

Ronnie Irving: *“Should healthy puppies be culled on [cosmetic grounds]...absolutely not...And I wouldn’t want the Kennel Club to be associated with such an idea.”*

- training and monitoring of judges:

“The Kennel Club has also stepped up training for its judges. Not just anatomy, but health and welfare, is now part of the judge’s curriculum.”

The Committee considered that these examples, at various points in the programme, conveyed the message that the Kennel Club was concerned with the health and welfare of pedigree dogs.

The Committee noted that Dr Sampson gave a number of interviews to Miss Harrison. He was interviewed for over an hour and a half in November 2006; for over two hours in January 2008 with Mr Irving; and again for around 13 minutes outside the House of Lords in April 2008. The Committee acknowledged that the question of which material to include in a programme is an editorial decision for the programme makers and that it is not incumbent on programme makers to use any particular proportion of material recorded. The programme makers, however, must ensure that their selection of material does not result in an individual or organisation being treated unfairly.

The Committee noted the extracts of Dr Sampson’s interviews that were included in the programme. Towards the beginning of the programme, Dr Sampson said:

“The vast majority of dog breeds are, and dogs in those breeds are healthy, healthy dogs”.

The clip was followed by footage of a bulldog, prepared for an operation, being dragged to an operating table.

Later in the programme, he said:

“The vast majority of dogs that we register, we register 250,000 dogs a year, the vast majority of those dogs will live long, happy, healthy lives”.

Footage was included of Dr Sampson in which he discussed health testing and said:

“We have this feeling in the UK that if we tried to do that we’d actually drive breeders away and then we’ve lost contact with them. And I think that’s part of the British psyche – ‘You’re not going to tell me what to do with my life’”.

There was also footage of Dr Sampson discussing health problems in the Cavalier King Charles Spaniel. Footage was later shown of Dr Sampson outside the House of Lords before and after a meeting arranged by CAWC to look at the problems in this breed. Dr Sampson was shown explaining his view that if the Kennel Club were tougher on breeders it would lose contact with them.

Having viewed all the untransmitted footage of Dr Sampson’s interviews, the Committee noted that Dr Sampson spent a great deal of time talking frankly to Ms Harrison about the premise of the programme, the role of the Kennel Club, and his own role. He spoke at length about inbreeding and line breeding and other subjects related to his field of specialism – genetics. He dealt in detail with the problems of disease and inherited conditions in dogs, and work being undertaken at all levels from the European Union to breed clubs to tackle these. While the Committee did not consider that he appeared in the programme to be flippant, it did consider that in the material used he was not given the chance to show how seriously he took the health problems confronting pedigree dogs. In the Committee’s view, the extracts in the programme did not fully or fairly reflect his considered response in the lengthy interviews with the programme makers.

The Committee noted that footage was included in the programme of a report entitled “The Geneticist’s View on Dog Breeding”. The text quoted said:

“Unfortunately the restrictive breeding patterns that have developed as part and parcel of the purebred dog scene have not been without collateral damage to all breeds... Increasingly inherited diseases are imposing a serious disease burden on many, if not all, breeds of dog”.

The commentary then said:

“The author of this paper? The Kennel Club’s very own genetics advisor, Jeff Sampson.”

“Miraculously, the problems appear to have been resolved since then.”

This was immediately followed by Dr Sampson saying:

“The vast majority of dogs that we register, we register 250,000 dogs a year, the vast majority of those will live long, happy, healthy lives.”

In the Committee’s view, this inferred that he had changed his views on the general health and state of pedigree dogs

In the Committee’s view, nothing in Dr Sampson’s interviews suggested that he considered that the problems had been resolved. The Committee therefore considered that his interviews were not fairly represented in this respect.

However, when the Committee considered this head of complaint, it was mindful of the Kennel Club’s overall complaint in this regard: that the programme had not

contained a fair representation of the Kennel Club's responses and that quotes were taken out of context to make it appear as though the Kennel Club did not appreciate the health and welfare problems faced by pedigree dogs. The Committee considered that the Kennel Club had been afforded a fair opportunity to respond to a number of accusations against it (see head e) below for further detail and a non-exhaustive set of examples) and that the programme included examples of positive steps that the Kennel Club had taken to address various health issues, as detailed above.

Overall the Committee considered that, when looking at the programme as a whole, there was a considerable amount of coverage given to the Kennel Club's position to demonstrate that they did appreciate the health and welfare problems faced by pedigree dogs. On balance, the Committee came to the view that the Kennel Club was not treated unfairly in this respect.

- e) The Committee finally considered the complaint that the programme included several allegations of iniquity and wrongdoing, to which the Kennel Club was not given an appropriate and timely opportunity to respond.

In considering this head of complaint the Committee took account of Practice 7.6 (as set out under decision head d) above, Practice 7.9 (as set out under decision head a) above) and 7.11 of the Code which provides 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.

The Committee considered these issues as follows:

- i), ii) & iii) The Kennel Club complained that it was alleged to have formed out of the Eugenics movement, to share the same ideologies as Adolf Hitler and to be hiding a "dark and dirty secret".

The Committee noted the following extract from the programme:

Voiceover *"Behind the doors of the Kennel Club's £20 million HQ in London's posh Mayfair lies a dark and dirty secret. The Kennel Club was born out of the Eugenics movement – the idea that we could improve the human race by controlling who bred to whom. It sounds incredible now, but the eugenics movement was hugely popular. Eugenics' doctrine taught that the genetic improvement of man lay in breeding only best to best, in purifying the human race of undesirable traits and in never allowing any mixing between races. The problem was that what was considered best was often decided solely on what you looked like... and very often what race you were. And then, in the 1930s, the eugenics movement found its ultimate champion."*

Professor Jones *"Adolf Hitler was a very keen geneticist and he really was, uh, he believed there was a pure race – the Aryans – which were different from every other race and you should breed from that race and kill off all the others."*

Voiceover *"The holocaust exposed eugenics as morally flawed. Its ideas about purity make no scientific sense either. And yet*

one organisation, almost unnoticed, has continued to embrace eugenicist principles.”

This was accompanied by archive footage of Adolf Hitler with Nazi soldiers and an “achtung Juden” placard. The Committee considered that viewers would have understood the reference to a “*dark and dirty secret*” to refer to the allegation that the Kennel Club adhered to eugenicist principles and, as a result of the use of footage of Hitler, would have understood that the programme was suggesting that the Kennel Club shared his ideologies. In the Committee’s view, this was a serious allegation to which the programme makers were obliged to offer the Kennel Club an opportunity to respond.

The Committee noted that in her email to the Kennel Club of 10 December 2007, Ms Harrison listed as one of the issues she wished to discuss with Mr Irving “your response to the argument by Prof James Serpell that the principles on which the Kennel Club was founded are ‘unashamedly eugenicist and racist’?” The Committee considered the interview with Mr Irving in January 2008 and noted the following exchange in which this point was followed up:

Ms Harrison What about the eugenicist charge?

Mr Irving ...I take it that eugenicist means that we are actually trying to breed dogs following a certain pattern and that is certainly what the Kennel Club’s people are trying to do because they were, they are, there were and still are trying to breed dogs that could to the jobs of work that they were designed to do.

Ms Harrison I think it is more the idea that you can improve on nature by you having control of the breeding rather than nature.

Mr Irving Indeed in the short term you can not necessarily improve on nature but you can create a situation where a dog is more suited to do a particular job of work...to that extent, if that’s what eugenicist means, well the Kennel Club was and still is a bit like that.

In the Committee’s view, this exchange could not have alerted Mr Irving to the likelihood that the programme would refer to the Kennel Club having a “*dark and dirty secret*”, nor that it would be edited in such a way as to juxtapose this with the footage of Hitler, so suggesting that the Kennel Club shared a common ideology with Nazi racial theory. In the Committee’s view, this part of the programme included a serious allegation about the Kennel Club to which it should have been offered an appropriate and timely opportunity to respond. The allegation was not put to Mr Irving in such a way as to satisfy this requirement.

The Committee therefore found that the Kennel Club was treated unfairly in this respect.

- iv) The Kennel Club complained that it was alleged to approve of the culling of healthy puppies which did not conform to the Breed Standard.

The Committee noted the programme included the following commentary:

“True to the Kennel Club’s eugenicist principles, breeders discard dogs born that deviate from the breed standard. The ridge on a Rhodesian Ridgeback serves no useful purpose... But the ridge is enshrined in the Kennel Club’s breed standard as the defining feature of the breed and so every Ridgeback must have one. The problem is that one in 20 Rhodesian Ridgebacks is born without a ridge”.

Rhodesian Ridgeback breeder, Ms Woodrow, then explained her belief that ridgeless puppies should be culled. The commentary went on to say:

“Neutering them is also allowed, but it’s still enshrined in the Rhodesian Ridgeback club’s code of ethics that ridgeless puppies shall be culled”.

The Committee considered that this part of the programme clearly suggested that the Kennel Club approved of culling healthy puppies that did not conform to the breed standard, at least in the case of Rhodesian Ridgebacks. This was a serious allegation to which the Kennel Club was entitled to respond.

The Committee then noted the following exchange in the programme.

Ms Harrison *“Should healthy puppies be culled on purely cosmetic grounds?”*

Mr Irving *No. Should healthy puppies be culled? Absolutely not. There is no reason in my view to cull puppies on cosmetic grounds, absolutely not. And I wouldn’t want the Kennel Club associated with such an idea.*

Ms Harrison *Such a practice happens all the time.*

Mr Irving *Well, I wasn’t aware of that until you told me that this morning. I’m appalled by that and I’ll, I will do what I can to prevent it but I’m not sure what I can do to prevent it.”*

Later in the programme Ms Maidment quoted a letter from the Kennel Club to the Rhodesian Ridgeback Club:

“We have several concerns about the inclusion of the phrase ‘ridgeless puppies shall be culled at birth’, in the code of ethics of one of our registered societies. We would therefore request that this is removed at the earliest possible opportunity from the club’s code as the Kennel Club cannot condone euthanising healthy puppies for a breed point and we must if necessary publicly dissociate ourselves from this practice”.

The Committee took the view that, as a result of the inclusion of Mr Irving’s vehement response on the question of culling, the Kennel Club was given an appropriate and timely opportunity to respond in relation to this allegation.

The Committee found no unfairness to the Kennel Club in this respect.

v), vi), viii), ix), x), xi) & xiii) The Kennel Club was alleged to be responsible for the very high levels of disability, deformity and disease in pedigree dogs, for *“the greatest animal welfare scandal of our time”*, for inbreeding, for *“breeding in deformities and disabilities”*, for not taking health and welfare into

consideration when judging dog shows, for the breeding of mutants, and for not doing enough to combat the health and welfare problems of pedigree dogs.

The Committee noted that the opening commentary said that the programme revealed *“for the very first time, the extent of health and welfare problems in pedigree dogs”*. Shortly afterwards the narrator said that the programme had uncovered *“the greatest animal welfare scandal of our time”*.

The reference in the programme to deformities and disabilities was made by Mr Evans, the RSPCA’s chief vet, who said:

“The RSPCA is extremely concerned about the very high levels of disability, deformity and disease in pedigree dogs”.

It was also Mr Evans who referred to *“mutants”* and suggested that dog shows did not pay sufficient attention to health:

“When I watch Crufts, what I see in front of me is a parade of mutants. It’s some freakish, garish beauty pageant that has nothing, frankly, to do with health and welfare”.

The suggestion that the Kennel Club was not doing enough to combat the problems was made on a number of occasions, for example when Mr Evans said:

“We have to encourage those involved in the industry to do a complete top to bottom review of both breed standards and the rules and regulations of dog showing, to move it away from its obsession beauty through to quality of life. But unless we start now, the pedigree dog hasn’t got a chance”.

The Committee took the view that the cumulative effect of the criticisms of the Kennel Club would have led viewers to understand that the programme was arguing that the Kennel Club bore responsibility for the problems of pedigree dogs referred to in the programme. The programme clearly suggested that the Kennel Club’s breed standards and competitive dog showing resulted in many of the health and welfare problems in pedigree dogs and that the Kennel Club could do more to combat these problems. These were serious allegations, to which the Kennel Club was entitled an opportunity to respond.

Although the reference to *“mutants”* was not put to the Kennel Club, the other allegations were put to its representatives in writing and in interviews. The Committee considered whether the Kennel Club’s representations were fairly conveyed in the programme. The issue of inbreeding and its detrimental effect on the health and well-being of pedigree dogs was a recurring theme in the programme. The Committee noted that, with reference to this, Mr Bill Lambert of the Kennel Club said in the programme that if there were a scientific basis for saying mother son matings should not be registered, the Kennel Club would go along with that. As set out under decision head a) the question of inbreeding was also raised with Mr Irving and his response included in the programme.

The Committee also noted commentary that said that the Kennel Club had taken *“some”* action to tackle problems and said:

“In 2003 they launched Accredited Breeder Scheme, which sets a code of conduct for breeders and asks that they make use of health screening schemes. The Kennel Club is also funding the development of DNA tests which will allow breeders to check if their dogs are carrying certain hidden conditions...Recently Ronnie Irving has spoken out about exaggerations. And some breed standards have been changed”.

The commentary also said, with reference to judging of shows:

“The Kennel Club has also stepped up training for its judges. Not just anatomy, but health and welfare, is now part of the judges’ curriculum”.

The Committee also noted that towards the end of the programme, the following exchange was included:

Ms Harrison *“It is really hard for us not to come to the conclusion that many breeds are in big trouble, that the show ring is responsible for deforming dogs into caricatures in some instances, and that the Kennel Club is not doing enough to tackle the problems.*

Mr Irving *I wouldn’t accept your argument that many breeds are in extreme trouble. There are some breeds that are in some degree of trouble and the whole effort of Jeff’s department and the Kennel Club and our Charitable Trust is in trying to direct ourselves against these problems and to try to do good things for these breeds.”*

The Committee also considered that, notwithstanding its decision at head d) above that Dr Sampson’s interview was not edited fairly, he was able to make some points on behalf of the Kennel Club, for example his view that the vast majority of pedigree dogs were healthy and his concerns about the risks of driving breeders away, were reflected in the programme as broadcast.

The Committee took the view that the Kennel Club’s responses to the criticisms were included so as to convey sufficiently its position in response to the allegations made in the programme under complaint head e) v), vi), viii), ix), x), xi), & xiii).

The Committee therefore found no unfairness in this respect.

- vii) The Kennel Club was alleged to be responsible for pedigree dog owners spending £10 million a week in vets’ fees.

The Committee noted the following commentary in the programme:

“Three quarters of the 7 million dogs in the UK are pedigree dogs... And we can exclusively reveal that they cost their owners a whopping £10 million in vets fees... every week”.

In the Committee’s view, this comment carried with it no implication that the Kennel Club was responsible for this figure and that it was therefore not a serious allegation to which the Kennel Club should have been given an opportunity to respond.

The Committee therefore found no unfairness to the Kennel Club in this respect.

- xii) The Kennel Club was alleged not to consider health and welfare when registering new pedigree puppies.

The Committee noted that, when looking at the case of George, a pug with severe health problems, the commentary said:

“And astonishingly there’s nothing to stop Joanne Morris from breeding from George. The Kennel Club would happily register George’s puppies – because no pug has to pass any health tests before it can be bred from”.

The Committee noted that, although this was accurate in relation to pugs, the programme makers had followed this comment by referring to the two breeds in which health tests are compulsory. It was therefore clear that testing was required in at least some cases.

The Committee therefore found no unfairness in this respect.

- xiv) The Kennel Club was alleged to have accused pet owners of overreacting about syringomyelia.

The Committee noted that CKCS owner, Ms Fowler, said of the Kennel Club that:

“They disputed that syringomyelia was a widespread problem in the Cavalier breed and suggested that it was a case of pet owner over reaction”.

The Committee noted that Mrs Fowler’s MP, who attended the meeting with the Kennel Club with her, was not able to recall a reference being made to “pet owner overreaction”. However, the Committee considered that it was reasonable for the programme to include the personal recollection of Mrs Fowler, whose dogs had been severely affected by the condition. Although this was a serious allegation about the Kennel Club, the Committee noted that, as set out under decision head e) v), vi), viii), ix), x), xi), & xiii) above, the Kennel Club’s position generally on the health and welfare of pedigree dogs was included in the programme. The commentary also included the following statement in response to Carol Fowler’s concerns about syringomyelia:

“And the Kennel Club is now funding research into the disease”.

In the Committee’s view, the Kennel Club’s position on this point was sufficiently conveyed in the programme.

The Committee therefore found no unfairness in this respect.

- xv) The Kennel Club was alleged to have covered up and brushed aside the operation on Danny the Peke, who won Crufts Best in Show in 2003.

The Committee noted that the commentary in the relevant part of the programme said:

“The problem was that shortly after Crufts, Danny was accused of having had a facelift. A sneaky nip and tuck to improve a dog’s chances in the show ring is not unheard of. It’s against Kennel Club rules though so, if true, Danny would have lost his title. The dog world held its breath and then after an investigation the Kennel Club announced that all Danny had had was an operation to alleviate a chronic throat infection. Danny...was still supreme champion. But we can reveal that the operation Danny really had was one to fix a serious inherited problem”.

The Committee considered that the key section in this commentary was the phrase *“we can reveal”*. The Committee considered that this comment, when combined with the juxtaposition of phrases such as *“chronic throat infection”* and *“serious inherited problem”*, implied that the Kennel Club had not been straightforward in its dealings on this matter. The Committee noted that the BBC agreed in its request for reconsideration that it could be inferred from the programme commentary that the Kennel Club had “covered up” the truth about Danny’s condition (although, as noted above, the BBC disputed that viewers *would* have drawn this inference).

As a result of the commentary’s phrasing, the Committee considered that the programme did make an allegation that the Kennel Club had covered up the nature of the operation on Danny the Peke and the truth about his condition. The Committee noted that the BBC admitted that it could be inferred from what the programme said that the Kennel Club had covered up the truth about Danny’s condition. However, the Committee disagreed with the point made by the BBC that viewers would not have drawn this inference. The allegation was sufficiently serious to warrant obtaining a response but it was not put to the Kennel Club. The Kennel Club was not, therefore, given an appropriate and timely opportunity to respond to this allegation. This was unfair to the Kennel Club.

The Committee also considered the Kennel Club’s complaint under head e) that footage of Professor Herrtage’s interview was not included in the programme. The Committee considers that it is a matter for programme makers’ editorial discretion as to which potential contributors to use in a programme. It was not incumbent on the programme makers to include any of Professor Herrtage’s interview in the programme and it was not unfair to the Kennel Club that they did not do so.

The Committee has therefore upheld parts of the complaint at head e) about the BBC’s failure to afford a proper opportunity to respond to the allegations relating to Danny the Peke; and the failure to do so in relation to the association of the Kennel Club with Nazi racial theory.

Accordingly the Committee has upheld parts of the Kennel Club’s complaint of unfair treatment in the programme.

The Committee has directed the BBC to broadcast a summary of the finding of unfair treatment.

Partly Upheld

Complaint by the Rhodesian Ridgeback Club of Great Britain made on its behalf by Mrs Kirsteen Maidment

Pedigree Dogs Exposed, BBC1, 19 August 2008

This Adjudication was originally published on 9 December 2009.

Summary: Ofcom has upheld parts of this complaint of unfair treatment made by the Rhodesian Ridgeback Club of Great Britain (“RRCGB”).

The BBC broadcast a documentary that examined health and welfare problems in pedigree dogs. The programme argued that pedigree dogs were “*dangerously inbred*” and that many of the problems were caused by competitive dog showing. One of the breeds featured in the programme as having problems was the Rhodesian Ridgeback. Footage of representatives and members of the RRCGB appeared in the programme.

The RRCGB complained to Ofcom that it was treated unfairly in the programme. The RRCGB’s complaint was considered by Ofcom’s Fairness Committee, its most senior decision making body in matters of Fairness and Privacy.

In summary the Committee found the following:

- It was clear from the programme that the culling of puppies born without a ridge was not mandatory under the RRCGB’s Code of Ethics and that such puppies could be neutered. In light of this it was not necessary for the programme to state that the Code of Ethics was 20 years old and was under review.
- It was not incumbent on the programme makers to use footage of Rhodesian Ridgeback breeders who said they would not put down a ridgeless puppy, as it was clear from the programme commentary that ridgeless puppies did not have to be put down.
- The programme included a serious allegation that the RRCGB was not doing all it could about a condition called Dermoid Sinus. In making this allegation, the programme did not refer to or appear to take into account caveats given by the scientist who conducted the research or the degree to which there was knowledge of this research amongst Rhodesian Ridgeback breeders. This was unfair to the RRCGB.
- Furthermore the inaccurate description of the breed’s ridge as “*a deformity*” and as “*a mild form of spina bifida that can cause serious health problems*” was likely to have compounded the impression given to viewers that the RRCGB was choosing to breed deformed, faulty dogs that suffered from Spina Bifida. The reference to Spina Bifida was inaccurate and the allegation itself not supported by the evidence. Again this was unfair to the RRCGB.

Introduction

On 19 August 2008, the BBC broadcast *Pedigree Dogs Exposed* on BBC1. The documentary examined the extent of health and welfare problems in pedigree dogs. The programme argued that pedigree dogs were “*dangerously inbred*” and that the

cause of many health and welfare problems experienced by pedigree dogs was competitive dog showing. A section of the programme focused on Rhodesian Ridgeback dogs, stating that *"it has been known for decades"* that the characteristic ridge on the dogs' back is *"a mild form of Spina Bifida that can cause serious health problems."* It said that some puppies were born without a ridge. Since they therefore did not conform to the Breed Standard as defined by the Kennel Club they were destroyed.

The programme included extracts of an interview with a Rhodesian Ridgeback breeder who did this, followed by a frame of the Rhodesian Ridgeback Club of Great Britain's ("RRCGB") Code of Ethics, which focused in on the words "Ridgeless puppies shall be culled". This was accompanied by Ms Jemima Harrison (the programme's director and narrator) saying that neutering ridgeless puppies was allowed, but that *"it's still enshrined in the Rhodesian Ridgeback club's Code of Ethics that ridgeless puppies shall be culled"*.

Later in the programme Ms Harrison asserted that there was a good reason to change the Kennel Club's Breed Standard for Rhodesian Ridgebacks, because about 10 per cent suffered from a *"nasty condition"*, called Dermoid Sinus, which did not occur in ridgeless dogs. This was followed by an interview with a Ridgeback breeder who said that she did not believe that the Breed Standard should be changed, and there were extracts from an interview with Mrs Kirsteen Maidment, the Chairman of the RRCGB. She was shown reading from a letter that the RRCGB had received from the Kennel Club expressing its concern about the inclusion of the phrase "Ridgeless puppies shall be culled at birth" in the RRCGB's Code of Ethics. She was also shown stating that she, and Rhodesian Ridgeback breeders in general, felt that ridgeless puppies were *"carrying a genetic fault"*.

The RRCGB complained that it was treated unfairly in the programme as broadcast.

The Complaint

The RRCGB's case

In summary, the RRCGB complained that it was treated unfairly in that the following material facts (of which Ms Harrison was aware) were misrepresented, disregarded or omitted from the programme:

- i) The programme did not make clear that it had "never been mandatory to put a ridgeless puppy to sleep". The RRCGB's Code of Ethics was shown in the programme but the programme highlighted only the phrase "Ridgeless puppies shall be culled."
- ii) The programme omitted to mention that the RRCGB's Code of Ethics had been drawn up 20 years previously and that, in the light of changing attitudes, the RRCGB's members had been reviewing it over the previous 12 months "with particular reference to the sensitive issue of ridgeless puppies".
- iii) The programme-makers interviewed a number of Rhodesian Ridgeback breeders at the Manchester Championship Dog Show in relation to the issue of ridgeless puppies. Some breeders had stated that they would not put down a ridgeless puppy, but the programme did not include any footage of interviews with these breeders.

- iv) The programme did not make clear that the statements made by Ms Harrison in the programme that: *“One in twenty Rhodesian Ridgebacks is born without a ridge”* and *“About ten per cent of Rhodesian Ridgebacks suffer from a nasty condition called Dermoid Sinus”* came from “small-scale Swedish research into Dermoid Sinus in the Rhodesian Ridgeback which is not yet complete”. Mrs Maidment believed that the Swedish research had looked at only 22 puppies (she could not recall what proportion had been ridgeless but thought that half might have been ridged and half ridgeless).
- v) The programme did not make clear that it was only the reporter’s interpretation of the Swedish research that led to the implication in the programme that the use of ridgeless dogs in a breeding programme would help reduce the incidence of Dermoid Sinus in Rhodesian Ridgebacks.

By way of background, the RRCGB stated that, in an email to Mrs Maidment dated 8 August 2008, Ms Harrison had stated: “The science is a little too premature (as I know you think too) to be able to say for sure that incorporating ridgeless into a breeding programme would solve the problem of Dermoid Sinus.”

- vi) The statements in the programme that: *“the ridge is a mild form of Spina Bifida”* and that Dermoid Sinus *“often burrow[ed] right into the dog’s spinal cord or brain”* were inaccurate and misleading.

Dermoid Sinus had been compared to Spina Bifida because it was a similar condition, but the ridge on a Rhodesian Ridgeback had never been described as, or been known to be, a mild form of Spina Bifida.

It was not the case that Dermoid Sinus *“often burrow[ed] right into the dog’s spinal cord or brain.”* Dermoid Sinus was a malformation of cells that occurred while a puppy was in embryonic form. It did not start outside the dog; rather, it usually started on the spinal line and, when a puppy with Dermoid Sinus was born, the channel through which infection could travel was already complete (i.e. it did not *“burrow”*). It was usually possible to detect whether a puppy had Dermoid Sinus immediately after it had been born. Puppies with the condition were usually put down when they were two to three days old because the condition generally worsened as a puppy grew and responsible breeders could not leave a puppy with the condition to suffer. Mrs Maidment said that Dermoid Sinus did sometimes appear on the shoulder or neck area, but that she had never heard of or come across it in the skull.

The RRCGB said that the inclusion of these statements in the programme was unfair to the RRCGB because it implied that Rhodesian Ridgeback breeders were knowingly breeding from dogs with a mild form of Spina Bifida and breeding dogs (and from dogs) with Dermoid Sinus. The RRCGB said that breeders did not breed from dogs without ridges, or those with Dermoid Sinus.

The BBC’s case

In summary, the BBC responded to the RRCGB’s complaint of unfair treatment as follows:

By way of background, the BBC said that the programme investigated the extent of the health and welfare problems of the nation’s pedigree dogs. It examined concerns that decades of inbreeding of pedigree dogs had led to an increase in serious genetic diseases and deformities in many breeds. The programme featured contributions

from many involved in the world of pedigree dogs who believed the problems were exacerbated by the trend of breeding dogs primarily on appearance, regardless of the effect this had on their health and wellbeing.

The BBC said that the programme highlighted the practice of some breeders (including those in the RRCGB) of culling healthy puppies solely because they did not meet the criteria set out in the Breed Standard, the blueprint for the appearance of pedigree dogs published by the Kennel Club.

The BBC said that there was a clear public interest in the making and the broadcast of the programme, as it highlighted the extent of the problems facing pedigree dogs, including the culling of healthy puppies. The BBC said that they believed that the general public would have been unaware that such a practice was common and it was legitimate and editorially justified to draw attention to the practice in the programme.

The BBC responded to each of the sub-heads of the complaint that the RRCGB was portrayed unfairly.

- i) In response to the complaint that the programme did not make it clear that it had never been mandatory to put a ridgeless puppy to sleep, the BBC said that the programme makers obtained conclusive evidence that some breeders knowingly culled healthy puppies if they did not meet the Kennel Club Breed Standard. The programme then gave a detailed explanation of what happened with the Rhodesian Ridgeback breed.

“True to the Kennel Club’s Eugenicist principles, breeders sometimes discard dogs born that deviate from the Breed’s Standard. The ridge on a Rhodesian Ridgeback serves no useful purpose, in fact it’s been known for decades that the ridge is a mild form of Spina Bifida that can cause serious health problems, but the ridge is enshrined in The Kennel Club’s Breed Standard as the defining feature of the breed so every Ridgeback must have one. The problem is that one in twenty Rhodesian Ridgebacks is born without a ridge”.

The programme included an interview with Mrs Ann Woodrow, a breeder, who explained the lengths she was prepared to go to in order to cull dogs born without a ridge. Both she and Mrs Maidment told the programme makers that they regarded dogs born without the ridge as suffering from a *“genetic fault”*. The BBC said that the RRCGB’s Code of Ethics at the time made it clear that culling was the option advocated by the RRCGB. The only specified exception was where a breeder found such action *“morally impossible”*, suggesting that the most extreme degree of opposition to culling was required before an alternative could be considered. However the programme did make clear that culling was not the only option considered acceptable by the RRCGB for ridgeless puppies:

“Neutering them is also allowed but it is still enshrined in the Rhodesian Ridgeback club’s code of ethics that ridgeless puppies shall be culled”.

Towards the end of the sequence, the programme said:

“Kirsteen Maidment says the Club is disappointed by the Kennel Club’s handling of the issue, and while the club supports those who prefer to neuter their ridgeless dogs rather than destroy them, they believe Ridgeback breeders should retain the right to put ridgeless puppies to sleep”.

- ii) The BBC next responded to the complaint that the programme omitted to mention that the RRCGB's Code of Ethics had been drawn up 20 years previously and that the RRCGB had been reviewing it over the previous 12 months "with particular reference to the sensitive issue of ridgeless puppies".

The BBC said that the Code of Ethics, which included the reference to culling, was on the club's website until at least February 2008, the date at which the club received a letter from the Kennel Club questioning the policy. The copy of the Code shown in the programme was clearly labelled "*as amended RRCGB AGM March 2006*", which demonstrated that it had been reviewed as recently as March 2006 but that the clause about culling had been retained.

Furthermore, the BBC said that the review of the Code did not propose to end the policy of culling ridgeless puppies. It was also clear from Mrs Maidment's interview that she continued to support the culling of healthy puppies born without a ridge, as she repeatedly referred to ridgeless puppies as carrying a genetic fault and explained that "*the veterinary profession nowadays do not necessarily accept that because a puppy doesn't have a ridge that it isn't a healthy puppy*". The BBC said that the programme accurately reflected the RRCGB's position on this point.

- iii) The BBC responded to the complaint that the programme makers interviewed a number of Rhodesian Ridgeback breeders at the Manchester Championship Dog Show in relation to the issue of ridgeless puppies, some of whom had stated that they would not put down a ridgeless puppy, but that the programme did not include any footage of interviews with these breeders.

The BBC said that the official policy of the club endorsed the culling of ridgeless puppies. In fairness to the club, the programme had explained on two separate occasions that it did support breeders who preferred to neuter puppies.

- iv) The BBC responded next to the complaint that the programme did not make clear that the statements made by Ms Harrison in the programme about Rhodesian Ridgebacks born without a ridge and the percentage of dogs affected by Dermoid Sinus came from "small-scale Swedish research into Dermoid Sinus in the Rhodesian Ridgeback which is not yet complete".

The BBC said that a limited amount of research had been carried out into the proportion of dogs born without a ridge and those suffering from Dermoid Sinus. The RRCGB had carried out no research of its own. The programme makers had reviewed the available studies. These were:

- A study carried out in 2007 by Dr Nicolette Salmon Hillbertz at the Swedish University of Agricultural Sciences which concluded that approximately 5-6% of Rhodesian Ridgebacks born in Sweden were ridgeless and about 8-10% of ridged offspring had Dermoid Sinus.
- A report by Flinders Medical Centre and University of Adelaide, which said that Dermoid Sinus was widely believed to occur in 10% of puppies.
- A 1996 survey by the Rhodesian Ridgeback Club of the United States, which said that the overall prevalence of Dermoid sinus in the surveyed population was 5.3%.

The programme-makers spoke to Dr Hillbertz who confirmed that she was *“extremely confident regarding our results”*, even though the sample size was relatively small.

Furthermore, the BBC said that Mrs Maidment recommended to the programme maker that she talked to Dr Hillbertz, suggesting she considered her research to be reliable and that when a detailed description of this section of the programme was sent to Mrs Maidment a number of changes were made, but she had not challenged the use of the above statistics.

The BBC said that it believed that the available evidence supported the programme’s summary that *“One in twenty Rhodesian Ridgebacks is born without a ridge”* and *“About ten per cent of Rhodesian Ridgebacks suffer from a nasty condition called Dermoid Sinus”*.

- v) The BBC next responded to the complaint that the programme did not make clear that it was only the reporter’s interpretation of the Swedish research that led to the implication in the programme that the use of ridgeless dogs in a breeding programme would help reduce the incidence of Dermoid Sinus in Rhodesian Ridgebacks.

The BBC said that the programme said:

“Dogs born without a ridge don’t suffer from Dermoid Sinus, so it would make perfect sense to change the breed standard. Perfect sense, that is, to anyone other than a Ridgeback breeder”.

The BBC said that all the research so far had concluded that ridgeless puppies did not suffer from Dermoid Sinus. Dr Hillbertz’s study said:

“The problem with Dermoid Sinus could be virtually eliminated by allowing ridgeless dogs in breeding and by avoiding matings between ridged dogs”.

Dr Hillbertz had clarified the meaning of this in an email to the programme makers on 23 January 2008:

“The correct interpretation of the sentence is: ridgeless individuals do not carry the ridge or DS causing mutation/mutations. Total eradication of DS could be obtained by excluding the ridge-phenotype from the breed. Again this is not a suggestion, merely addressing what could be done”.

The BBC said that it was therefore clear that Dr Hillbertz’s opinion was that using ridgeless dogs in breeding would virtually eliminate Dermoid Sinus from the breed. The RRCGB was aware of Dr Hillbertz’s findings, but the club still did not endorse the use of ridgeless dogs for breeding.

- vi) The BBC then responded to the complaint that statements in the programme that *“the ridge is a mild form of Spina Bifida”* and that Dermoid Sinus *“often burrow[ed] right into the dog’s spinal cord or brain”* were inaccurate and misleading and implied that Rhodesian Ridgeback breeders were knowingly breeding from dogs with a mild form of Spina Bifida and breeding dogs (and from dogs) with Dermoid Sinus. The RRCGB said that breeders did not breed from dogs without ridges, or those with Dermoid Sinus.

The BBC accepted that the description of the ridge on a Rhodesian Ridgeback as a "*mild form of spina bifida that can cause serious health problems*" was not medically exact and said that the ridge was in fact associated with a condition which scientists and vets believed was related to Spina Bifida, namely Dermoid Sinus. The BBC said that this inexactness would not have materially misled the audience or led to any unfairness to the RRCGB. The programme was highlighting the scientific evidence that a significant proportion of dogs with a ridge suffered from Dermoid Sinus. Despite Dr Hillbertz's findings that breeding from ridgeless dogs would virtually eliminate the condition, the RRCGB would not use ridgeless dogs for breeding and preferred to cull puppies born with Dermoid Sinus.

The description of Dermoid Sinus was presented in language which was easy to understand for the average viewer and was not misleading or unfair to the RRCGB.

The RRCGB's comments

In summary the RRCGB responded to the BBC's statement as follows:

- ii) Regarding the Code of Ethics, the RRCGB said that this could not be altered constitutionally until after the AGM in March 2008 when members would discuss the review. The programme did not mention that the RRCGB had been in the process of reviewing its code for 12 months and that the review was still in progress. Furthermore, the programme's failure to display the whole clause on culling meant that viewers were not in possession of all the facts.

The RRCGB said that the puppy without a ridge had a genetic fault with which breeders had never considered it ethical to breed. The RRCGB also said that they had arranged to take the issue of humanely destroying Dermoid Sinus puppies and breeding with ridgeless to the Breed Council and then to the Rhodesian Ridgeback World Congress in August. Therefore the review was still in progress and could not be resolved until the members met after the World Congress.

- iv) The RRCGB said that research was available from several sources in addition to those referred to by the BBC and that it was clear from this research that the incidence of ridgeless puppies and Dermoid Sinus varied internationally. However the programme did not explain that the statistics and research quoted referred to the small scale Swedish research, leaving viewers with the false impression that these percentages applied to the breed in the UK.

Mrs Maidment also said that Ms Harrison was aware that a UK breeder had identified Dermoid Sinus in a ridgeless puppy. Although this and other evidence from the US and Australia put a question mark over the research referred to in the programme, it was not mentioned.

Mrs Maidment said that the fact that she gave the programme maker Dr Hillbertz's contact details did not constitute agreement with the research, which was not yet complete and had not yet been presented. It could not therefore be said that the RRCGB was aware of Dr Hillbertz's findings at the time of making the film. She also said that she had challenged the detailed description of the section of the programme featuring the RRCGB and some of her suggested changes were made. However, contrary to the impression given in an email to Mrs

Maidment prior to broadcast, the programme did not refer to the Swedish research and did not include the culling clause of the Code of Ethics in full.

- v) With reference to Dermoid Sinus, Mrs Maidment said that the statement in the programme that dogs born without a ridge did not suffer from the condition applied to the small number of ridgeless puppies in the Swedish project. Furthermore, the BBC's statement that "all the research *so far* had concluded that ridgeless puppies did not suffer from Dermoid Sinus" implied that the scientific research was not conclusive.
- vi) As regards the ridge on Rhodesian Ridgebacks, Mrs Maidment said that it was an inherited characteristic, after which the breed was named. The description of the ridge as a "*mild form of spina bifida that can cause serious health problems*" and the inclusion of a statement by Mr Mark Evans, the RSPCA's chief vet, that the dogs were deliberately bred with the "*deformity*" created the inexactness which misled the viewers to believe that Rhodesian Ridgeback breeders were deliberately breeding unhealthy puppies.

Mrs Maidment denied that the RRCGB was following a breeding programme that failed to tackle a serious health problem and said that the description of Dermoid Sinus was presented to the average viewer in language that gave the impression that something "active" burrowed its way down to the spinal cord or brain thus creating a sensational impression.

In conclusion, Mrs Maidment said that she had made it clear to Ms Harrison that the whole interview was based on interim knowledge and that the RRCGB was waiting for the outcome of the World Congress. This was not referred to in the programme. Furthermore, in an email dated 9 August 2008 Ms Harrison stated:

"The science is a little too premature (as I know you think too) to be able to say for sure that incorporating ridgeless into the breeding programme would solve the problem of Dermoid Sinus".

However, she then based the whole programme on this research. Despite all the information about the breed, the RRCGB and the Swedish research, Ms Harrison selectively produced a programme that gave the impression that RRCGB breeders were deliberately breeding unhealthy puppies.

The BBC's comments

The BBC said that the Rhodesian Ridgeback was featured in the programme as a breed in which the practice of culling healthy puppies that did not meet the Breed Standard was accepted. The programme also said that the RRCGB refused to use ridgeless dogs for breeding, despite scientific evidence that doing so would reduce the incidence of Dermoid Sinus. The programme accurately and fairly represented the RRCGB's reasons for its position on these issues and the club was given a right to reply.

In summary the BBC responded to the RRCGB's specific comments as follows:

- ii) As regards the Code of Ethics, the BBC said there was no unfairness in not mentioning that the RRCGB was in the process of reviewing its policy on culling ridgeless puppies, as Mrs Maidment told the programme makers that there was no intention to end the culling of ridgeless puppies and that the aim was modify the language used rather than to make a significant change to the policy.

The BBC said there was no unfairness in the way the code of ethics was displayed in the programme and that the script explained on two occasions that culling ridgeless puppies was not the only option and viewers would have been aware that it was not mandatory.

- iv) As regards the incidence of Dermoid Sinus, the BBC said that the research carried out by Dr Hillbertz was the only recent, scientific peer-reviewed study carried out into the incidence of Dermoid Sinus and ridgeless dogs in Rhodesian Ridgebacks. The study, which was published in 2007 and available on the internet at the time of the programme, involved hundreds of dogs and concluded that the prevalence of Dermoid Sinus was 8-10% and of ridgeless puppies was 5-6%. The figures used in the programme were soundly based. The only other peer reviewed work was carried out in 1932 and 1966 and showed 15% and 9% respectively. The statistics quoted by the RRCGB were neither peer reviewed nor gathered using recognized scientific methods but were based on information provided by breeders.
- v) With reference to the implication in the programme that the use of ridgeless dogs in a breeding programme would help reduce the incidence of Dermoid Sinus in Rhodesian Ridgebacks, the BBC said that all the scientific research so far suggested that dogs without a ridge did not suffer from the condition. The only evidence to the contrary was anecdotal and unreliable. Mrs Maidment appeared to confirm on a number of occasions during her interview that she was aware of Dr Hillbertz's finding that using ridgeless dogs in breeding could virtually eliminate Dermoid Sinus from the breed.
- vi) As regards the reference to Dermoid Sinus as a mild form of Spina Bifida, the BBC said that the RRCGB had confirmed that it would not use ridgeless dogs for breeding despite the scientific evidence that this would lead to a dramatic reduction in the incidence of Dermoid Sinus in the breed. Although the club could take positive steps to end the suffering of puppies born with the condition by breeding with ridgeless dogs, it chose not to do so. The BBC said that it appeared that the RRCGB had a cosmetic objection to breeding with ridgeless dogs. It was therefore fair and accurate for the programme to point out that breeders chose to ignore scientific evidence that breeding from ridgeless dogs would help to tackle a serious health condition because of ethical objections to breeding from dogs they regarded as suffering from a genetic fault. The BBC did not accept that the description of Dermoid Sinus gave a "sensationalist impression" or was unfair to the RRCGB. The Club's website accepted that it was a serious health problem which affected the breed and led to many affected dogs being put to sleep within days of being born.

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.

The RRCGB's complaint was considered by Ofcom's Fairness Committee ("the Committee") its most senior decision making body in matters of Fairness and Privacy. In reaching its decision, the Committee carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, both parties' written submissions, and a recording and transcript of the full interview with Mrs Maidment.

The Committee considered the complaint that material facts of which Ms Harrison was aware, were misrepresented, disregarded or omitted from the programme, which was unfair to the RRCGB.

In considering this complaint Ofcom took account of Practice 7.9 of the Ofcom Broadcasting Code ("the Code"), which states that before broadcasting a factual programme broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

The Committee considered the separate issues raised by the RRCGB as follows:

- i) The Committee first considered the complaint that the programme did not make clear that it had "never been mandatory to put a ridgeless puppy to sleep" and that the RRCGB's Code of Ethics was not shown in a fair way in the programme.

The Committee noted that Ms Harrison's commentary introducing the Rhodesian Ridgeback breed in the programme said:

"The ridge on a Rhodesian Ridgeback serves no useful purpose, in fact it's been known for decades that the ridge is a mild form of Spina Bifida that can cause serious health problems, but the ridge is enshrined in the Kennel Club's Breed Standard as the defining feature of the breed so every Ridgeback must have one. The problem is that one in twenty Rhodesian Ridgebacks is born without a ridge".

Mrs Woodrow, a Rhodesian Ridgeback breeder, then said:

"And we do have trouble nowadays with the young vets who tend to see everything in black and white and won't put them down. It's a healthy beautiful puppy, there's nothing wrong with it except it hasn't a ridge. And you say well actually they're meant to have ridges. It's not easy and usually we end up having to go to an old vet that we've known for years to just quietly put them to sleep. I would rather they were put down under my care than they landed in the hands of the fighting people, which is appalling".

This was followed by Ms Harrison saying:

"Neutering them instead is also allowed, but it's still enshrined in the Rhodesian Ridgeback club's code of ethics that ridgeless puppies shall be culled".

This was accompanied by footage of the RRCGB's Code of Ethics, showing the words "Ridgeless puppies shall be culled".

Mr Ronnie Irving, Chairman of the Kennel Club, was shown saying in response to a question from Ms Harrison as to whether healthy puppies should be culled on “*purely cosmetic grounds*”:

“There is no reason in my view to cull puppies on cosmetic grounds, absolutely not. And I wouldn’t want the Kennel Club to be associated with such an idea”.

Ms Harrison then said:

“Culling puppies because they don’t meet the Kennel Club breed standard is not, perhaps, as common as it used to be, but it still happens...”

The programme then included a discussion of the RRCGB’s Code of Ethics and Mrs Maidment’s comment on the Kennel Club’s request that the culling provision be removed from it:

“Kirsteen Maidment says the Club is disappointed by the Kennel Club’s handling of the issue, and while the club supports those who prefer to neuter their ridgeless dogs rather than destroy them, they believe Ridgeback breeders should retain the right to put ridgeless puppies to sleep”.

The Committee noted that the full provision in the RRCGB Code of Ethics on the culling of ridgeless puppies said:

“Ridgeless puppies shall be culled at birth; if a breeder finds this morally impossible the puppy shall be homed, without pedigree certificate, at rearing costs only, with an undertaking that it shall be neutered”.

The Committee noted that this provision was not given in full in the programme, but took the view that the commentary was consistent with the wording used in the RRCGB’s Code of Ethics. Although the Committee noted that the only extract of it that was shown on screen said that “Ridgeless puppies shall be culled”, it considered that it was clear from the commentary and footage from Mrs Maidment’s interview included in the programme that neutering was an option and that the RRCGB would support breeders who wanted to neuter ridgeless puppies rather than put them to sleep. In these circumstances, the Committee took the view that it was clear that culling ridgeless puppies was not mandatory.

The Committee found no unfairness to the RRCGB in this respect.

- ii) The Committee then considered the complaint that the programme omitted to mention that the RRCGB’s Code of Ethics had been drawn up 20 years previously and that, in the light of changing attitudes, the RRCGB’s members had been reviewing it over the previous 12 months “with particular reference to the sensitive issue of ridgeless puppies”.

The Committee noted that, although the RRCGB was reviewing its Code of Ethics, the version on its website in February 2008 still contained the provision that “Ridgeless puppies shall be culled” and that this had been retained following a review in 2006. In these circumstances it was not incumbent on the programme makers to refer to the fact that the RRCGB Code of Ethics was 20 years old. Furthermore, the Committee noted that the change to this provision that was proposed in the review was to change the provision so as to read “Ridgeless puppies may be culled”, in place of “shall be culled”. As set out under decision

head i) above, it was clear in the programme in any event that the culling provision was not mandatory. In these circumstances, the Committee considered that the RRCGB's position on culling was clearly conveyed in the programme.

The Committee found no unfairness to the RRCGB in this respect.

- iii) The Committee considered the complaint that the programme makers interviewed a number of Rhodesian Ridgeback breeders at the Manchester Championship Dog Show in relation to the issue of ridgeless puppies. Some breeders had stated that they would not put down a ridgeless puppy, but the programme did not include any footage of interviews with these breeders.

The Committee considers that it is a matter for programme makers' editorial discretion as to which potential contributors to use in a programme. It was not incumbent on the programme makers to include interviews with any of the Rhodesian Ridgeback breeders interviewed during the programme making process unless the failure to do so would have caused unfairness to the RRCGB. The Committee noted that, as set out under decision head a) above, both the commentary and Mrs Maidment's contribution to the programme made it clear that some breeders wished to and did neuter ridgeless puppies rather than putting them to sleep. The RRCGB's position was therefore made clear in the programme without the inclusion of footage recorded at the Manchester show.

The Committee found no unfairness to the RRCGB in this respect.

- iv) & v) The Committee considered together the complaints that the programme did not make clear that the statements that: *"One in twenty Rhodesian Ridgebacks is born without a ridge"* and *"About ten per cent of Rhodesian Ridgebacks suffer from a nasty condition called Dermoid Sinus"* came from "small-scale Swedish research into Dermoid Sinus in the Rhodesian Ridgeback which is not yet complete"; and that the programme did not make clear it was only Ms Harrison's interpretation of the Swedish research that led to the implication in the programme that the use of ridgeless dogs in a breeding programme would help reduce the incidence of Dermoid Sinus in Rhodesian Ridgebacks.

In considering these heads of complaint, the Committee had particular regard to Practice 7.9 of the Code, which provides that before broadcasting a programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Accordingly, the Committee sought to address whether the programme makers had taken reasonable steps to ensure that they had sufficient evidence to support their claims, and that they presented them in a manner which did not result in any unfairness to the RRCGB.

The Committee noted that in the section of the programme that looked at Rhodesian Ridgebacks Ms Harrison said by way of commentary that:

"...the ridge is enshrined in the Kennel Club's breed standard as the defining feature of the breed and so every ridgeback must have one. The problem is that one in 20 Rhodesian Ridgebacks is born without a ridge".

A little later, she said:

"About 10% of Rhodesian Ridgebacks suffer a nasty condition called Dermoid Sinus. It looks innocent enough, just a pinpricked sized hole on the surface of

the dog's skin. But these holes often burrow right into the dog's spinal cord or brain – an open channel through which lethal infection can travel. Dogs born without a ridge don't suffer from Dermoid Sinus, so it would make perfect sense to change the breed standard. Perfect sense, that is, to anyone other than a Ridgeback breeder..."

The Committee noted that the programme did not explain where these figures came from. It also noted that it appeared from correspondence between Ms Harrison and Mrs Maidment some ten days prior to the broadcast that Mrs Maidment challenged these figures. In this, Ms Harrison said that she would be using those figures "but will qualify with 'about', 'around' or 'it's thought...". The commentary was qualified in relation to the percentage of Rhodesian Ridgebacks suffering from Dermoid Sinus, but not in relation to the number of Rhodesian Ridgebacks born without a ridge.

The Committee noted that Mrs Maidment believed that the Swedish research had looked at only 22 puppies, of which she thought half might have been ridged and half ridgeless, while the BBC had submitted evidence that suggested that the number of dogs involved could be considerably higher than Mrs Maidment believed. The Committee also noted that the BBC had acknowledged that "there is a limited amount of research that has been carried out into the proportion of dogs born without a ridge and those suffering from Dermoid Sinus" but that the programme makers had reviewed a number of the available studies. The BBC also referred to a 23 January 2008 email from Dr Hillbertz to Ms Harrison in which Dr Hillbertz confirmed that she was "extremely confident regarding our results [in one such study]" even though the sample size was, as the BBC put it, "relatively small".

The Committee noted that the question of the extent of the research was intrinsically linked to the validity of the research as a basis for the claims made. The Members attempted to discern how many litters and dogs had been included in the studies the programme makers had relied upon. The Committee examined the material provided as evidence by the BBC, as well as Dr Hillbertz's thesis and published article, but due to the variety of figures and the different contexts within which they were presented in the evidence, as a lay committee it was unable to determine with confidence which set of figures the programme makers had relied on. Although the Committee carefully and thoroughly considered all of the material put before it, it was conscious that it is not Ofcom's role to adjudicate on the validity of scientific research or a particular scientific view. Rather, in regard to this complaint, Ofcom is required to determine whether the programme as broadcast resulted in unfair treatment of the RRCGB.

The Committee considered that it was not incumbent on the programme makers to attribute the figures in the programme, provided this caused no unfairness to the RRCGB. It noted that the Swedish research was discussed at length in Ms Harrison's interview with Mrs Maidment. In this Mrs Maidment said that:

"this whole interview is really based at the moment on interim knowledge shall we say, as we are awaiting the outcome of our World Congress in August and I just want to make that quite clear, that we're just stating things as they are at the moment".

Ms Harrison appeared to accept this position, replying:

"Totally, I'll completely make that clear."

Dr Hillbertz was to attend the Rhodesian Ridgeback World Congress in August 2008, when the research would be presented and discussed.

The Committee also noted that in an email to Mrs Maidment shortly before transmission (in August 2008) Ms Harrison said:

“The science is a little too premature (as I know you think too) to be able to say for sure that incorporating ridgeless into the breeding programme would solve the problem of Dermoid sinus. However, we do say that the ridge is strongly associated with dermoid sinus [sic] and ask if this in itself is a reason for change (strongly challenged by Julie Bates, Ann Woodrow and yourself).”

In the Committee’s view this contrasted with the commentary line:

“Dogs born without a ridge don’t suffer from Dermoid Sinus, so it would make perfect sense to change the breed standard”.

The Committee also noted that in her correspondence with Dr Hillbertz in January 2008, Ms Harrison asked:

“Why, given that the current state of play results in perfectly healthy (indeed often healthier) ridgeless dogs being euthanized at birth, and only ridged dogs are allowed to breed increasing the risk of DS [Dermoid Sinus], why do you feel unable to go one step further and suggest breeding practices change?”

Dr Hillbertz’s reply was:

“Regarding your comment that ridgeless individuals are healthier dogs what is the definition of healthier dogs (assuming that it is not related to DS...)? I cannot associate the comment to my research...are there statistical data available regarding the statement? The comment seems to be a lay version of interpretations, or....????...We need to be sure that we know what we are dealing with (the nature of the mutation responsible for DS development is not as straightforward as we initially hoped) on the DNA-level. Today we only hypothesize what is going on...[sic]”

Ms Harrison also asked Dr Hillbertz in her email whether “breeding ridgeless to homozygous ridged would result in an all-ridged litter with reduced (no?) risk of DS”.

Dr Hillbertz’s reply was:

“Before informing the RR community, there is still some work to be done and too early leap into new breeding approaches could risk introductions (and subsequently distributions) of new disease mutations if the breeding stock is diminished”.

The Committee noted that Dr Hillbertz was significantly less definitive in discussing her findings than Ms Harrison was in putting those findings to Mrs Maidment, and in using them to support her argument in the programme that the breed standard should change. This email exchange took place in January of 2008, so post-dated the publication of Dr Hillbertz’s doctoral thesis and the article on the ridge and Dermoid Sinus to which she had contributed in Nature Genetics, and to which the BBC had referred. Moreover, these answers were given in direct

response to a series of specific questions from the programme makers about the research. They were given by the foremost expert on this research.

Dr Hillbertz's email exchange with the programme makers was significant as it reflected her contemporaneous position on the research findings.

In particular, it was apparent from Dr Hillbertz's email of 23 January 2008 that she had attached a number of caveats and a degree of caution to the interpretation of her results.

For these reasons the Committee acknowledged that while the programme makers were entitled to rely on published research documents when they came to present this issue, once they had obtained this email correspondence from Dr Hillbertz, they should have taken greater care to reflect accurately her caveats and caution in the programme. Indeed Dr Hillbertz had specifically asked to be informed "of what material you will use and I expect that you run everything, regarding the RR studies, by me prior to the finalization of the program.....[sic] minor misunderstandings will have vast impacts, which could affect the breed in a negative manner." The Committee saw no material that suggested this had been the case.

The Committee also noted the assertion by Dr Hillbertz, in her email to Ms Harrison, that:

"breeders do not know [sic] that ridgeless individuals do not carry the DS-mutation and that DS is associated to the ridge, as this is one of the major findings with our research."

This was confirmed by Mrs Maidment's statement in untransmitted footage (in relation to Dr Hillbertz' research and her forthcoming presentation to the World Congress) that "a lot of breeders didn't – and still don't – know how far the research has got to and exactly where we are in it."

The Committee compared this with the programme commentary on this subject, which asserted that "*it would make perfect sense to change the breed standard. Perfect sense, that is, to anyone other than a ridgeback breeder*". The Committee considered that the programme as broadcast did not reflect the fact, mentioned by Dr Hillbertz, that at that time Rhodesian Ridgeback breeders in general were not aware of the research on Dermoid Sinus. This research was to be presented to Rhodesian Ridgeback breeders for the first time at their World Congress on 12-15 August 2008 so the first chance the RRCGB would have to act would be at its AGM in March 2009. At the time of the broadcast, the RRCGB had not had the opportunity to modify its behaviour in response to the Dermoid Sinus research.

In addition it was apparent from Dr Hillbertz's email of 23 January 2008 that breeding on a more selective basis, from fewer dogs, could carry other risks. She also alluded to using alternative approaches to the Dermoid Sinus problem before proceeding to introducing ridgeless dogs into the breeding pool:

"...we are currently working with developing [sic] a DS-specific DNA-test and my recommendation to breeders is to be patient until such test is [sic] fully developed and evaluated. It may take some time, but when (I am optimistic..) we succeed, genetics will give us the informative answers necessary regarding understanding DS and thus the tool to address the DS-problem in the global Rhodesian Ridgeback population."

Taking all these factors into account, the Committee considered that the programme implied a degree of certainty which the evidence did not support, suggesting that any reasonable person would change the breed standard because of this. By refusing to do so, the programme alleged that the RRCGB was failing to do all it could to eliminate Dermoid Sinus.

In making this serious allegation, the programme did not refer to – or appear to take into account – the caveats given by Dr Hillbertz in her communications with Ms Harrison; nor Ms Harrison’s statement that the science was “a little too premature”. Nor did the Committee consider that it took into account Mrs Maidment’s and Dr Hillbertz’s comments on the continuing quest for a DNA marker for Dermoid Sinus. It unfairly implied that breeders were choosing to ignore information, which key contributors said was unknown to them. A clear impression was given in the programme that the evidence to support a fundamental change to the breed standard was more certain than the leading researcher in the field herself seemed to suggest. In the Committee’s view this led to an over-simplification of the situation and the inclusion in the programme of an allegation about the RRCGB that was not supported by sufficiently strong evidence.

The programme was unfair to the RRCGB in these respects.

- vi) The Committee next considered the complaint that the statements in the programme that: *“In fact it has been known for decades that the ridge is a mild form of Spina Bifida that can cause serious health problems”* and that Dermoid Sinus *“often burrow[ed] right into the dog’s spinal cord or brain”* were inaccurate and misleading.

The Committee noted the RRCGB’s point that Dermoid Sinus had been compared to Spina Bifida because it was a similar condition, but that the ridge on a Rhodesian Ridgeback had never been described as, or been known to be, a mild form of Spina Bifida.

The Committee noted that the RRCGB considered that the inclusion of the statements complained of in the programme was unfair because the statements implied that Rhodesian Ridgeback breeders were knowingly breeding from dogs with a mild form of Spina Bifida and breeding dogs, and from dogs, with Dermoid Sinus. The RRCGB said that breeders did not breed from dogs with Dermoid Sinus.

The Committee also noted that the BBC accepted that the description of the ridge provided in the programme (and quoted above) was “not medically exact”, although it went on to assert that this was not the kind of inexactness which would have misled the audience or affected viewers’ perceptions of the RRCGB. The BBC explained that the ridge is associated with “a condition which scientists and vets believe is related to Spina Bifida, namely Dermoid Sinus”.

The Committee noted the relevant extract of the commentary, which said:

“The ridge on a Rhodesian Ridgeback serves no useful purpose. In fact it has been known for decades that the ridge is a mild form of spina bifida that can cause serious health problems”.

The Committee considered that this commentary directly linked the ridge to Spina Bifida.

After considering the statements from the two parties and the scientific evidence put before it, the Committee was able to ascertain that the Rhodesian Ridgeback breed's ridge is not, in itself, a genetic disorder. The Committee considered that by describing the ridge as a form of Spina Bifida, the programme incorrectly conflated two separate issues: that having a ridge predisposes a percentage of Rhodesian Ridgeback dogs to Dermoid Sinus; and that Dermoid Sinus – like Spina Bifida – is a neural tube defect. The reference to the ridge as a mild form of Spina Bifida was inaccurate and the allegation itself not supported by the scientific evidence.

The programme later went on to describe Dermoid Sinus in more detail, stating *“About 10% of Rhodesian Ridgebacks suffer a nasty condition called Dermoid Sinus”*.

The Committee considered that the programme was likely to have given viewers the impression that Rhodesian Ridgeback dogs suffered from two disorders: that all ridged dogs suffered from a mild form of Spina Bifida and that 10% of Rhodesian Ridgeback dogs were also born with Dermoid Sinus. As a result, the Committee considered that it exaggerated the incidence of disorders afflicting the Rhodesian Ridgeback breed suggesting it was a fundamentally unhealthy breed, and so made the actions of the RRCGB in response to the situation (which, as discussed above under heads iv) and v) were unfairly presented) appear unreasonable.

As set out under decision heads iv) and v) above, the programme made a serious allegation that was not supported by evidence. This was that the RRCGB, by refusing to accept that the breed standard should be changed, was not doing all it could to prevent Dermoid Sinus.

In view of this, it was essential that the programme presented a balanced picture of the scientific evidence surrounding this condition. It considered that viewers would have understood the programme to be saying not only that the RRCGB was not doing all it could about Dermoid Sinus, but was only breeding from dogs with a form of Spina Bifida, i.e. ridged ones. Moreover by refusing to change the breed standard it was unnecessarily perpetuating the continuation of Dermoid Sinus in the breed. In the Committee's view, the cumulative effect of the part of the programme dealing with this would have been to give viewers the impression that the RRCGB was choosing to breed deformed, unhealthy dogs that suffered from Dermoid Sinus.

The Committee therefore found that the programme was unfair to the RRCGB in this respect.

Accordingly the Committee has upheld parts of the RRCGB's complaint of unfair treatment in the broadcast of the programme.

The Committee has directed the BBC to broadcast a summary of the finding of unfair treatment.

Partly Upheld

Complaint by Mrs Virginia Barwell

Pedigree Dogs Exposed, BBC1, 19 August 2008

This Adjudication was originally published on 9 December 2009.

Summary: Ofcom has upheld part of this complaint of unfair treatment made by Mrs Virginia Barwell.

The BBC broadcast a documentary that examined health and welfare problems in pedigree dogs. The programme argued that pedigree dogs were “*dangerously inbred*” and that many of the problems were caused by competitive dog showing. The programme looked at health problems suffered by Cavalier King Charles Spaniels (“CKCS”) and included footage from various dog shows, including the Cavalier King Charles Spaniel Club Championship Show in Malvern. The programme also included extracts of interviews with representatives of the Kennel Club, animal health and welfare experts, and several pedigree dog owners. There was also material from interviews with several dog breeders including Mrs Virginia Barwell who breeds CKCSs.

Mrs Barwell complained to Ofcom that she was treated unfairly in the programme. Her complaint was considered by Ofcom’s Fairness Committee, its most senior decision making body in matters of Fairness and Privacy.

In summary the Committee found that Mrs Barwell was not portrayed as a “ruthless dog breeder”, as she had complained, but that footage of her interview was unfairly edited in that her views were over-simplified.

Introduction

On 19 August 2008, the BBC broadcast *Pedigree Dogs Exposed* on BBC1. The documentary examined the extent of health and welfare problems in pedigree dogs. The programme argued that pedigree dogs were “*dangerously inbred*” and that the cause of many health and welfare problems experienced by them was competitive dog showing.

The programme included distressing scenes of Cavalier King Charles Spaniels (“CKCS”) with syringomyelia, a condition where the brain is too large for the skull. It also included footage from various dog shows, including the Cavalier King Charles Spaniel Club Championship Show in Malvern, and extracts of interviews with representatives of The Kennel Club, animal health and welfare experts, and several pedigree dog owners. In addition the programme included extracts of interviews with several dog breeders, including Mrs Virginia Barwell, who breeds CKCS.

Mrs Barwell complained that she was treated unfairly in the programme as broadcast.

Ofcom’s Fairness Committee (“the Committee”), its most senior decision making body with regard to fairness and privacy complaints, considered, and provisionally adjudicated on, this complaint. It found that there was some unfair treatment of Mrs Barwell in the broadcast of the programme.

The BBC requested a reconsideration of the provisional finding on the ground that it had made material mistakes of fact and had given undue weight to certain pieces of evidence.

The Committee reconvened to consider afresh Mrs Barwell's complaint of unfair treatment.

The Complaint

Mrs Barwell's case

In summary, Mrs Barwell complained that she was treated unfairly in that an interview with her was unfairly edited. She was interviewed live and un-rehearsed. Her statement was selectively edited in order to depict her as a "ruthless dog breeder who was not prepared to take reasonable steps to avoid having inherited disease passed down to later generations", which was quite contrary to her full, unedited statement.

The BBC's case

In summary, the BBC responded as follows:

By way of background, the BBC said that the programme investigated the extent of the health and welfare problems of the nation's pedigree dogs. It examined concerns that decades of inbreeding of pedigree dogs had led to an increase in serious genetic diseases and deformities in many breeds. The BBC said that the programme featured contributions from many involved in the world of pedigree dogs, including vets, animal welfare groups, breeders and scientists, who believed the problems were exacerbated by the trend of breeding dogs primarily on appearance, regardless of the effect this had on their health and wellbeing. It highlighted two serious health issues that affected the CKCS: syringomyelia (a neurological condition caused by breeding dogs whose skulls are too small for their brains) and Mitral Valve Disease, an inherited heart condition that frequently leads to premature death.

The BBC said that Mrs Barwell was well known in the CKCS world. She had bred dogs for 40 years, was a frequent judge at shows and was previously chairman of the CKCS UK. Mrs Barwell was interviewed by the programme makers. Her contribution was included in a section of the programme that examined the division of opinion over the extent of the health problems facing the breed. The BBC said the programme featured Mrs Carol Fowler, a dog owner who considered that some breeders were not taking the issue seriously enough.

In relation to syringomyelia, Ms Jemima Harrison, the programme's director and narrator said in the commentary on the breed's premier Championship show:

"People come from all over the world to this event. Some big-winning dogs here change hands for thousands of pounds. Carol Fowler is here too. It is three years since she started campaigning for action on syringomyelia, the brain condition she believes is destroying the breed. And the Kennel Club is now funding research into the disease. But breeders are still not taking it as seriously as Carol would like".

Mrs Barwell then said:

“Some of the characteristics attributed to syringomyelia are not always what they seem. Dogs scratch. All dogs scratch”.

The BBC said that Mrs Barwell’s comments summarised the opinion of many CKCS breeders that the problem with syringomyelia had been unduly exaggerated. The section used in the programme was a fair and accurate representation of Mrs Barwell’s views as expressed in her full, untransmitted interview, during which she had repeatedly played down the health problems of CKCS and made it clear that she believed many concerns – particularly about syringomyelia – were overstated. Mrs Barwell had begun by saying she thought the breed was “as strong as it ever was and I would emphasise that” and went on to say “the breed is not in decline, contrary to reports, it simply isn’t in decline”, “my feeling is that the quality of dogs is as high as ever” and “I think the Cavalier is as strong as ever”.

Mrs Barwell had explained that, in her opinion “heart disease is still the killer, the main killer of old and young dogs, not syringomyelia”. On two separate occasions Mrs Barwell suggested that syringomyelia was not as widespread as Mrs Fowler and others claimed. She said in her full, untransmitted interview:

“But some of the, how can I put it, characteristics attributed to syringomyelia are not always what they seem. Dogs scratch, all dogs scratch, but, you know, these days if you see a dog scratching in the ring, your neighbour who may not know, sitting next to you watching it says “oh I bet that’s got syringomyelia”. Not true. It’s really an awful, sort of, handle for a dog that is probably just having a good old scratch because it needs to”.

Later she said:

“You might see a dog scratch, but as I said earlier, that isn’t syringomyelia, not always anyway”.

The BBC said that the part of Mrs Barwell’s interview, about syringomyelia, that was included in the programme was edited fairly in this respect, as it accurately portrayed the point of view she expressed repeatedly to the programme makers.

The BBC said that Mrs Barwell also referred in the programme to the use of MRI scans to identify syringomyelia in CKCS. The commentary said that most breeders continued to breed from untested dogs and Mrs Barwell was then shown saying:

“I make no bones about it. I simply will not have my dogs MRI scanned”.

The BBC said that Mrs Barwell’s contribution in the programme, while brief, was a fair and accurate representation of the point of view she expressed in her interview:

Mrs Barwell I think that, I make no bones about it, I simply will not have my dogs MRI scanned. I haven’t, touch wood, had syringomyelia, I would know if I had it because it is extremely painful. I think that I have my heart, dog ‘s heart tested, ophthalmic tested, and until we can come up with a relatively simple, sort of, I don’t know what you might call it, but DNA testing anyway, then I am not prepared to put my animals through MRI scanning. That’s as simple as that.

Ms Harrison Because it involves an anaesthetic?

Mrs Barwell Because it involves an anaesthetic. I think that, you know, if I had an animal I was very suspicious of then that's a different matter altogether but I'm not just doing it through normally healthy dogs. I'm not going to put them through it.

The BBC said that the extract from Mrs Barwell's comment was used to illustrate the fact that despite health problems within the CKCS, many breeders continued to breed from dogs which had not been tested for syringomyelia. It said that MRI scans were widely recognised within the CKCS breed clubs and the Kennel Club as the only effective way to identify dogs with the condition, including those which were asymptomatic but would still pass the disease onto any offspring. The BBC also said that the CKCS Club recommended that owners and breeders scanned their dogs. It ran a scheme offering subsidised scans to owners. The CKCS Club website said that "The only way to confirm a diagnosis is by MRI (Magnetic Resonance Imaging)". The Kennel Club's Genetics Co-Ordinator, Dr Jeff Sampson, had also recently endorsed "a more formal approach to MRI screening and evaluation".

The BBC said it was fair and legitimate to include Mrs Barwell's comment because her refusal to allow apparently healthy dogs to be scanned was contrary to the advice of vets and breed clubs, and further demonstrated the division within CKCS breeders. Breeders such as Mrs Barwell knowingly and publicly ignored the advice and continued to breed from dogs which had not been tested. The BBC said that the programme makers spoke to a number of CKCS breeders in the making of the programme who confirmed that Mrs Barwell was well known for her opposition to the use of MRI scans. The programme did not portray Mrs Barwell as "a ruthless dog breeder" and that her contributions accurately represented her point of view on two key issues.

Furthermore, the programme made it clear that many CKCS breeders were opposed to Mrs Fowler's campaign for action on syringomyelia, by including the contribution of Mrs Margaret Carter, a CKCS breeder, who said: "*She is very much disliked by a lot of people for interfering in something she has no right*".

Mrs Barwell's comments

In summary Mrs Barwell responded as follows:

Mrs Barwell said that she had agreed to be interviewed at the request of Mrs Leslie Jupp, chairman of the CKCS Club. She believed the programme would be truthful, and factually based on sound and unbiased journalism with the object of promoting health and well being in pedigree dogs. She said that her responses to questions put to her in interview were straightforward and honest, based on more than 40 years' experience as an owner, breeder, shower and judge of CKCSs.

Mrs Barwell said that the full recording of her interview, which lasted 13½ minutes, showed that Ms Harrison asked her several questions about the general health of the breed and about syringomyelia in CKCSs. She responded in some depth to questions on the availability of puppies, health checks and the quality of judging at shows. However, Mrs Barwell said that her interview was severely edited, so that she appeared for two brief clips lasting just a few seconds, which she felt were chosen to try to show that she, as a prominent and hitherto well respected breeder and judge of CKCSs was a rather shallow person with no real, long-term aims for the benefit of her chosen breed.

The programme makers had a hidden agenda to demonstrate that pedigree dog breeding and showing, as practiced in the UK, was inherently cruel and harmful to many breeds of dog. Certain high-profile and popular breeds were chosen to this end, including the CKCS, probably because of its popularity as well as the syringomyelia question. Mrs Barwell said that the programme was deliberately composed so as to give the impression that syringomyelia was rife in CKCSs and that her statement that the condition was not peculiar to CKCSs was ignored. In order to highlight the supposed syringomyelia problem the highly qualified veterinary scientist, Dr Clare Rusbridge, was shown saying that one cause of syringomyelia was that the CKCS's skull was too small for its brain. However the programme gave no hard, statistical evidence as to the occurrence of clinically diagnosable syringomyelia in the breed and Mrs Barwell said that she did not know if such statistics were available. She said that from her own experience and from anecdotal evidence from many owners, breeders and vets with wide knowledge of CKCSs, she was certain that clinical syringomyelia was very rare in the breed and probably not significantly more common than in other breeds or species, including humans. Furthermore, Mrs Barwell considered that the rarity of clinical syringomyelia raised questions about the interpretation of the results of MRI scans. Mrs Barwell said that she therefore feared that the introduction of screened breeding programmes, based largely on the results of MRI scans, might have the opposite of the desired effect, perhaps narrowing the gene pool and giving rise to a greater incidence of inherited disease.

The BBC's comments

In summary the BBC responded as follows:

The BBC said that Mrs Barwell's statement that, on the basis of her own experience and anecdotal evidence, she considered that clinical syringomyelia was very rare in the breed, confirmed that the programme fairly and accurately represented her views about the condition.

The BBC denied that the programme-makers were following a hidden agenda to demonstrate that pedigree dog breeding and showing was inherently cruel and harmful to many breeds. They had reached this conclusion following a two year investigation, based on the evidence they had gathered from canine experts, vets, scientists, breeders and owners.

In response to Mrs Barwell's suggestion that the programme should have explained her view that syringomyelia is not peculiar to CKCS, the BBC said that there was no unfairness to Mrs Barwell in excluding her opinion about syringomyelia in other breeds, bearing in mind her primary experience was with CKCS and that was the basis on which she was interviewed.

The Committee's Provisional Decision

After these representations were all received, the Fairness Committee met, considered and reached a provisional decision on Mrs Barwell's complaint. The Committee decided to uphold part of Mrs Barwell's complaint that her attitude towards testing her dogs for genetic disorders was unfairly represented but found that she was not portrayed as a "ruthless dog breeder" and that her views on the significance of syringomyelia were fairly edited and portrayed.

The BBC requested a reconsideration of this provisional decision on the ground that the Committee had made material mistakes of fact and had given undue weight to certain pieces of evidence.

The Fairness Committee then gave Mrs Barwell the opportunity to respond to the BBC's request before going on to consider afresh her complaint of unfair treatment.

The BBC's request for reconsideration

In summary, the BBC said the Committee had made material mistakes of fact and had given undue weight to certain pieces of evidence and insufficient weight to other pieces of evidence. The BBC said that Mrs Barwell only featured in the programme in relation to syringomyelia and that viewers would have understood that her comments related only to that condition. The Committee gave undue weight to Mrs Barwell's views on other testing, which were immaterial. The BBC said that the Committee also gave undue weight to Mrs Barwell's explanation for not having her dogs MRI tested, namely her concerns about anaesthetic, as her concerns were not generally considered to be justified or credible. Nor did the BBC accept that Ms Harrison had endorsed Mrs Barwell's position.

The BBC also said that the Committee gave undue weight to Mrs Barwell's statement that she would be more likely to consider a scan if she was suspicious that one of her dogs had syringomyelia, despite the fact that Mrs Barwell is not a medical expert and despite the evidence of experts who state that many dogs with syringomyelia remain asymptomatic but can still pass the condition on to their offspring and that an MRI scan is the only way to identify asymptomatic dogs. Furthermore, the BBC said that the programme makers had evidence that cast doubt on Mrs Barwell's claim that she had not had syringomyelia in any of her dogs. The BBC also said that, notwithstanding its statement that Mrs Barwell's contribution to the programme was confined to syringomyelia, if the Committee believed that there was still unfairness to Mrs Barwell, it should be aware that the programme makers had evidence that cast doubt on the veracity of her claims about her testing of her dogs for other conditions.

In summary, Mrs Barwell said in response to the BBC's request for reconsideration that the full interview she gave covered a wide range of health issues for the breed but that the only footage used was in relation to syringomyelia. She believed this had been done to suggest that she held views that differed from those of the majority and that this, taken in isolation might have led viewers to believe that she was a callous breeder who cared little for the health and welfare of her animals. She said that it was clear from the full interview that this was not the case. Mrs Barwell said that she had given much thought to the problem of syringomyelia and that the only thing she had discovered for certain was that not enough was known to adopt firm breeding protocols without some risk to the gene pool. She said that many would agree with this and that, therefore, recommendations for MRI scanning and consequent breeding protocols were currently voluntary. Mrs Barwell said she had made it clear in her interview that she welcomed the use of MRI scans for individual sick animals but that this was not included in the programme. Mrs Barwell also strongly denied the BBC's allegations that she had made untrue claims regarding testing of her dogs for conditions other than syringomyelia.

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 Barwell's complaint was considered by Ofcom's Fairness Committee ("the Committee") its most senior decision making body in matters of Fairness and Privacy. In reaching its decision, the Committee carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast; both parties' written submissions, and a recording and transcript of the full interview with Mrs Barwell. The Committee reconvened to consider the BBC's reconsideration request.

In considering the complaint the Committee took account of Practices 7.2, 7.6 and 7.9 of the Code. Practice 7.2 states that broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise. Practice 7.6 specifies that when a programme is edited, contributions should be edited fairly. Practice 7.9 states that before broadcasting a factual programme broadcaster must satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

The Committee considered Mrs Barwell's complaint that she was treated unfairly in that an interview with her was unfairly edited, and that her statement was selectively edited in order to depict her as a "ruthless dog breeder who was not prepared to take reasonable steps to avoid having inherited disease passed down to later generations", which was quite contrary to her full, unedited statement.

The Committee noted that Mrs Barwell gave an interview at the Malvern dog show, where she discussed a range of issues with Ms Harrison, including syringomyelia, Mitral Valve Disease, MRI testing, anaesthesia, her own dogs, breeding and testing of dogs, judging at dog shows, and the health of the CKCS breed generally.

The Committee considered the footage of Mrs Barwell's interview that was included in the programme. The Committee noted that, having referred to Mrs Fowler's campaign for action on syringomyelia, the programme's commentary said:

"But breeders are still not taking it as seriously as Carol would like".

This was immediately followed by a clip from Mrs Barwell's interview, in which she said:

"Some of the characteristics attributed to syringomyelia are not always what they seem. Dogs scratch. All dogs scratch".

The programme's commentary then said:

"Most [breeders] continue to breed from untested dogs".

Mrs Barwell was then shown saying:

"I make no bones about it. I simply will not have my dogs MRI scanned".

The Committee took the view that the introduction to this section of the programme clearly suggested that Mrs Barwell, like some other CKCS breeders, was not taking the issue of syringomyelia as seriously as Mrs Fowler would like and that she would deliberately breed from dogs that had not been tested for syringomyelia. The Committee also noted that Mrs Barwell's interview was edited so as to include only her brief comment about dogs scratching and the bald statement that she would not have her dogs MRI scanned.

The Committee noted that the above quotation from Mrs Barwell's interview regarding dogs scratching was taken from the following excerpt of her complete interview:

"There certainly is the will and wherewithal to tackle it, we run a very successful health fund within the club, I'm a past Chairman of the club and I know all about that."

"And people have taken advantage of the availability of reduced rates to have their dogs tested if they so desire. But some of the, how can I put it, characteristics attributed to syringomyelia are not always what they seem. Dogs scratch, all dogs scratch, but, you know, these days if you see a dog scratching in the ring, your neighbour who may not know, sitting next to you watching it says "oh I bet that's got syringomyelia". Not true. It's really an awful, sort of, handle for a dog that is probably just having a good old scratch because it needs to".

Later in the interview she said:

"You might see a dog scratch, but as I said earlier, that isn't syringomyelia, not always anyway".

In the Committee's view, the selection of what amounted to a sound bite from Mrs Barwell about dogs scratching did not fairly reflect her more detailed position about syringomyelia, as set out in her interview.

As regards testing generally, the Committee noted that in her interview Mrs Barwell said that she had her dogs heart- and eye- tested. However, the Committee took the view that it would have been clear to viewers when the narrator said that "*Most [breeders] continue to breed from untested dogs*", that this referred to testing for syringomyelia, as this was the health issue under discussion at this point in the programme. It was therefore not incumbent on the programme makers to include footage of Mrs Barwell's interview in which she talked about testing for diseases or conditions other than syringomyelia.

The Committee then considered the question of MRI scans and the editing of Mrs Barwell's interview in this respect. As set out above, Mrs Barwell said in the programme:

"I make no bones about it. I simply will not have my dogs MRI scanned."

This was the first reference in the programme to MRI testing. Mrs Barwell's statement that she would not have her dogs scanned was a strong one and in the Committee's view, the explanation she gave in her interview should have been included or referred to. The Committee noted the full extract from Mrs Barwell's interview, from which the above brief quotation was taken:

- Mrs Barwell ...I make no bones about it, I simply will not have my dogs MRI scanned. I haven't, touch wood, had syringomyelia, I would know if I had it because it is extremely painful. I think that I have my heart, dog's heart tested, ophthalmic tested, and until we can come up with a relatively simple, sort of, I don't know what you might call it, but DNA testing anyway, then I am not prepared to put my animals through MRI scanning and that's as simple as that.
- Ms Harrison Because it involves an anaesthetic?
- Mrs Barwell Because it involves an anaesthetic. I think that, you know, if I had an animal I was very suspicious of then that's a different matter altogether but I'm not just doing it through normally healthy dogs. I'm not going to put them through it.
- Ms Harrison I can understand that because of the evidence. So what would you say to the pet owners...?

The Committee considered that the full interview revealed two important qualifications to Mrs Barwell's views on having her dogs MRI scanned: that her objection to having her animals scanned was because they would have to be anaesthetised, and that she would be more likely to consider the scan if she were suspicious that one of her dogs had syringomyelia. Neither of these qualifications was reflected in the presentation of Mrs Barwell's view in the programme and the programme contained no analysis of potential risks of the anaesthetic that would need to be administered in order to carry out an MRI scan.

The Committee noted that a number of credible contributors to the programme stressed the importance of testing CKCS dogs for syringomyelia. These included a veterinary neurologist Dr Clare Rusbridge and Mrs Fowler. The Committee also noted that both the CKCS Club and the Kennel Club's own guidance recommends that CKCS breeders have all dogs MRI scanned for signs of the disease. However, in failing to explain the reason for Mrs Barwell's reluctance to have dogs MRI scanned, namely the need for anaesthetic, and including only the bald statement that she would not have her dogs scanned, the programme failed fairly to reflect Mrs Barwell's views on MRI scanning.

In the Committee's view, as a result of the editing of Mrs Barwell's interview so that it included only her comment on dogs scratching and her opposition to MRI scanning, her views as expressed in interview were compressed to such an extent that they were not fairly conveyed. The Committee noted that the programme makers did not accept the validity of the explanations and qualifications set out in the longer extracts from Mrs Barwell's interview set out above. However, the Committee took the view that those explanations and qualifications should have been included or referred to in commentary, so as to reflect fairly Mrs Barwell's reasons for her views. If necessary, the programme makers could then have stated why they did not accept her explanations and qualifications. But the programme's failure to include her explanations and qualifications resulted in unfairness to her.

Notwithstanding this unfair editing, the Committee noted that the programme did not portray Mrs Barwell as a "ruthless breeder". The Committee also considered that, as her appearance in the programme was so brief, viewers were unlikely to have formed an opinion that she was "ruthless" in any way.

In summary, the Committee considered that Mrs Barwell was not portrayed as a “ruthless dog breeder” and that there was no unfairness to her in this respect. However, the Committee considered that the footage of Mrs Barwell was unfairly edited in that her explanations for the brief extracts included in the programme, as expressed in her full untransmitted interview, were not conveyed to viewers.

Accordingly the Committee has upheld part of Mrs Barwell’s complaint of unfair treatment in the broadcast of the programme.

The Committee has directed the BBC to broadcast a summary of the finding of unfair treatment.

Partly Upheld

Complaint by Mr Andrew Flynn

Mischief – Your Identity For Sale, BBC3, 11 September 2008

Summary: Ofcom has upheld part of this complaint of unfair treatment made by Mr Andrew Flynn. It has also upheld his complaint of unwarranted infringement of privacy.

This programme investigated a number of issues about personal data and data security. The programme included an “*experiment*” in which the reporter set up a meeting with an internet advertising company that specialised in “pop-up” advertising, pretending that she intended to use its services. During a surreptitiously filmed meeting held in a café, one of the programme makers posed as a waiter and persistently interrupted the meeting with a “*special offer*” on muffins, purportedly to replicate the “*annoying*” nature of pop-up adverts, to see if the representatives from the company “*find pop-up ads annoying*”. Mr Flynn was one of the representatives of the company who was at the meeting and was surreptitiously filmed.

In summary Ofcom found the following:

- The programme showed Mr Flynn responding in a reasonable manner to the interruptions to the meeting and did not give an unfair or adverse impression of him.
- Footage of Mr Flynn was unfairly edited so as to suggest to viewers, wrongly that the personal details he was suggesting could be obtained might be sensitive.
- Although Mr Flynn was filmed as the result of deception and misrepresentation and without his consent, there was no unfairness to him as a direct result of the deception and secret filming.
- Mr Flynn was clearly identifiable, footage of him was used without his consent and there was no public interest justification for the use of that footage in the programme. His privacy was therefore unwarrantably infringed in the programme as broadcast.

Introduction

On 1 December 2008, BBC3 broadcast an edition of its documentary series *Mischief* entitled *Your Identity For Sale*. In this edition, the programme’s presenter investigated how advertisers track and profile what people search for on the internet, and then trade the information. The presenter was shown using a computer and had, it seemed, inadvertently installed a programme which monitored what she searched for on the internet and enabled websites to send “pop ups” to her computer. The presenter was then shown contacting the company that provided the pop up programme, Zango, and pretending to be an online psychic who wanted to discuss the possibilities of enhancing the profile of her website. The programme included a telephone conversation between the presenter and a Zango telephonist, in which they discussed pop up advertising opportunities. The presenter also said that she had arranged to meet representatives of Zango in a café to discuss the opportunities further.

The programme then showed secretly filmed footage of the presenter, posing as a client, and meeting with two Zango representatives. The presenter said (in voiceover) that she wanted to conduct an experiment to discover if those who “*serve pop up ads find pop up ads annoying*”. During the secretly recorded meeting, a waiter (who was, in reality, another of the series’ presenters) persistently interrupted their conversation about internet pop up opportunities by offering them a special “3 for 2 offer” on muffins. Both Zango representatives were shown telling the waiter repeatedly that they were not interested in the offer. Immediately after this footage was shown in the programme, the presenter said (in voiceover) that “*I can’t say I got a huge amount of information. It was fun though.*”

The complainant, Mr Andrew Flynn, was one of the Zango representatives secretly recorded and shown in the programme. A short extract from the secretly recorded footage in which he featured, was also shown at the beginning of the programme.

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

The Complaint

Mr Flynn’s case

In summary, Mr Flynn complained that he had been treated unfairly in that:

- a) He was portrayed unfairly in the programme.

In particular, Mr Flynn said that the section of the programme in which he appeared was engineered and designed purely for entertainment purposes.

- b) The programme’s footage at the start of the programme was edited to suggest that he was saying something that he was not.
- c) He was filmed as a result of misrepresentation and deception, without his consent.

In particular, Mr Flynn said that he was surreptitiously filmed for purely entertainment purposes. He said that the programme makers should have asked for his consent or obscured his identity in the broadcast programme.

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

- d) His identity was not “hidden” in the programme and his permission for it to be included was not requested by the broadcaster.

The BBC’s case

By way of background, the BBC said that the programme makers had looked into Zango’s pop-ups after Zango software was delivered to the reporter’s laptop without her knowledge. In the course of accepting an online offer of an apparently free spam blockers download, she had agreed, without realising it, to accept advertising directed to her by Zango on behalf of its clients. The BBC said that Zango’s terms and conditions were not at all clear or prominent and that, having inadvertently agreed to accept advertising, the reporter’s internet use was plagued by advertising

pop-ups. The BBC said that secret filming was carried out on the basis that this was intrusive marketing and as such amounted to anti-social behaviour. The BBC said that, as Mr Flynn's colleague had conceded that delivery of advertisement to a person's computer was intrusive, the story was in the public interest. This public interest was further served by the exposure of double standards on the part of Zango to the extent that its marketing staff would not tolerate behaviour towards them which mimicked Zango's own behaviour towards internet users, as demonstrated by the muffin offer at the cafe.

In summary, the BBC responded to Mr Flynn's complaint of unfair treatment as follows:

- a) The BBC said that the section of the programme in which Mr Flynn was featured was not designed purely for entertainment purposes, but to investigate whether Zango operated double standards when being persistently interrupted in a manner similar to the way that internet users are persistently interrupted by the advertisements Zango delivers to computers. The BBC said that the sequence therefore had a serious purpose and a public interest was clearly being served.

The BBC said the footage was not secretly filmed purely for entertainment purposes (where consent would be required) but that it was filmed for a serious purpose, and in the public interest, but in an entertaining fashion, in which case consent would not necessarily be required.

- b) As regards the complaint that Mr Flynn's remarks, as edited at the beginning of the programme, suggested that he was saying something that he was not, the BBC said that at the start of the transmitted programme, Mr Flynn was heard saying "...*entice people to subscribe then you have their information*". The BBC said that the transcript of the unedited recording of the meeting in the coffee shop where these remarks were made showed the full context of the conversation the quotation was taken from.

The BBC said that the editing of these remarks had no effect on their meaning, but that they had simply been "tightened up". In the BBC's opinion, Mr Flynn was advising the reporter as to how, having availed herself of the services that Zango does offer, she would be in a position to gather personal information about the respondents to the advertisements generated by Zango.

- c) The BBC said that, as set out in its response under head a) above, Mr Flynn was not filmed for purely entertainment purposes and that there was a serious purpose to the filming and that it was justified in the public interest. Mr Flynn's consent was therefore not required for the filming.

In summary, the BBC responded to Mr Flynn's complaint that his privacy had been unwarrantably infringed in the broadcast of the programme as follows:

- d) The BBC said that, given the circumstances in which Mr Flynn was filmed, he would have had only a limited expectation of privacy. The meeting was filmed in a public place and the conversation was audible to those around. The BBC said that there was no discussion of confidential or commercially sensitive material to which a greater expectation of privacy might apply. The filmed material which was broadcast focussed on the public reaction of Mr Flynn and his colleague to "pop-up advertising" which was being played out in public view, not on the conversation. The BBC said that it did not believe that this exchange attracted a significant expectation of privacy.

The BBC said that if there was an infringement of privacy, it was warranted, since the story was in the public interest because the activity being investigated was anti-social and it exposed the double standards of those marketing Zango's services. In these circumstances, the BBC argued, there was no requirement to conceal Mr Flynn's identity.

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

- a) Ofcom first considered the complaint that Mr Flynn was portrayed unfairly in the programme as broadcast.

In considering this part of the complaint Ofcom took account of Rule 7.1 of the Code, which provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also considered Practice 7.9, which provides that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation.

Ofcom noted that the purpose of this section of the programme, called "*Experiment 1: My Pop-Up Waiter*" was, according to the programme's commentary, "*to find out if people who serve pop-up ads find pop-up ads annoying*". The feature was introduced and presented in the programme as an opportunity to monitor the reaction of people who provide pop-up advertising – described in the preceding programme commentary as "*annoying pop-ups*" and "*something even more annoying than cookies*" – to an analogous situation. Ofcom also noted the reporter's explanation of why she approached Zango:

"...this weird pop-up came up that looked like it was going to stop junk mail, and looked all official and normal. So I clicked on it to stop junk mail, because everyone wants to do that, and it seems to have taken over my web browser because now there's ads everywhere".

She explained that the company responsible for the pop-up she had encountered was Zango and that, in order to approach the company, she had "*invented a persona, Madame Wilcox, an online psychic*". She explained that she had called Zango to discuss the advertising opportunities for her website.

Ofcom considered that the programme's commentary made it clear that the meeting had really been arranged to observe the reactions of Mr Flynn and his colleague to the interruptions of the "waiter":

"Madame Wilcox arranged to meet [Zango] in a café. An experiment to find out if people who serve pop-up ads find pop-up ads annoying. My pop-up ad was Alex [the "waiter"] advertising his special offer on muffins".

Ofcom considered that the premise of the café sequence was based on an expectation that the two Zango representatives, Mr Flynn and his colleague, would find the interruptions annoying. Ofcom noted that Mr Flynn and his colleague were depicted in the programme getting somewhat frustrated by repeated interruptions from the "waiter". However, Ofcom considered that, despite being tested by these persistent interruptions, Mr Flynn and his colleague both conducted themselves in a professional and good-natured manner throughout the meeting. Ofcom considered that Mr Flynn's responses were restrained and that viewers would have considered his reactions reasonable given the nature of the situation.

Taking all the above factors into account, Ofcom was satisfied that, despite footage of the meeting being used in a different context from that in which it was held, the programme simply showed Mr Flynn responding in a reasonable manner and did not give an adverse impression of him.

Mr Flynn was therefore not portrayed unfairly and Ofcom did not uphold this complaint.

- b) Ofcom then went on to consider whether the footage of Mr Flynn included at the beginning of the programme was edited in such a way as to suggest he was saying something that he did not.

In considering this head of complaint, Ofcom gave particular regard to Practice 7.6 of the Code, which provides that when a programme is edited, contributions should be represented fairly.

Ofcom first noted the transcript of the unedited café sequence, which was as follows:

Ms Bryan: So it's between the – the person who runs the website, whether it's British Airways or Harrods selling teapots, you know, to take the information from the site to make a sale, to make a transaction, and we just like facilitate bringing the – the relevant traffic that will buy on your site.

Mr Flynn: Yes. And normally British Airways will have a sale. And that's how they get people to actually do a search and find a flight. So you might want to do something along the lines of free – a free email reading, to **entice people to subscribe**, sign up, you get their details, **then you have their details** and then you can then further – you can then on sell stuff to them by getting them to call. But you need to have something to hook these people in, otherwise – (interrupted by waiter) [Emphasis added by Ofcom]

Ofcom then compared this unedited sequence with the edited quote, as featured in opening section of the broadcast:

Commentary: *“You see I wasn’t the only one interested on their personal bits. There’s a whole world of snoops out there.*

Mr Flynn: *Entice people to subscribe then you have their details.*

Commentary: *Gathering information you wouldn’t tell your mum...”*

Ofcom considered that the excerpt of Mr Flynn’s explanation that was included in the broadcast did not differ materially from what he had said during the original conversation. It was apparent from the full conversation that he was explaining to the programme reporter how she would go about building up her customer base by utilising Zango’s services, encouraging internet users to submit their details before using them to make further contact with them. Ofcom considered that the central message of Mr Flynn’s comment – that people could be incentivised to provide their details – was accurately conveyed by the edited footage included in the programme.

However, Ofcom considered that the subsequent comment *“Gathering information you wouldn’t tell your mum...”* was likely to have suggested to viewers that the details being obtained might be of such sensitivity one would not want it revealed to one’s closest relatives. It was clear from the unedited footage that Mr Flynn was in fact referring to basic subscription contact details for marketing and not to that kind of sensitive information. In these circumstances, Ofcom took the view that the editing of this footage resulted in unfairness to Mr Flynn.

Ofcom therefore upheld this complaint.

- c) Ofcom next considered the complaint that Mr Flynn was filmed as a result of misrepresentation and deception, without his consent and that he was surreptitiously filmed for purely entertainment purposes.

In considering this part of the complaint, Ofcom took account of Practice 7.14 of the Code, which states that it may be warranted for a broadcaster and programme maker to use material obtained through misrepresentation and deception (which includes surreptitious filming and recording) without consent if it is in the public interest and cannot be reasonably obtained by other means.

Ofcom noted that Mr Flynn was filmed at the meeting organised by the reporter on the pretext that she was looking to use the company’s services to advertise her online psychic service and that the BBC accepted that the filming took place as a result of deception and without Mr Flynn’s consent. Ofcom also noted that the BBC said that the programme makers could only realistically expose the double standards they anticipated by surreptitious filming, using the pretext of a business meeting.

Ofcom considered that the programme as a whole served a public interest purpose, presenting a relevant and important current affairs story about the use of personal information in an entertaining and light-hearted manner. However, in relation to the café sequence, Ofcom noted that, although there was a possibility that the meeting may have exposed double standards on the part of Mr Flynn and his colleague that were unlikely to have been revealed if the meeting was filmed openly, the programme makers provided no evidence that this outcome was likely or that they had grounds to believe it was Mr Flynn’s probable response. In the

event, the reaction of Mr Flynn and his colleague to being repeatedly interrupted was measured and reasonable and did not demonstrate a double standard on their part. Ofcom noted that the reporter said in commentary:

"I can't say I got a huge amount of information, it was fun though".

In Ofcom's view, this suggested that the programme makers acknowledged the very limited value of the sequence and that the footage was in fact used for entertainment purposes rather than because it served any real public interest.

In these circumstances Ofcom did not consider that the broadcast of the footage of the meeting served any public interest. Ofcom therefore considered that Mr Flynn's consent should have been obtained before the material was broadcast, given that no steps were taken to obscure his identity and that he was identifiable in the broadcast. The programme makers did not seek Mr Flynn's consent for the footage to be used in the broadcast as required by the Code. However, Ofcom also took into account the overarching Rule 7.1 of the Code, which requires broadcasters to avoid unjust or unfair treatment of individuals or organisations in programmes and its accompanying guidance which provides that "failure to follow [the practices set out in Section 7 of the Code] will only constitute a breach where it results in unfairness to an individual or organisation in the programme". Although the decision at head b) was that the programme had been edited in a way that resulted in unfairness to Mr Flynn, Ofcom considered no unfairness had been caused as a direct result of the deception and secret filming.

Ofcom did not therefore uphold this complaint of unfairness.

- d) Ofcom then considered Mr Flynn's complaint that his privacy had been unwarrantably infringed in the broadcast of the programme in that his identity was not "hidden" in the programme and his permission for it to be included was not requested by the broadcaster.

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 Ofcom's Broadcasting Code "the Code" which states:

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

Ofcom also took account of Practice 8.6, which provides that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast unless the infringement of privacy is warranted. It also took account of Practice 8.13, which provides that surreptitious filming should only be used where it is warranted and that, normally, it will only be warranted if there is *prima facie* evidence of a story in the public interest; and there are reasonable grounds to suspect that further material evidence could be obtained; and it is necessary to the credibility and authenticity of the programme.

In considering whether Mr Flynn's privacy was infringed in the programme as broadcast, Ofcom first considered whether he had a legitimate expectation of privacy in the circumstances that she was filmed.

Ofcom noted that the meeting between Mr Flynn, his colleague and the programme's reporter took place in a busy café, a place to which members of the public had access, and that it was conducted in full view of those around them. Ofcom also noted that Miss Bryan understood the meeting to be a private business meeting with someone she believed was a genuine potential client.

Taking into consideration all of the factors above, Ofcom's found that Mr Flynn had a legitimate expectation of privacy.

Ofcom then considered whether Mr Flynn's privacy was infringed in the broadcast of the programme. Ofcom noted that Mr Flynn's face was clearly visible on a number of occasions during the café sequence and that his voice was clearly audible. The programme also made frequent references to the name of the company he was representing. Taking these factors together, Ofcom considered that Mr Flynn was clearly identifiable in the programme as broadcast. Ofcom noted that the programme makers did not seek Mr Flynn's consent for the use of the footage in the programme as they did not consider it to be necessary. In these circumstances, Ofcom found that Mr Flynn's privacy was infringed.

Having found an infringement of Mr Flynn's privacy in the broadcast, Ofcom considered whether the infringement was warranted. As set out under decision head c) above, Ofcom considered that the programme as a whole served a public interest purpose, but that the café sequence did not demonstrate a double standard on the part of Mr Flynn and his colleague and was in fact broadcast for entertainment purposes. Ofcom therefore took the view that the use of the surreptitiously filmed footage of Mr Flynn in the broadcast did not serve any public interest.

Ofcom found, therefore, that the infringement of Mr Flynn's privacy was not warranted.

Accordingly, Ofcom has upheld part of Mr Flynn's complaint of unfair treatment in the programme as broadcast. Ofcom has also upheld Mr Flynn's complaint of unwarranted infringement of his privacy in the programme as broadcast.

Partly Upheld

Complaint by Miss Autumn Bryan

Mischief – Your Identity For Sale, BBC3, 11 September 2008

Summary: Ofcom has upheld this complaint of unwarranted infringement of privacy made by Miss Autumn Bryan. It has not upheld her complaint of unfair treatment.

This programme investigated a number of issues about personal data and data security. The programme included an “*experiment*” in which the reporter set up a meeting with an internet advertising company that specialised in “pop-up” advertising, pretending that she intended to use its services. During a surreptitiously filmed meeting held in a café, one of the programme makers posed as a waiter and persistently interrupted the meeting with a “*special offer*” on muffins, purportedly to replicate the “*annoying*” nature of pop-up adverts, to see if the representatives from the company “*find pop-up ads annoying*”. Miss Bryan was one of the representatives of the company who was at the meeting and was surreptitiously filmed.

In summary, Ofcom found the following:

- The programme showed Miss Bryan responding in a reasonable manner to the interruptions to the meeting and did not give an unfair or adverse impression of her.
- Although Miss Bryan was filmed as the result of deception and misrepresentation and without her consent, there was no unfairness to her as a result of her portrayal in the programme.
- Miss Bryan was surreptitiously filmed without evidence of a public interest justification. This was an unwarranted infringement of her privacy in the making of the programme.
- Miss Bryan was clearly identifiable, footage of her was used without her consent and there was no public interest justification for the use of that footage in the programme. Her privacy was therefore unwarrantably infringed in the programme as broadcast.

Introduction

On 1 December 2008, BBC3 broadcast an edition of its documentary series *Mischief*, entitled *Your Identity For Sale*. In this edition, the programme’s reporter investigated how advertisers can track and profile what people search for on the internet, and then trade the information. The programme’s reporter was shown using a computer on which she had inadvertently installed a programme that monitored what she searched for on the internet and enabled websites to send “pop-ups”¹ to her computer. She was then shown contacting the company that provided the pop-up programme, Zango, and pretending to be an online psychic who wanted to discuss the possibilities for enhancing the profile of her website. The programme included a telephone conversation between the reporter and a Zango telephonist, in which they discussed pop-up advertising opportunities. The reporter also said that she had

¹ “Pop-ups” are a form of online advertising used on the internet in when web sites open a new web browser window to display an advertisement.

arranged to meet representatives of Zango in a café to discuss the opportunities further.

The programme then showed surreptitiously filmed footage of the reporter posing as a client and meeting with two Zango representatives. She said (in voiceover commentary) that she wanted to conduct an experiment to discover whether or not those who “*serve pop-up ads find pop-up ads annoying*”. During the surreptitiously filmed meeting, a “waiter” (in reality, another of the series’ reporters) persistently interrupted their conversation about internet pop-up opportunities by offering them a special “3 for 2 offer” on muffins. Both Zango representatives were shown telling the waiter repeatedly that they were not interested in the offer. Immediately after this footage was shown in the programme, the programme’s reporter said (in voiceover commentary): “*I can’t say I got a huge amount of information. It was fun though.*”

The complainant, Miss Autumn Bryan, was one of the Zango representatives surreptitiously filmed and shown in the programme. A short extract from the surreptitiously filmed footage was also shown at the beginning of the programme.

Miss Bryan complained to Ofcom that she had been treated unfairly in the programme and that her privacy had been unwarrantably infringed in the making and broadcast of the programme.

The Complaint

Miss Bryan’s case

In summary, Miss Bryan complained that she had been treated unfairly in the programme as broadcast in that:

- a) She was portrayed unfairly in the programme.

In particular, Miss Bryan said that the meeting she attended with her colleague and the programme’s reporter was not presented in the context in which it was held and that she was “used as a joke”. She said that the programme also used excerpts from the surreptitiously filmed footage of the meeting out of context within the rest of the programme.

- b) She was filmed as a result of deception and misrepresentation and without her consent.

In particular, Miss Bryan said that the BBC had obtained the footage of her surreptitiously through deception and misrepresentation and that the information sought by the programme makers could have been obtained through other means. She said that she was easily identifiable from the secretly filmed footage shown in the programme and her consent was not obtained.

In summary, Miss Bryan complained that her privacy had been unwarrantably infringed in the making of the programme in that:

- c) She was surreptitiously filmed without her consent.

In particular, Miss Bryan said that the surreptitious filming of her was not warranted. She said that she, her colleague and the company that she represented at the meeting had always been open to respond to queries or press-related stories. Miss Bryan said that the story involving her was not in the

public interest and that her involvement in the programme was for entertainment purposes.

In summary, Miss Bryan complained that her privacy had been unwarrantably infringed in the programme as broadcast in that:

- d) She was clearly identifiable from the surreptitiously filmed footage of her included in the programme as broadcast.

The BBC's case

By way of background, the BBC said that the programme makers had looked into Zango's pop-ups after Zango software was delivered to the reporter's laptop without her knowledge. In the course of accepting an online offer of an apparently free spam blockers download, she had agreed, without realising it, to accept advertising directed to her by Zango on behalf of its clients. The BBC said that Zango's terms and conditions were not at all clear or prominent and that, having inadvertently agreed to accept advertising, the reporter's internet use was plagued by advertising pop-ups. The BBC said that secret filming was carried out on the basis that this was intrusive marketing and as such amounted to anti-social behaviour. The BBC said that, as Mr Flynn's colleague had conceded that delivery of advertisement to a person's computer was intrusive, the story was in the public interest. This public interest was further served by the exposure of double standards on the part of Zango to the extent that its marketing staff would not tolerate behaviour towards them which mimicked Zango's own behaviour towards internet users, as demonstrated by the muffin offer at the cafe.

In summary, the BBC responded to Miss Bryan's complaint of unfair treatment as follows:

- a) The BBC said that the meeting was never intended to be presented in the same context as that in which it was held. The meeting was set up on the pretext of discussing a business arrangement in order to explore whether there were double standards involved in Zango's commercial activities. It said that the meeting was a ploy, as surreptitiously filmed events often were, to reveal behaviour that would not necessarily be revealed if the subject knew that their behaviour was being filmed.

The BBC said that the surreptitious filming was not used out of context with the rest of the programme. The programme investigated the acquisition, use and sale of personal information. The BBC said that, while Zango did not store or sell personal information, the company did use information about an individual's web use to facilitate targeted advertising to that person's computer.

- b) The BBC said that it accepted that Miss Bryan was filmed as a result of deception and without her consent. It said that this sequence was designed to investigate whether or not Zango operated double standards with regard to being persistently interrupted in a manner similar to the way that internet users are persistently interrupted by the advertisements that Zango delivered to computers. The BBC argued that this could only be revealed by secret filming, as it was highly unlikely that such a double standard would be freely admitted and equally unlikely that the behaviour observed would have occurred if Miss Bryan and her colleague knew that they were being filmed.

The BBC said that it accepted that Miss Bryan was identifiable in the footage but said that since she was not named, she would have been identifiable only to those who already knew her. The BBC said that there was no requirement for the programme makers to obtain her consent given that the story was in the public interest and that a further public interest was served by showing her behaviour that illustrated the double standard being revealed by the programme.

In summary, the BBC responded to Miss Bryan's complaint that her privacy had been unwarrantably infringed in the making of the programme as follows:

- c) The BBC said that, given the circumstances in which Miss Bryan was filmed, she would have only a limited expectation of privacy. The meeting was filmed in a public place, and the conversation was audible to those around. The BBC said that there was no discussion of confidential or commercially sensitive material to which a greater expectation of privacy might apply. The filming was designed to focus on the public reaction of Miss Bryan and her colleagues to "pop-up advertising" which was being played out in public view, not the conversation taking place. The BBC said that it did not believe that this exchange attracted a significant expectation of privacy.

The BBC said that if there was an infringement of privacy, then it was warranted since the story was in the public interest because the activity being investigated was anti-social and it exposed the double standards of those marketing Zango's services.

In summary, the BBC responded to Miss Bryan's complaint that her privacy had been unwarrantably infringed in the programme as broadcast as follows:

- d) The BBC said that the story being investigated in the programme was in the public interest and, insofar as it recorded behaviour that revealed a double standard underlying Zango's commercial activities, it served an additional public interest. It said that any expectation of privacy Miss Bryan had in these circumstances was very limited and that any breach of privacy was warranted. The BBC said that since the behaviour being revealed was Miss Bryan's, it did not believe there was any requirement to conceal her identity. It added that Miss Bryan was not named in the programme so her identity was only revealed in a very limited sense, and would only have identified her to those who already knew her.

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.

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

parties' written submissions and supporting material. In its considerations, Ofcom took account of Ofcom's Broadcasting Code ("the Code").

- a) Ofcom first considered Miss Bryan's complaint that she was portrayed unfairly in the programme as broadcast.

In considering this part of the complaint Ofcom took account of Rule 7.1 of the Code, which provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also considered Practice 7.9, which provides that, before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation.

Ofcom noted that the purpose of this section of the programme, called "*Experiment 1: My Pop-Up Waiter*" was, according to the programme's commentary, "*to find out if people who serve pop-up ads find pop-up ads annoying*". The feature was introduced and presented in the programme as an opportunity to monitor the reaction of people who provide pop-up advertising – described in the preceding programme commentary as "*annoying pop-ups*" and "*something even more annoying than cookies*" – to an analogous situation. Ofcom also noted the reporter's explanation of why she approached Zango:

"...this weird pop-up came up that looked like it was going to stop junk mail, and looked all official and normal. So I clicked on it to stop junk mail, because everyone wants to do that, and it seems to have taken over my web browser because now there's ads everywhere".

She explained that the company responsible for the pop-up she had encountered was Zango and that, in order to approach the company, she had "*invented a persona, Madame Wilcox, an online psychic*". She explained that she had called Zango to discuss the advertising opportunities for her website.

Ofcom noted the BBC's acceptance that the café sequence was not presented in the context in which it was held, namely a meeting to discuss Zango's product. However, Ofcom considered that the programme's commentary made it clear that the meeting had really been arranged to observe the reactions of Miss Bryan and her colleague to the interruptions of the "waiter":

"Madame Wilcox arranged to meet [Zango] in a café. An experiment to find out if people who serve pop-up ads find pop-up ads annoying. My pop-up ad was Alex [the "waiter"] advertising his special offer on muffins".

Ofcom considered that the premise of the café sequence was based on an expectation that the two Zango representatives, Miss Bryan and her colleague, would find the interruptions annoying. Ofcom noted that Miss Bryan and her colleague were depicted in the programme getting somewhat frustrated by repeated interruptions from the "waiter". However, Ofcom considered that, despite being tested by these persistent interruptions, Miss Bryan and her colleague both conducted themselves in a professional and good-natured manner throughout the meeting. Ofcom considered that Miss Bryan's responses were restrained and that viewers would have considered her reactions reasonable given the nature of the situation.

Taking all the above factors into account, Ofcom was satisfied that, despite footage of the meeting being used in a different context from that in which it was held, the programme simply showed Miss Bryan responding in a reasonable manner and did not give an adverse impression of her.

She was therefore not portrayed unfairly and Ofcom did not uphold this complaint.

- b) Ofcom next considered the complaint that Miss Bryan was filmed as a result of deception and misrepresentation and without her consent.

In considering this part of the complaint, Ofcom took account of Practice 7.14 of the Code, which states that it may be warranted for a broadcaster and programme maker to use material obtained through misrepresentation and deception (which includes surreptitious filming and recording) without consent if it is in the public interest and cannot be reasonably obtained by other means.

Ofcom noted that Miss Bryan was filmed at the meeting organised by the reporter on the pretext that she was looking to use the company's services to advertise her online psychic service and that the BBC accepted that the filming took place as a result of deception and without Miss Bryan's consent. Ofcom also noted that the BBC said that the programme makers could only realistically expose the double standards they anticipated by surreptitious filming, using the pretext of a business meeting.

Ofcom considered that the programme as a whole served a public interest purpose, presenting a relevant and important current affairs story about the use of personal information in an entertaining and light-hearted manner. However, in relation to the café sequence, Ofcom noted that, although there was a possibility that the meeting may have exposed double standards on the part of Miss Bryan and her colleague that were unlikely to have been revealed if the meeting was filmed openly, the programme makers provided no evidence that this outcome was likely or that they had grounds to believe it was Miss Bryan's probable response. In the event, the reaction of Miss Bryan and her colleague to being repeatedly interrupted was measured and reasonable and did not demonstrate a double standard on their part. Ofcom noted that the reporter said in commentary:

"I can't say I got a huge amount of information, it was fun though".

In Ofcom's view, this suggested that the programme makers acknowledged the very limited value of the sequence and that the footage was in fact used for entertainment purposes rather than because it served any real public interest.

In these circumstances Ofcom did not consider that the broadcast of the footage of the meeting served any public interest. Ofcom therefore considered that Miss Bryan's consent should have been obtained before the material was broadcast, given that no steps were taken to obscure her identity and that she was identifiable in the broadcast. The programme makers did not seek Miss Bryan's consent for the footage to be used in the broadcast as required by the Code. However, Ofcom also took into account the overarching Rule 7.1 of the Code, which requires broadcasters to avoid unjust or unfair treatment of individuals or organisations in programmes and its accompanying guidance which provides that "failure to follow [the practices set out in Section 7 of the Code] will only constitute a breach where it results in unfairness to an individual or organisation in the programme". As set out under decision head a) above, Ofcom found that there

was no unfairness to Miss Bryan in the programme and no adverse impression given of her.

Taking these factors into account, Ofcom considered that despite the programme makers gaining Miss Bryan's participation in the programme as a result of deception and their failure to obtain her consent for use of the footage, her inclusion did not result in any unfairness to her in the programme.

Accordingly Ofcom did not uphold this complaint of unfairness in the programme as broadcast.

- c) Ofcom next considered Miss Bryan's complaint that her privacy had been unwarrantably infringed in the making of the programme in that she was surreptitiously filmed without her consent.

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 Ofcom's Broadcasting Code "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 complaint, Ofcom took account of Practice 8.5 of the Code, which provides that any infringement of privacy in the making of a programme should be with the person's consent or otherwise be warranted. Ofcom also took account of Practice 8.13 which provides that surreptitious filming should only be used where it is warranted and that, normally, it will only be warranted if there is *prima facie* evidence of a story in the public interest; and there are reasonable grounds to suspect that further material evidence could be obtained; and it is necessary to the credibility and authenticity of the programme.

In considering whether Miss Bryan's privacy was infringed in the making of the programme, Ofcom first considered whether she had a legitimate expectation of privacy in the circumstances that she was filmed.

Ofcom noted that the meeting between Miss Bryan, her colleague and the programme's reporter took place in a busy café, a place to which members of the public had access, and that it was conducted in full view of those around them. Ofcom also noted that Miss Bryan understood the meeting to be a private business meeting with someone she believed was a genuine potential client.

Taking into consideration all of the factors above, Ofcom's found that Miss Bryan had a legitimate expectation of privacy.

Ofcom took the view that the actions of the programme makers in surreptitiously filming the meeting at the café, without Miss Bryan's knowledge or consent, infringed her privacy.

Having found an infringement of Miss Bryan's privacy in the making of the programme, Ofcom went on to consider whether the infringement was warranted.

As set out under decision head b) above, Ofcom took the view that there was no evidence provided by the BBC that surreptitiously filming the meeting would expose a double standard on the part of Miss Bryan or her colleague. Nor had the BBC given any cogent reason why the programme makers suspected that by filming the meeting they would uncover such material. In Ofcom's view, the programme makers were endeavoring to reveal a certain type of behaviour, but they had not provided any material to suggest they could have known how Miss Bryan and her colleague would behave. In these circumstances, there was no public interest justification for the surreptitious filming and it amounted to an unwarranted infringement of Miss Bryan's privacy in the making of the programme.

- d) Ofcom then considered Miss Bryan's complaint that her privacy had been unwarrantably infringed in the broadcast of the programme in that she was clearly identifiable from the surreptitiously filmed footage of her included in the programme as broadcast.

In considering this head of complaint, Ofcom took account of Practice 8.6, which provides that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast unless the infringement of privacy is warranted. It also took account of Practice 8.13, as set out under decision head c) above.

For the same reasons as those given under decision head c), Ofcom considered that Miss Bryan had a legitimate expectation of privacy during what she believed was a private business meeting with a prospective client.

Ofcom then considered whether Miss Bryan's privacy was infringed in the broadcast of the programme. Ofcom noted that Miss Bryan's face was clearly visible on a number of occasions during the café sequence and that her voice was clearly audible. Furthermore, when she introduced herself to the programme's reporter at the beginning of the café sequence, her first name was audible, although not prominently so. The programme also made frequent references to the name of the company she was representing. Taking these factors together, Ofcom considered that Miss Bryan was clearly identifiable in the programme as broadcast. Ofcom noted that the programme makers did not seek Miss Bryan's consent for the use of the footage in the programme as they did not consider it to be necessary. In these circumstances, Ofcom found that Miss Bryan's privacy was infringed.

Having found an infringement of Miss Bryan's privacy in the broadcast, Ofcom considered whether the infringement was warranted. As set out under decision head b) above, Ofcom considered that the programme as a whole served a public interest purpose, but that the café sequence did not demonstrate a double standard on the part of Miss Bryan and her colleague and was in fact broadcast for entertainment purposes. Ofcom therefore took the view that the use of the surreptitiously filmed footage of Miss Bryan in the broadcast did not serve any public interest. Ofcom found, therefore, that the infringement of Miss Bryan's privacy was not warranted.

Accordingly, Ofcom has not upheld Miss Bryan's complaint of unfair treatment in the programme as broadcast. However, Ofcom has upheld Miss Bryan's complaint of unwarranted infringement of her privacy in the making and the broadcast of the programme.

Not Upheld

Complaint by the Cavalier King Charles Spaniel Club made on its behalf by Mrs Lesley Jupp

Pedigree Dogs Exposed, BBC1, 19 August 2008

This Adjudication was originally published on 9 December 2009.

Summary: Ofcom has not upheld this complaint of unfair treatment made by Mrs Jupp on behalf of the Cavalier King Charles Spaniel Club (“CKCSC”).

The BBC broadcast a documentary that examined health and welfare problems in pedigree dogs. The programme argued that pedigree dogs were “*dangerously inbred*” and that many of the problems were caused by competitive dog showing. The programme looked at health problems suffered by Cavalier King Charles Spaniels (“CKCS”) and included footage from various dog shows, including the Cavalier Club Championship Show in Malvern. The programme also included extracts of interviews with representatives of the Kennel Club; animal health and welfare experts; a number of pedigree dog owners; as well as extracts from interviews with several dog breeders.

The Cavalier King Charles’ Spaniel Club (“CKCSC”) complained to Ofcom that it was treated unfairly in the programme. The CKCSC’s complaint was considered by Ofcom’s Fairness Committee, its most senior decision making body in matters of Fairness and Privacy.

In summary the Committee found the following:

- Although the programme makers did not provide the CKCSC with sufficient information about the likely nature and purpose of the programme when securing consent for its participation, since the CKCSC was not specifically referred to in the programme, no material facts were misrepresented, disregarded or omitted from the programme resulting in unfairness to the Club.
- The editing of an interview with Mrs Virginia Barwell, (in which she gave her views about syringomyelia and testing), did not result in unfairness to the CKCSC, as she was not speaking on behalf of the club.
- The use of footage of Ms Beverley Costello did not result in an implication that the Club ignored health issues when breeding dogs, as the club was not referred to in this context.
- No adverse implications were made about the Club as a result of the use of footage filmed before and after a meeting at the House of Lords, as the club was not referred to.
- There were no significant allegations about the club in the programme to which it should have been offered an opportunity to respond.

Introduction

On 19 August 2008, the BBC broadcast *Pedigree Dogs Exposed* on BBC1. The documentary examined the extent of health and welfare problems in pedigree dogs.

The programme argued that pedigree dogs were “*dangerously inbred*” and that the cause of many health and welfare problems experienced by pedigree dogs was competitive dog showing.

The programme included footage of King Charles Cavalier Spaniels (“CKCS”) with syringomyelia, a condition where the brain is too large for the skull. It also included footage from various dog shows, including the Championship Show in Malvern, and extracts of interviews with representatives of the Kennel Club, animal health and welfare experts and a number of pedigree dog owners. The programme also included material from interviews with several dog breeders.

Several sections of the programme focused on health and welfare problems experienced by CKCS, which the reporter, Ms Jemima Harrison, said was “*probably the sickest*” breed in the UK. In particular, these sections of the programme focused on two conditions experienced by CKCS, namely a heart condition, mitral valve disease (MVD) and syringomyelia. Dr Clare Rusbridge, a veterinary neurologist, said that syringomyelia was “*a major welfare problem*” for the breed and that there were “*thousands of Cavaliers in pain across the world*”. Mr Simon Swift, a veterinary cardiologist, spoke about heart problems suffered by the breed.

The programme included material recorded at the Championship Show in Malvern, which was organised by the CKCSC. Ms Carol Fowler, a CKCS owner, was shown campaigning at the show on the subject of syringomyelia. This section of the programme also included extracts of interviews with three CKCS breeders: Mrs Virginia Barwell, Ms Margaret Carter and Ms Beverley Costello.

Mrs Barwell was interviewed and shown stating that some of the characteristics attributed to syringomyelia were not always symptomatic of the condition, and that she would not have her dogs MRI scanned. This is the method by which the condition can be detected. Ms Harrison said in this section of the programme that some breeders were not taking the condition as seriously as Ms Fowler would like and that most breeders continued to breed from “*untested dogs*”.

Also included were parts of an interview with the owner of the Best in Show at Malvern. This was Ms Costello (whose dog, Rollo, was alleged in the programme to have syringomyelia and who had sired a number of litters) and of an interview with Ms Carter, who said she had seen Rollo’s scan, which confirmed that he had the condition.

The programme also included footage of members of the CKCSC arriving at and leaving a meeting at the House of Lords, which had been called by the Companion Animal Welfare Council (“CAWC”) to try to find a way forward for the Cavalier with regard to the inherited problems.

Mrs Lesley Jupp, Secretary of the CKCSC, complained to Ofcom that the club was treated unfairly in the programme.

The Complaint

The CKCSC’s case

In summary, the CKCSC complained that it was treated unfairly in the programme as broadcast in that:

- a) The CKCSC did not give informed consent to participate in the programme. It had given permission to the programme makers to attend and film at its Championship Show because it had been told by them that the programme would be about dogs, dog shows and health issues. The CKCSC had envisaged that the programme would be objective and had not realised that the programme would be unfairly critical of dog shows and breeders. If it had realised this, it would have been more active in trying to ensure that relevant information about, for example, the CKCSC's efforts on health issues, were reflected in the programme as broadcast. As the programme developed, the CKCSC was not aware of the nature of the material that would be included in the programme, or that the slant of the programme would be very different from that which the CKCSC had envisaged.
- b) The following material facts (of which the programme makers had been aware prior to transmission) were misrepresented, or were disregarded or omitted from the programme as broadcast:
 - i) The programme did not make clear that the CKCSC had raised considerable sums of money for research into health problems in the breed since the early 1980s. Little mention was made in the programme of the CKCSC's current efforts on health issues and its achievements over the last 20 years or so on these matters.
 - ii) The programme did not mention that hereditary cataracts, which had first been encountered in the breed in the 1980s, had been virtually eliminated by conscientious breeders following breeding guidelines and tackling the problem with the help of Cavalier Clubs and the Kennel Club. Eye Testing clinics were held and advice was available to CKCSC members at its Championship Show, which was the CKCSC's normal practice. The CKCSC said that it would continue to hold Eye Testing clinics until the defect was formally eradicated. Mr Ian Mason, a veterinary ophthalmologist, who had advised and assisted the CKCSC for many years, was interviewed by the programme makers, but his views were not included in the programme.
 - iii) It was widely known and accepted by the CKCSC's members that Mitral Valve Disease ("MVD") was the main health problem within the breed. Since the 1990s, the CKCSC and its members had sought to reduce the incidence of this problem and the CKCSC, assisted by cardiologists, had conducted heart testing, issued breeding advice to its members and raised extensive funds for MVD research. Heart Testing clinics were held and advice was available to CKCSC members at its Championship Show, which was the CKCSC's normal practice. The programme makers had visited the Heart Testing clinic at the Championship Show and asked a club member for permission to film her four dogs being examined. All four had been found not to have MVD, but this was not mentioned in the programme.
 - iv) Although Mr Swift, a veterinary cardiologist who had advised and assisted the CKCSC for many years, had been interviewed by the programme makers for over two hours, very little of what he had said had been included in the programme, and what he was shown saying was taken out of context. The CKCSC said, by way of example, that he was seen to agree with Ms Harrison that there had been no progress in reducing heart disease in Cavalier King Charles Spaniels. The programme did not mention that in Sweden, breeders had heeded advice to only breed from dogs over a certain age, but that they, too, had not made any progress.

- v) Although the programme makers had interviewed Dr Brendan Corcoran at Edinburgh University, where he was responsible for co-ordinating research being conducted on MVD, the programme had not mentioned this research, which was funded jointly by the Kennel Club and the CKCSC, and none of the interview was included in the programme as broadcast.
- vi) The only method of diagnosis for syringomyelia was by an MRI scan, but this entailed risks because the dog had to be anaesthetised. MRI scanning was costly and the CKCSC had made arrangements for its members to participate in low-cost MRI schemes.
- vii) The investigations by Dr Rusbridge, one of the prime researchers of syringomyelia, had benefited from financial help from the CKCSC. The reporter stated that Dr Rusbridge believed that up to one third or more of Cavalier King Charles Spaniels could have syringomyelia, but omitted to mention that other neurologists contested this figure. The CKCSC said that a Kennel Club purebred dog health survey gave a figure of less than 3%. Dr Rusbridge went on to give a graphic description of the condition.
- viii) There was an absence of reliable data in relation to syringomyelia. Research was under way at the Animal Health Trust to correct the lack of reliable data and to devise better breeding guidelines for the CKCSC's members.
- ix) The programme did not make clear that Ms Carter, a member of the CKCSC who was interviewed for the programme, had given personal views and had not spoken as a representative of the CKCSC.
- c) Mrs Barwell, a member of the CKCSC, was interviewed by the programme makers. Only small extracts were included in the programme, which gave viewers the impression that CKCSC members were indifferent to health issues. Mrs Barwell was shown stating that she would not have her dogs MRI scanned, but the programme did not make clear the reasons for this.
- d) The inclusion of extracts of Ms Costello's interview in the programme as broadcast was unfair to the CKCSC in that it gave viewers the impression that it was normal practice for CKCSC members to knowingly ignore health issues when breeding their dogs. It said that this was untrue, as evidenced by its record of members' support for health schemes, health research, and its acknowledgment that much more was still to be achieved.
- e) The programme portrayed members of the CKCSC as walking away from the programme makers when they were leaving a meeting at the House of Lords. This gave the impression that the CKCSC's members were indifferent to health issues and the reporter questioned their commitment to the health of the breed. This was unfair because the CKCSC had attended voluntarily and had been there to explain, and work with The Companion Animal Welfare Council ("CAWC") to show, how complex the issues were and how much was currently being done. The CKCSC's members had been making positive moves, but this was not made clear to viewers. In addition, the programme did not explain that the CKCSC's members were unable to give a statement to the programme makers as they were leaving because of an undertaking they had given to the CAWC that the proceedings would remain confidential until the CAWC had issued a press statement.

- f) The programme made the following significant allegations about CKCS breeders, to which the CKCSC was not offered an opportunity to respond, having not been made aware of the allegations that were to be made:
- i) That breeders routinely ignored advice to only breed from dogs over a certain age, with the result that heart disease in the breed was as bad as it ever was.
 - ii) That there was widespread denial from top breeders that syringomyelia was a problem in the breed.
 - iii) That breeders were not taking syringomyelia as seriously as Ms Fowler would like.
 - iv) That most breeders continued to breed from dogs that had not been tested for syringomyelia.
 - v) That many people at the very highest level in the breed had known that Ms Costello's dog, Rollo, had syringomyelia.
 - vi) That breeders knowingly bred from dogs with syringomyelia.

The BBC's case

The BBC said that the programme investigated the extent of the health and welfare problems of the nation's pedigree dogs and examined concerns that decades of inbreeding had led to an increase in serious genetic diseases in many breeds. It said that the programme featured contributions from many involved in this field, including vets, animal welfare groups, breeders and scientists, who believed the problems were exacerbated by the trend of breeding dogs primarily for appearance, regardless of the effect this had on their health and wellbeing.

There was a clear public interest in the making and the broadcast of the programme, as it highlighted these problems, including two serious health issues that affected the CKCS, namely syringomyelia and MVD.

In summary, the BBC responded to the CKCSC's complaint of unfair treatment as follows:

- a) In response to the complaint that the CKCSC did not give informed consent to participate, the BBC said that the breed was highlighted in the programme because it was one of the most popular and one that suffered from a high degree of inherited diseases. The programme makers consistently explained to contributors (including the CKCSC and its members) that the programme was an investigation into canine health and genetics and that it was critical of dog shows and breeders was based on evidence from experts. The programme makers had numerous meetings and contacts with the CKCSC, its members and its advisers during the course of their research. The CKCSC was left in no doubt that the programme was about canine health and investigating the extent of syringomyelia and MVD in the breed. A number of meetings demonstrated that the CKCSC was aware of this:
 - May 2007: Two telephone conversations with Mrs Jupp, contemporaneous notes of which confirmed that the discussions were entirely focused on health issues in the breed.

- October 2007: Interviews with several CKCS breeders at the Syringomyelia Conference in Rugby.
 - January 2008: An interview with Mr Swift, who had carried out extensive research into MVD in CKCSs and according to the CKCSC, “has advised and assisted the club for many years”. The BBC said that the CKCSC had confirmed that it was aware this interview had taken place and professed knowledge of the nature and content of the interview.
 - January 2008: Interviews regarding health problems in the breed with several CKCS breeders at the Manchester Championship Dog Show.
 - February 2008: Filming at the Malvern Show for which the CKCSC gave permission on the basis of an understanding that the programme would be about “dogs, dog shows and health issues”.
 - February 2008: Interviews with numerous CKCSC members and breeders at the Malvern Show, including Mrs Barwell, the former chair of the CKCSC and its nominated spokesperson. The nature of the questions put to Mrs Barwell could have left the CKCSC in no doubt as to the content of the programme or why the CKCSC was being asked to contribute.
 - Members of the CKCSC were present at a meeting held at the House of Lords in April 2008. Following the meeting, they were questioned by the programme makers about the health of dogs at their shows but refused to respond.
- b) The BBC said that an investigative documentary of this kind had to limit the degree of detail which could be provided, but that the facts and opinions presented in the programme ensured that the position of the CKCSC was fairly represented.
- i) With reference to health issues and research, the BBC said that the programme fairly reflected the efforts which had been made by the CKCSC and other CKCS breeders to address the issues in the breed, and in particular MVD and syringomyelia. It interviewed a number of experts who believed that the club was not doing enough to screen dogs for hereditary disease. This point was reinforced in an interview with Dr Jeff Sampson, the Genetics Co-ordinator of the Kennel Club, who supported the actions of the CKCSC:

Dr Sampson *“There was a lot of work went on in the early days between the Kennel Club and the Cavalier Clubs to establish the wherewithal for their heart screening programme.*

Ms Harrison *But it's not worked.*

Dr Sampson *Well, that is a rather...but what might have happened if they'd done nothing. Now you answer that: if they'd done nothing, where might the breed be today, do you think?*

Ms Harrison *So you're saying it could be worse? But that's not good enough is it?*

Dr Sampson *No of course it...Well, it's progress, though. And I'm putting a potential positive spin on your negative spin. Yes, nobody with [sic] argue that the level of Mitral Valve Disease in the Cavalier breed is too high.”*

The BBC said that the programme explained that the Kennel Club was now funding research into syringomyelia in CKCS. It also showed members of the CKCSC attending a meeting at the House of Lords, held by CAWC, which it said had been called to *“try and find a way forward for the Cavalier. Many key players will be here”*. The BBC said that viewers would therefore have been aware that the CKCSC was involved in an organised effort to tackle genetic welfare problems in pedigree dogs.

- ii) As regards cataracts, the BBC said there was no unfairness in failing to mention the efforts that had been made to tackle this problem in CKCS, as MVD and syringomyelia were the major conditions which posed the greatest threat to the breed’s health.

However, the BBC said that the programme gave examples of cases where actions by breed clubs and the Kennel Club had addressed health issues in certain pedigree dogs, so that viewers would have been aware that effort was being made in some areas.

- iii) With reference to MVD, the BBC said that the programme accurately reflected the fact that MVD is a major threat to the health of CKCSs. Mr Swift, who had advised the CKCSC for many years, explained the extent of the problem in the programme:

“By the time they’re five, about half of all Cavaliers will have a murmur and that frequency will rise as they get older. So probably by the time they’re about 10 or 11 almost all Cavaliers have got a heart murmur of some description”.

He said later:

“It’s more common in Cavaliers than in any other breed and it’s probably 25 times more likely to occur in a Cavalier than in a cross-bred. We also know that the disease occurs earlier in Cavaliers than in other breed and then progresses to cause them to die prematurely”.

As set out under its response under head b) i) above, the BBC said that the commentary referred to the heart screening programme and the programme included an interview with Dr Sampson in which he explained that he believed this had led to progress in tackling the problem.

However, the BBC said that the evidence from experts such as Mr Swift, and the experience of many pet owners interviewed by the programme makers, suggested that the problem with MVD was as bad as ever and many believed that more needed to be done.

The BBC said that Mr Swift had explained that the action the CKSC claimed it had taken had had no effect in tackling MVD:

“There is no doubt, it has been established very clearly in a survey done by a Swedish group in the early nineteen nineties, that this is definitely an inherited disease and if they followed the breeding advice then the situation would change...We’ve been trying to improve the situation for the last ten to fifteen years and made little progress”.

The BBC also referred to a proposal put forward by Mr Swift in May 2006 for a new heart testing scheme for CKCS and the fact that in his conclusion he confirmed that the CKCSC was not doing enough to tackle this significant health problem:

“When I first became involved, the club was innovative in its thinking and indicated it wanted to address the issues of mitral valve disease within the breed. However, since setting up the scheme, little progress has been made and the Club gives little indication of wanting to carry that enthusiasm forward. Clubs in Europe and America have adopted echocardiography as the gold standard and left the UK behind. As a result many cardiologists across the world have little confidence in the UK scheme. It is time to change”.

The BBC said that Mr Swift’s proposal was rejected by the CKCSC.

- iv) As regards Mr Swift’s interview, the BBC said that two separate contributions from Mr Swift were included in the programme, taken from an interview that lasted just over twenty minutes. Both were a fair and accurate representation of the points he made during the interview. He told the programme makers that he believed MVD was “*a major problem for the breed*” and that the quality of life for dogs was “*significantly affected*”. In addition to his comments about the extent of the problem, the BBC said that the programme also included the following contribution:

Mr Swift *“As a cardiologist, it is very frustrating to see such a [sic] slow progress*

Ms Harrison *There’s no progress*

Mr Swift *(laughs)*

Ms Harrison *Am I right?*

Mr Swift *Yes, yes. Fair enough. It is frustrating to see such a lack of progress.”*

In relation to the breeding advice given to CKCS breeders, the following exchange took place in the interview:

Mr Swift The advice has been in place for probably...I think probably about twelve, thirteen years now. We’re currently reviewing the database of Cavaliers and I would say that at the moment there is no evidence that it is having any impact at the age at which the dogs develop their murmurs.

Ms Harrison So the breeding advice is wrong?

Mr Swift I think the breeding advice is correct, whether it’s being followed accurately and by all breeders is probably the issue.

The BBC said that the programme did not misrepresent Mr Swift’s opinion and that he actually appeared to go further and suggest breeders were responsible for the lack of progress.

The BBC said it did not believe there was any unfairness to the CKCSC in not referring to the breeding policy advocated in Sweden. The CKCSC's suggestion that the Swedish approach had been ineffective in reducing the incidence of MVD was premature. The breeding programme, which began in 2001, had not yet been evaluated and the researchers had confirmed that it would be several more generations before it was possible to draw any conclusions.

- v) As regards Dr Corcoran, the BBC said that the programme makers spoke to him as part of their background research on soft-palate resections in brachycephalic dogs, and in particular the case of Danny the Peke, a Crufts Champion who had undergone surgery to alleviate a breed-specific respiratory problem. There was no discussion about any research he may have been conducting into MVD. The interview was conducted on the phone but was not recorded.
- vi) With reference to the use of MRI scanning, the BBC said that the detailed process for diagnosing dogs with syringomyelia was not material to the audience's understanding of the problem and omitting the information did not result in any unfairness to the CKCSC.

The BBC said that although the CKCSC funded a limited, reduced cost MRI scan scheme it did not require owners or breeders to make any positive results public and the outcome of the scan did not have to be declared. There was a list of dogs that had been MRI scanned on the CKCSC website but inclusion on the list was voluntary and currently only around 250 dogs were featured (from a CKCS population of around 100,000 dogs registered with the Kennel Club). The CKCSC could provide a public database of the syringomyelia status of dogs, which would significantly help breeders and prospective owners make informed choices, and provide valuable information for researchers tackling this inherited problem, but had chosen not to.

The BBC said that many long-standing CKCS breeders, including the former chair of the CKCSC, Mrs Barwell, refused to have their dogs scanned even though this was the only way to identify dogs with syringomyelia. The BBC also said that prize-winning CKCSC breeders, such as Ms Costello, continued to breed from dogs that had been scanned and positively diagnosed with syringomyelia. The CKCSC had endorsed the breeding protocol to tackle syringomyelia recommended by a group of veterinary neurologists, headed by Dr Rusbridge, but the action of breeders such as Ms Costello were in breach of this protocol.

- vii) With reference to Dr Rusbridge, the BBC said she was a veterinary neurologist who had spent more than 10 years researching syringomyelia. She was generally regarded as the leading expert on syringomyelia and the most qualified to talk about the condition. On the basis of her experience and research, and several other veterinary studies, she had concluded that a third or more of CKCSs may have syringomyelia. The BBC said it was unaware of any veterinary neurologists involved in syringomyelia research who disputed this figure. Dr Rusbridge was supported by the other two leading veterinary researchers into syringomyelia: Professor Nick Jeffery of Cambridge University and Mr Geoffrey Skerritt of Chestergates Referral Hospital. However, the programme made it clear that she was giving her own expert assessment rather than proven fact:

“No one knows exactly how many Cavaliers have syringomyelia but veterinary neurologist Clare Rusbridge believes up to one third or more of the breed could be affected”.

The BBC said that the CKCSC confirmed that it had supported and funded Dr Rusbridge’s work but now appeared to suggest that her opinion was discredited. The survey referred to by the CKCSC was carried out by the British Small Animal Veterinary Association (“BSAVA”) in 2004. It concluded that neurological conditions (including syringomyelia) accounted for only 7.9% of all illnesses in CKCS, suggesting that Dr Rusbridge was radically out of kilter with other research. The BBC said that the 3% figure quoted by the CKCSC referred to cases where the survey suggested a neurological condition was the cause of death in a CKCS.

The BBC said that, although the CKCSC appeared to suggest that the BSAVA survey, commissioned by the Kennel Club, was the definitive research on the subject, the findings of the survey should be treated with caution for the following reasons:

- it was carried out in 2004, when the degree of knowledge and understanding of syringomyelia was considerably less than now;
- the response to the survey was only 26.6.% and the survey results included a rider that results should be treated with caution;
- younger dogs included in the survey may have had the condition but been asymptomatic at the time;
- subsequent research suggested that many dogs with syringomyelia remained asymptomatic and would not have shown up in the survey’s results, even though they were capable of passing on the condition to their offspring; and
- the survey was only sent to breed clubs, who may have had a vested interest in playing down the level of the problem.

The BBC said that the programme makers were aware that all scientific studies may have potential drawbacks. Ms Rusbridge’s own estimates were based on her use of MRI scans, which meant she was not using a random sample of CKCSs. However, the BBC referred to three studies and one report, which it said had been carried out into syringomyelia and appeared to support Ms Rusbridge’s figure and possibly even suggest her conclusion was somewhat conservative.

The BBC said it believed the programme was justified in reporting the opinion of an expert such as Dr Rusbridge and noted that her figure appeared to be in line with the latest scientific studies. The most recent figures Dr Rusbridge had released (up to September 2008) showed that 63% of the 783 dogs she had scanned were shown to have syringomyelia.

- viii) The BBC said that the programme explained in the third minute that *“no one knows exactly how many Cavaliers have syringomyelia”*, which was sufficient to ensure the audience was not misled. However, as explained in its response at head b) vii) above, the available evidence supported the claims made in the programme that syringomyelia is a serious and widespread condition in CKCS.

- ix) As regards Ms Carter's contribution to the programme, the BBC said that she was a member of the CKCSC health committee for seven years, with special responsibility for syringomyelia. It was therefore legitimate to include her comments in the programme. However, it did not believe the audience would have formed the impression that she was speaking on behalf of the CKCSC. The first time she appeared, the on-screen caption described her as a "Cavalier Breeder" without referring to her position on the CKCSC health committee. No mention was made of her association with the club until the end of the sequence and the script made it clear that her views on syringomyelia and Mrs Fowler's campaign were not shared by other CKCS breeders:

- Ms Harrison *"Cavalier internet lists bristle with vitriol about Carol.*
- Ms Carter *She's very much disliked by a lot of people for interfering in something she has no right.*
- Ms Harrison *Margaret Carter is the exception. Six years ago, she discovered that her top stud dog Monty has syringomyelia. But by then it was too late. Monty had passed on the condition to dozens of his puppies. Determined that it should never happen again, Margaret has worked hard to raise awareness about the disease. And for the past seven years, she has been on the main breed club's health committee, with special responsibility for syringomyelia.*
- Ms Carter *Yes, I think every breed needs a Carol Fowler. I think she's moved mountains and I take my hat off to her.*
- Ms Harrison *But this support for an outsider is frowned upon within the breed."*

The BBC noted that the CKCSC had since removed Ms Carter from its health committee for confirming to the programme that the champion dog at the Malvern Show had syringomyelia.

- c) As regards Mrs Barwell's interview, the BBC said that her comments fairly and accurately summarised the opinion of many CKCS breeders that the problem with syringomyelia had been exaggerated. Throughout Mrs Barwell's interview with the programme makers, she repeatedly played down the health problems of CKCS and made it clear that she believed any concerns, particularly about syringomyelia, were overstated. She began her interview by saying she thought the breed was "as strong as it ever was and I would emphasise that" and went on to add "the breed is not in decline, contrary to reports, it simply isn't in decline...my feeling is that the quality of dogs is as high as ever...I think the Cavalier is as strong as ever".

The BBC said that Mrs Barwell explained on two separate occasions that she did not believe syringomyelia was as widespread as owners like Ms Fowler claimed:

"But some of the, how can I put it, characteristics attributed to syringomyelia are not always what they seem. Dogs scratch, all dogs scratch. But, you know, these days if you see a dog scratching in the ring, your neighbour who you may not know, sitting next to you watching it says "oh I bet that's got

syringomyelia". Not true. It's really an awful, sort of, handle for a dog that is probably just having a good old scratch because it needs to".

She later said:

"You might see a dog scratch, but as I said earlier, that isn't syringomyelia, not always anyway".

The BBC said the programme accurately portrayed the point of view repeatedly expressed by Mrs Barwell, as the CKCSC nominated spokesperson.

Furthermore, the BBC said that the suggestion the programme should have explained why Mrs Barwell refused to have her dogs MRI scanned seemed to show an inconsistency in the CKCSC's approach to breed health, in that the CKCSC ostensibly encouraged scanning, to the extent of running a cut-price scheme for members. It therefore did not believe that omitting Mrs Barwell's reason for not scanning her dogs could be regarded as unfair to the CKCSC.

- d) With reference to Ms Costello, the BBC said that her dog, Rollo, was awarded Best in Show at the most prestigious event in the CKCS calendar, despite the fact that senior members of the CKCSC knew the dog had syringomyelia. It was legitimate to include this sequence in the programme because it demonstrated that the CKCSC awarded its most prestigious title to a dog that was well known within the higher echelons of the club [to have been diagnosed with a serious and hereditary health problem. Furthermore, the interview with Ms Costello confirmed that top breeders were knowingly breeding from dogs with syringomyelia, an inherited condition. The CKCSC's own breed protocol says this should not happen but no action had been taken against Ms Costello. Instead, Ms Carter had been removed from the club's health committee for bringing the matter to the public's attention.

The BBC said that the evidence appeared to contradict the CKCSC's claim of members' support for its health schemes and said that two of the 40 or so top winning dogs of 2007 were on the CKCSC's published list of MRI scanned dogs (one being a puppy). At the time the programme was broadcast, only three of the 16 breeders on the CKCSC Committee had submitted scanned dogs to the MRI list; at regional club level only eight breeders out of more than 100 committee members had listed dogs on the MRI list; and only one of the top 12 stud dogs of 2007 was on the MRI list. Additionally, all 12 dogs were first used at stud when they were less than two and a half years old, the minimum age any CKCS should be used according to the CKCSC's own breeding protocols for both MVD and SM.

- e) As regards the CAWC meeting in Westminster, the BBC said that the programme explained the meeting in the following terms:

Ms Harrison *"The Companion Animal Welfare Council, CAWC, has called a top level meeting to try to find a way forward for the Cavalier. Many key players will be here, including the Kennel Club's Jeff Sampson who looks quite pleased to see us.*

Dr Sampson *Good morning guys.*

Ms Harrison *Which is more than can be said for the Cavalier breeders.*

Mrs Hull *Surprised to see you here.*

Ms Harrison *Why? (no response)"*

The programme said that the meeting was also attended by "*geneticists, a representative from the Government department that oversees animal health and welfare, and vets*" and that viewers would have understood that those attending the meeting, including the CKCS breeders, were among the "*key players*" referred to as attending the meeting and as having a common goal to tackle the problem of syringomyelia in the breed.

In relation to the programme's inclusion of footage of the CKCS breed club members after the meeting, the BBC said that the programme included footage of Mrs Hull, the chair of the Southern Cavalier Club, in which she explained why the breeders were not prepared to speak to the programme makers:

Ms Harrison *"Can I ask why you were so upset to see us this morning?"*

Mrs Hull *The Breed Club Championship Show, entering the ring and discussing with the Best in Show winner about syringomyelia was completely out of order."*

This was a reference to the Malvern Show (see response at head d) above), where the programme makers revealed that Rollo had been diagnosed with syringomyelia and that Ms Costello had continued to use him for breeding despite knowing that syringomyelia was an inherited condition. Ms Harrison asked a series of questions about the show of the club members, who were in a public place and had prior knowledge that the programme makers were present. The members were entitled not to answer such questions, but it was not unfair to include their refusal to respond in the programme.

The CKCSC members were not asked to comment on the outcome of the CAWC meeting, so this could not have been the reason they refused to respond to the questions put to them.

- f) The CKCS was just one of many breeds of pedigree dog featured in the programme. However, the Kennel Club was the recognised guardian of pedigree dogs in the UK and the vast majority of breed clubs, including the CKCSC, were registered with the Kennel Club and worked closely with it. The BBC therefore believed viewers would have recognised that the Kennel Club was responding on behalf of the breed clubs and that the extensive interviews and contributions from its representatives ensured that breeders and clubs were given an appropriate right of reply to the substantive allegations being made in the programme.

The BBC did not believe it was reasonable to include a specific response to every allegation made in the programme, which was fair and ensured that the audience was given the material facts.

- i) As regards heart disease, the BBC said that Mr Swift believed that heart disease in the breed was not improving because breeders were ignoring the advice they had been given. It believed it was justified to include his informed opinion on this matter, particularly bearing in mind he was funded and supported by the CKCSC. However, the programme set out his view in the context of the fact that "*In Cavaliers, a heart screening programme has been up and running since 1995 – and dedicated breeders do now test their dogs*".

As set out in its response to the complaint at head d) above, the BBC said that there was evidence to suggest that breeders were ignoring the CKCSC's own breeding advice and that 10 of the top 12 dogs sired their first litter when they were less than a year old. Furthermore, Kennel Club breed record supplements revealed that a third of all litters were born to cavalier bitches under two and a half years old.

- ii) As regards breeders' denial about syringomyelia, the BBC said that this claim was attributed to Carol Fowler:

"But what shocked Carol Fowler most was the widespread denial from top Cavalier breeders that the brain condition that had killed her first Cavalier, Bonnie, was a problem in the breed".

This was Ms Fowler's opinion, based on the reaction she received when she attempted to highlight the extent of the problem with syringomyelia. The BBC believed that it was justified to include her point of view, which was supported by substantial evidence.

As set out in its response to the complaint at head c) above, the BBC said that Mrs Barwell, the spokesperson put forward by the CKCSC, had repeatedly played down concerns about syringomyelia. It also said that the CKCSC tried to stop Mrs Carter from speaking to the programme makers and subsequently removed her from its health committee for confirming that Rollo had syringomyelia.

- iii) As regards Ms Fowler's opinion of breeders' response to syringomyelia, the BBC said that the programme makers were justified in reporting her point of view, which was supported by experts such as Dr Clare Rusbridge. It repeated that the spokesperson put forward by the CKCSC, Mrs Barwell, consistently said that concerns about syringomyelia were overstated and that many CKCS breeders did not believe that syringomyelia was a major health problem for the breed and noted that the programme did say in the same sequence that the Kennel Club was now funding research into the disease, which ensured that viewers were aware that breeders were taking some action.
- iv) As regards breeding from untested dogs, the BBC said that the CKCSC said an MRI scan was the only reliable method of diagnosing syringomyelia, but that, as set out in its response to head d) above, only a tiny percentage of breeders were prepared to make public the fact that their dogs had been scanned and that they did not reveal the outcome of the scans.
- v) Furthermore, Mrs Barwell, the club's spokesperson, confirmed she would never have one of her dogs tested for syringomyelia. The programme makers spoke to a number of other breeders who confirmed that colleagues were ignoring the club's breeding protocol.
- vi) In addition to the points made in its response to the complaint at head d) above, the BBC said that Mrs Carter confirmed to the programme makers that she had seen Rollo's MRI scan, which showed he had syringomyelia. The programme makers also had a signed statement from a CKCS owner who accompanied Ms Costello when Rollo was scanned, confirming the diagnosis.

They were also aware that Ms Costello had shown the scan to several other breeders.

The BBC noted that the statement issued by the CKCSC following the meeting to remove Mrs Carter confirmed that the information about Rollo was known to the CKCSC:

“Margaret Carter was privy to **information that had been given to the Club** for health research on the basis of an understanding that it would remain confidential” [BBC’s emphasis].

The BBC said that members of the CKCSC were given the opportunity to respond to this allegation following the CAWC meeting at the House of Lords but chose to remain silent.

- vii) As regards breeders knowingly breeding from dogs with syringomyelia, the BBC said that this allegation was only made in relation to Ms Costello. The programme accurately reported that her award winning dog, Rollo, had sired 26 litters since he was diagnosed, despite the fact the specialist who diagnosed the dog’s condition had told Ms Costello she should never breed from him. The CKCSC did not require breeders of dogs that were positively tested for syringomyelia to make such information public, enabling them to continue to breed from affected dogs.

The CKCSC’s comments

In summary the CKCSC responded as follows:

- a) As regards informed consent, the CKCSC stated that it was aware that the programme would be about health issues. Its complaint was that the programme content and editorial bias did not fairly reflect club efforts on health issues, or the assurances given by the programme makers on the approach that it would take. Its consent was therefore not informed consent, in that either the programme makers did not initially make their intentions for the programme clear to the club, or changes occurred to the programme as it developed that would have affected its consent to participate.

The CKCSC said that the interviews referred to by the BBC were not conducted with the club, but with individual breeders. Some of the interviewees may have been club members, but the views expressed by them did not necessarily wholly reflect club policy or factors which the club had to consider, for example, the implementation of its Code of Ethics, educating members on health matters and encouraging them to participate actively on its health initiatives.

The CKCSC said it received an email from the programme makers on 14 February 2008 requesting permission to attend the CKCSC’s show on 23 February 2008. The email described the programme makers’ objectives and strategies and formed the basis of the club’s understanding of the nature of the programme and why the club had been asked to contribute. On the basis of this, the CKCSC agreed that the programme makers could film and interview at the show, because it wanted them to observe the continuing work being done by the CKCSC and its associated research professionals on health matters.

However, the CKCSC felt that the programme as broadcast did not sufficiently acknowledge these efforts and did not fulfil the programme makers’ stance during

the May 2007 telephone discussions, or their stated intentions from the email of 14 February 2008. In particular, the CKCSC said that the programme did not fulfil the programme makers' stated intention that the programme was "emphatically, meant to be a positive and inspiring film" and that they were "not interested in bashing pedigree dogs". Instead, the general tone and editorial emphasis of the programme gave viewers the impression that the club was indifferent to health matters.

- b) The CKCSC did not agree that it would have been impossible or unreasonable for the programme makers to have addressed each of the specific issues complained about under heads b) i) to ix). It said that these dealt with key issues at the heart of the programme and the programme makers should have selected material for presentation in a manner that was editorially balanced. There was no reason for this process to have drastically reduced the scope of the programme. In the CKCSC's view, material was selected for broadcast in pursuit of specific editorial aims that were flawed and consequently the programme as broadcast was unfair in its presentation of the club's efforts on health issues.
- iii) With reference to MVD, the CKCSC said that its complaint was that the programme failed to adequately reflect the club's endeavours to deal with the disease. The CKCSC emphasised the distinction between club health initiatives and the views and actions of some of its membership.

The CKCSC said that the programme's single reference to the heart screening programme was placed between the narrator saying "*Carol was shocked to discover...that health screening programmes are often inadequate or ineffective*" and "*but they routinely ignore advice...and the result is that heart disease in the Cavalier is as bad as it ever was*". The overwhelming thrust and editorial bias of the programme was therefore that the club had done little to deal with MVD.

The CKCSC said that the excerpt from the interview with Dr Sampson on this point was "openly rubbished" by the narrator.

The CKCSC denied that it rejected Mr Swift's proposals and said that it adopted all his recommendations with the exception of the recommendation that an echocardiogram should be mandatory. Nevertheless, it continued to encourage its members to use echocardiography.

- iv) The CKCSC acknowledged, after viewing the full interview given by Mr Swift, that it did not last for two hours, but said that very little of what Mr Swift said was selected for the broadcast and that the extracts included did not accurately summarise his opinions. For example, he also said in relation to MVD:

"It's a major problem for the breed and something that **they are trying to do something about**...80-85% of dogs registered with the Kennel Club **do not belong to a Cavalier Club member**... [That the mode of inheritance of MVD] isn't a simple matter...[and that if] we stopped breeding from all dogs with murmurs, we'd be left with such a small breeding pool that we would **generate other genetic disease or encourage other genetic diseases to occur within the breed**. So it has to be done **slowly and gradually**" [CKCSC's emphasis].

The CKCS said that it had not suggested that the breeding policy advocated in Sweden was ineffectual but that, as with its own scheme, no progress had yet been made to reduce the incidence of MVD.

The CKCSC also quoted a comment from Mr Swift's full interview about breeding guidelines:

"The breeding advice that has been given by the Cavalier Club and that **they now recommend** is that dogs should be over five and clear of a murmur before they are allowed to be used for breeding. The problem is that many breeders want to use their dogs at a much earlier age for breeding **so what we also allow is that the parents of those dogs should be over five and clear of a murmur**...The breeding advice is correct, whether it is being followed accurately and by **all** breeders is probably the issue" [CKCSC's emphasis].

The CKCSC said that this comment should be read in conjunction with Mr Swift's comments on the percentage of dogs owned by club members. Mr Swift described the club's recommendation that heart tests be conducted annually as "crucial" and, regarding disclosure of test results, that he "has the data anyway". His advice that people should obtain clear heart certificates for the parents of any puppies they purchase from breeders, in accordance with CKCSC recommendations, was omitted.

The CKCSC said the programme led viewers to believe that it failed to promote breeding guidelines devised by its cardiologists and to advocate effective MVD health policies. However, the club had never dismissed the incidence of MVD within the breed and it continued to work towards its reduction and elimination. Furthermore, it was not given the opportunity to comment on Mr Swift's contributions.

- vi) As regards MRI testing, the CKCSC said that the costs and risks associated with MRI scanning were important considerations for breeders. MRI scanning could only be conducted at specialist Referral Centres, of which there were a limited number, and could cost in the order of £1000-1300, plus a consultation fee of approximately £200, plus a referral fee charged by the owner's vet. Dr Rusbridge had touched on this issue by describing MRI scans as "expensive". A number of CKCS breeders interviewed were concerned by the risk created by the need for an anaesthetic and their view was not untypical. The programme also gave the impression that MRI scanning was a diagnostic facility that was readily available but which CKCSC members chose to ignore.

In response to the BBC's statement, the CKCSC said that the disclosure of scan results was an issue that was not examined during the programme, only in conversations between the programme makers and Mrs Jupp in May 2007. Had the club been asked to comment further, it would have done so.

- vii) As regards Dr Rusbridge, the CKCSC said that it did not suggest that Dr Rusbridge was unqualified to speak on syringomyelia or that her opinions were discredited. However it was the club's view that other eminent neurologists were unlikely to agree that she was the leading expert on syringomyelia and the most qualified to talk about the condition. Nor did the club suggest that the BSAVA survey was definitive. The CKCSC said that the various data quoted by the BBC in its statement clearly indicated that there was no reliable information on the incidence of syringomyelia. The BBC

should have provided further information and qualification when it presented Dr Rusbridge's belief that up one third or more of CKCSs had syringomyelia, because viewers were left with the impression that it was a matter of fact. The BBC statement showed the programme makers were aware of the drawbacks of Dr Rusbridge's study and these should have been presented.

The CKCSC said that the data quoted in the BBC's statement were derived from various small-scale studies and the experiences of Dr Skerritt and Dr Rusbridge, both of whom practiced at Referral Centres where they were largely presented with dogs suspected of having syringomyelia/CM. The BBC's comments on the BSAVA survey helped demonstrate that there was no reliable information on the incidence of syringomyelia.

The CKCSC said that it did not maintain that the level of syringomyelia was insignificant, only that information given to viewers was incomplete and there was a lack of editorial objectivity and balance in the presentation of the subject.

- c) As regards Mrs Barwell's interview, the CKCSC said that Mrs Barwell was not "nominated" by the club as its spokesperson, but was suggested to Ms Harrison as a possible interviewee, as she was a long established breeder. She did not say or imply that she thought the incidence of syringomyelia in the breed had been exaggerated, only that she had not experienced the problem in her dogs. Mrs Barwell did not, as the BBC said, "repeatedly play down" the health problems in the breed, but said that in her opinion MVD was the "killer" in the breed rather than syringomyelia. When she referred to the "quality" of dogs, she meant show quality, i.e. conformity with the Breed Standard. The CKCSC also said that Mrs Barwell's comments on scratching could not be linked to her opinion on the incidence of syringomyelia within the breed.

The CKCSC said that when Mrs Barwell said that she would not have her dogs scanned she was referring to the risks associated with the anaesthetic and Ms Harrison responded "I can understand that". The CKCSC reiterated that Mrs Barwell's comments were heavily edited and placed in a context which implied that she would never scan her dogs under any circumstances and she was completely lacking in compassion for her animals.

The CKCSC said that if the programme maker saw an apparent "inconsistency" in the club's approach to breed health, it should have asked the club for clarification and included its response in the programme. There was no inconsistency, as if a dog had a condition that made it unsafe to administer an anaesthetic, scanning under such circumstances would have to be carefully considered.

- d) As regards Rollo and Ms Costello, the CKCSC said that the committee and officers of the club (except Mrs Carter) did not know that Ms Costello's dog had syringomyelia. Furthermore, the award of Best in Show was not given by the club but by the appointed judge. The judges were independent of the organisers of shows at which they officiated and judged against criteria set out in the breed standard. There was no evidence to suggest that the judge was aware the dog had syringomyelia.

The CKCSC said that Ms Costello's interview did not confirm the programme's allegation that other top breeders also bred from dogs knowing they have syringomyelia. Her statement was contradicted by Ms Carter, whose comments were accepted without qualification. This was unfair to the club because it was

implied that other club members routinely acted as Ms Costello was alleged to have done.

The CKCSC said that its breeding guidelines for reducing the incidence of syringomyelia, which were published following an International Conference on syringomyelia organised by the club in November 2006, were produced jointly by the neurologists in attendance and published by its chairman, Dr Rusbridge. The CKCSC said that the guidelines were made available to its members in January 2007. The CKCSC described the guidelines, which were recommendations, qualified by the statement "It has yet to be proven if this guide is appropriate", as the consensus of opinion among specialists that the best way for breeders to proceed was to MRI scan their dogs and then breed from the least affected dogs. The CKCSC said there was no overriding requirement to breed only from syringomyelia free dogs.

The CKCSC said that it was not true that no action had been taken to address the allegation made against Ms Costello. Two investigations into the matter, by the CKCSC and the Kennel Club, had ended inconclusively but the Kennel Club was not registering any stock bred by Ms Costello and she had been removed from the club's judges lists as well as resigning her CKCSC membership.

- f) The CKCSC said its and other regional cavalier clubs' members owned approximately 20% of CKCS dogs and had no control over non-member breeders. The club was surprised that the programme makers considered it appropriate to consult only the Kennel Club on breed issues, given the specific criticisms of club policies and actions made in other parts of its statement. The CKCSC did not receive an "appropriate right of reply" and received no response to its letter to the BBC dated 29 July 2008, expressing concerns.
- i) As regards heart disease, the CKCSC restated its complaint that it was not given the opportunity by the programme makers to respond to this issue, with the expectation that its response would be reflected fairly in the programme.
 - ii) As regards breeders' denial about syringomyelia, the CKCSC did not dispute the programme makers' entitlement to include Ms Fowler's view in the programme, but said that it should have been accompanied by a balancing opinion.

The CKCSC said that it did not understand the BBC's argument that the club representatives' decision not to comment on leaving the CAWC meeting indicated widespread denial of syringomyelia, given that these representatives had just voluntarily attended a meeting to discuss initiatives on this subject. It also denied the link made by the BBC between Mrs Carter's removal from its committee for breaching the club's Code of Ethics by furnishing information without prior written consent of the owner, and any widespread denial that syringomyelia was a problem.

- iii) As regards Ms Fowler's opinion of breeders' response to SM, the CKCSC restated that it was not given the opportunity to respond to these criticisms and that it was taking SM seriously.
- iv) As regards breeding from untested dogs, the CKCSC said that disclosure of MRI scan results was not an issue raised during the programme. It wished as many breeders as possible scanned their dogs and, to encourage them to do so, it did not insist that results were disclosed, as testing was regarded as the

first priority. It added that not being included on the club's MRI list was not necessarily an indicator that the dog had not been scanned.

In response to figures given by the BBC in its response at head d) above, the CKCSC said that it had 12 committee members, of which seven were active breeders. It was unable to comment on the actions of committee members of other clubs, where members may also be inactive breeders. The Club also said that, while it advocated and encouraged breeders to scan their dogs, it had no powers to insist or force its members to do so and could only continue to educate and encourage.

- v) As regards people at the highest level knowing that Rollo had syringomyelia, the CKCSC referred to its comments under head d) above. The club said that Mrs Carter's comments indicated only that she was aware of the outcome of the MRI scan, not that other people at the highest level had known. Ms Carter had since stated that she regretted not making the information public at an earlier date. The CKCSC said that it had not been shown that Ms Carter had divulged the information about Ms Costello's dog to the committee or to members.

The CKCSC said that allegations concerning Miss Costello only became apparent when the programme was broadcast and said that the questions put to members of the club following the CAWC meeting in Westminster about dogs with syringomyelia being able to win at shows did not deal with the allegations against Ms Costello.

The club representatives who attended the CAWC meeting chose not to be interviewed because were asked not to comment on proceedings in advance of a CAWC statement. They would not have been able to comment about a member without first obtaining the facts and the member's consent to comment first in any case.

- vi) As regards breeders knowingly breeding from dogs with syringomyelia, the CKCSC said that this allegation was not made only in relation to Ms Costello, as the programme sequence of the Malvern show gave viewers the impression that most breeders routinely bred from dogs with syringomyelia, in contravention of breeding guidelines. Ms Harrison's comments were general, such as "*most continue to breed from untested dogs*", so that viewers were given the impression that Ms Costello's alleged actions were not untypical. However, the interview with Ms Costello did not prove that other stud dog owners had also bred from dogs knowing that they had syringomyelia. The editorial bias of the programme led viewers to believe otherwise and this reflected badly on the club.

The BBC's comments

In summary, the BBC responded as follows to the CKCSC's comments:

The CKCSC was contacted by the programme makers during their initial research and granted permission for the programme makers to film at the Malvern Show in February 2008. However, the CKCSC was not mentioned by name in the programme and none of the contributors to the programme was introduced or billed as speaking on its behalf. The CKCSC had also drawn attention to the distinction it made between the "club" and its members, some of whom were featured in the programme. The BBC said that the CKCSC had explained that the personal views of its members did

not represent the views of the club, and it appeared to have disassociated itself from any of the views expressed in the programme by breeders and owners. The CKCSC had also confirmed that it and other regional CKCS bred clubs represent only around 20% of all registered CKCSs (see CKCSC comments at head f) above).

The BBC said that it therefore did not accept that viewers would have understood, or had reason to believe, that comments in the programme about CKCS breeders referred directly to the CKCSC. Any views expressed by contributors to the programme could not have led to any unfairness to the CKCSC on the basis that the club was not mentioned by name and viewers were not given the impression that any of the contributors were speaking on behalf of, or about, it rather than CKCS breeders in general. The BBC said that there was one instance in the programme where this may not have been the case and that this was addressed under point d) below.

- a) As regards informed consent, the BBC said that the CKCSC had confirmed that it was aware the programme would be about canine health issues and acknowledged that there was regular contact with the programme makers during which the nature and content of the programme was repeatedly explained. The email sent on 14 February began by describing the programme as “a science documentary looking at canine genetics and the health of purebred dogs...our focus is on how science can help tackle the health problems that have developed in some of our breeds”. The evidence from experts such as Mr Swift and Dr Rusbridge led the programme makers to believe that not enough was being done by breeders across the board to safeguard the welfare of pedigree dogs. The CKCSC may have assumed that the programme “would give due credit to the club for these efforts [on health issues]”, but the BBC said that it had no basis on which to make such an assumption. A request was made to interview someone from the CKCSC “about the health of the breed and the steps the club is taking to safeguard health”. The CKCSC responded by suggesting a number of breeders who might be suitable interviewees, but now said that those contributors could not be regarded as representing the club.
- b) With reference to the portrayal of CKCSC policies and efforts on canine health issues, the BBC reiterated that the club was not mentioned by name and no specific allegations were made against it (and referred to its response at head d) below). The programme fairly and accurately reflected the range of views expressed by CKCS breeders, as well as actions taken by CKCS owners and breeders. The BBC said that viewers would have understood that comments both by and about the CKCS breeders referred to breeders in general rather than specifically to the CKCSC. It therefore did not believe it was unfair to omit specific aspects of the CKCSC’s approach to canine health.
- iii) With reference to MVD, the BBC said that the programme explained within the first five minutes that CKCSs suffer from health problems which are more frequent than in other breeds and cause many dogs to die prematurely. The programme went on to report on two separate occasions that CKCS clubs had taken action to address the problem of MVD in CKCSs and that viewers would have been well aware that breed clubs had recognised the problem and had taken action to try to address it. However, it was legitimate and justified to include the opinion of experts such as Mr Swift, who had worked extensively on behalf of the CKCSC, and who believed that breeders were not taking the issue seriously enough and as a result, no progress had been made in tackling the problem.

The BBC said that an announcement made by the CKCSC in 2006 confirmed that the club did not adopt Mr Swift's recommendations and rejected any mandatory action to address the problem of MVD, instead responding by saying "owners should be *encouraged*" [BBC's emphasis] to have their dogs tested. It specifically rejected Mr Swift's recommendation that dogs of five years and over should be subjected to an echocardiogram.

- iv) The BBC said that Mr Swift's expert opinion, as expressed in his interview, was accurately represented in the programme and that viewers would have understood his concerns about the lack of progress in tackling the problem of MVD to refer specifically to the CKCSC.
- vi) The BBC said that it appeared that the CKCSC considered that the costs and risks associated with MRI scanning should have been referred to explicitly. The BBC said that this degree of detail would not have been material to the audience's understanding of the issue. However, any potential unfairness would be to those who rejected the use of MRI scans on the grounds of costs or health risks, but that this did not apply to the CKCSC which said it supported the use of MRI scans.
- vii) The BBC said the programme accurately reported Dr Rusbridge's expert opinion that up to a third or more of CKCS may have been suffering from syringomyelia. This figure was supported by other recent scientific studies and was included to give viewers an indication of the extent of the problem. Some individual breeders did disagree as to the extent of syringomyelia in the breed, such as Mrs Virginia Barwell, who was featured in the programme, but the BBC did not accept that viewers would have been given the impression that breed clubs, such as the CKCSC, disputed Dr Rusbridge's conclusions. Furthermore, it noted that the CKCSC had confirmed that it "does not maintain that the level of syringomyelia is insignificant", and that it was working with the Animal Health Trust to develop a breeding programme aimed at reducing the prevalence of the condition. Therefore, the BBC did not believe there was any unfairness to the CKCSC in the way the programme reported Dr Rusbridge's expert opinion.
- c) The BBC said that the CKCSC had confirmed that Mrs Barwell was not speaking to the programme as its spokesperson and was not presented as such by the programme. It therefore did not believe that there can have been any unfairness to the CKCSC in the way her views were presented.
- d) The BBC said that there was no unfairness to the CKCSC in including an interview with Ms Costello in which she asked if Rollo had syringomyelia. Ms Costello was not identified as a member of the CKCSC and there was no indication in the programme that the Malvern Show was organised or run by the CKCSC. There was no reason for viewers to understand that Ms Costello was speaking on anything other than a personal basis and the CKCSC confirmed that the views of individual members did not represent the views of the club.

However, the BBC said, if some viewers did understand the script line that "*many people at the highest level of the cavalier club¹ know that the dog (Rollo) is*

¹ The Committee noted that although the transcript quoted by the BBC said "*many people at the very highest level of the cavalier club know that the dog (Rollo) is affected*", the programme itself said "*many people at the very highest level **in the breed** know that the dog (Rollo) is affected*" [Ofcom's emphasis].

affected” to be a reference to the CKCSC, it maintained that the comment was accurate and justified. Ms Carter, who was the club’s health representative with particular responsibility for syringomyelia, confirmed she knew Rollo had the condition and that this fact was widely known. The programme makers had a signed confirmation from another breeder who was present at the time Rollo’s scan was carried out and had also spoken to a senior member of the club who confirmed that she had used Rollo at stud knowing he had syringomyelia. The programme makers were also aware that Ms Costello had shown the positive MRI scan to several other breeders and had the names of further club members who confirmed that they were aware Rollo had syringomyelia at the time he entered the Malvern Show. The BBC believed that the statement issued by the CKCSC announcing that Ms Carter had been removed from her position further confirmed that the CKCSC was aware that Rollo had syringomyelia.

The BBC said that the programme makers were justified in revealing that the winner of the leading show for CKCS was a dog that had been MRI scanned and had been shown to have syringomyelia. The show’s organisers, senior members of CKCS clubs and other breeders were all content for the dog to be entered into the competition despite widespread knowledge that it had a serious health problem. The BBC believed that this supported one of the central allegations of the programme, that those in the world of pedigree dogs regard appearance as more important than health and wellbeing.

- f) The BBC said that the CKCSC had confirmed that it and other CKCS breed clubs represented only around 20% of those dogs registered with the Kennel Club. As no specific allegations were made against the CKCSC, it was not necessary or appropriate to offer the club a specific right of reply. As the programme highlighted concerns about the health of many breeds of pedigree dog, not just the CKCS, the programme makers were justified in putting these concerns to the Kennel Club, as the recognised parent body for breed clubs. This ensured that the programme fairly reflected the views of pedigree dog breeders in general.

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.

The CKCSC’s complaint was considered by Ofcom’s Fairness Committee (“the Committee”) its most senior decision making body in matters of Fairness and Privacy. In reaching its decision, the Committee carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, both parties’ written submissions, and recordings and transcripts of interviews with Dr Rusbridge, Mrs Barwell, Mr Swift and CKCS breeders at the Malvern Show.

- a) The Committee first considered the complaint that the CKCSC did not give informed consent to participate in the programme.

In considering this part of the complaint the Committee took account of Practice 7.3 of the Ofcom Broadcasting Code (“the Code”). Practice 7.3 states that where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor), they should normally be told about the nature and purpose of the programme and what kind of contribution they are expected to make. The Practice also states that it may be fair to withhold all or some of this information where it is justified in the public interest or under other provisions of the Code.

As set out above, potential contributors to a programme should be given sufficient information about the programme’s nature and purpose to enable them to make an informed decision about whether or not to take part. In assessing whether the CKCSC gave informed consent, the Committee looked at information that was provided to the club prior to the recording of the contribution, untransmitted footage and the programme itself.

The Committee noted that there were a number of communications between Mrs Jupp and Ms Harrison, over the telephone and in writing. Ofcom noted in particular that in an email dated 14 February to Mrs Jupp, following up a conversation and requesting permission to film at a CKCSC show, Ms Harrison said:

“Our current project is a science documentary looking at canine genetics and the health of purebred dogs. We’ll be charting the evolution of the dog and the history of dog breeding. Our focus is on how science can help tackle the health problems that have developed in some of our breeds...although the film will take a long hard look at the problems, it is, emphatically, meant to be a positive and inspiring film...we are not interested in bashing pedigree dogs...”

In the Committee’s view this description contrasted sharply with the programme itself, which opened as follows:

“Now on BBC1, a shocking exposure on the inbreeding of pedigree dogs”.

The commentary went on to say:

“And what we’ve uncovered is the greatest animal welfare scandal of our time”.

The Committee considered that the information provided to the CKCSC about the nature and purpose of the programme for which its assistance was being sought, in particular the references to the programme being “positive” and “uplifting”, was misleading. In the Committee’s view there was nothing in the email of 14 February 2008 or in notes of telephone conversations with Mrs Jupp that would have led her, as the CKCSC representative, to understand the premise of the programme that was subsequently broadcast, namely that it would refer to a “shocking exposure” or “the greatest animal welfare scandal of our time”.

The Committee noted that the CKCSC’s participation in the programme as broadcast was minimal. However its participation in the making of the programme had been significant, since club representatives provided information, gave permission for filming to take place at the show in Malvern and suggested potential interviewees to Ms Harrison. The Committee considered that the

CKCSC had materially contributed to the programme and so was entitled to be given sufficient information to enable it to give informed consent for its participation.

The Committee considered that the programme makers had not provided the CKCSC with sufficient information about the likely nature and purpose of the documentary when securing consent for filming at its show and for its participation in the programme making process. In the Committee's view insufficient steps were taken by the programme makers to enable them to justifiably treat any consent that was provided by the CKCSC as informed consent. The Committee noted that the BBC did not suggest that there were grounds for departing from the usual requirement for informed consent and in the Committee's view there were no such grounds.

Having reached this view, the Committee then went on to consider whether the lack of informed consent had led to unfairness to the CKCSC in the programme as broadcast under heads b) to f) below.

- b) The Committee next considered the complaint that material facts of which the programme makers were aware prior to broadcast were misrepresented or were disregarded or omitted from the programme as broadcast.

In considering this part of the complaint the Committee 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.

The Committee noted the BBC's position that the CKCSC's views were fairly represented in the programme. It also noted that the CKCSC was not referred to by name in the programme and that generally it was unlikely that viewers would have associated the concerns raised in relation to the breed with the CKCSC. The Committee noted that the CKCSC organised the Malvern show which featured in the programme, but that this event was not identified as being organised by the CKCSC, just referred to as the "the most prestigious event in the CKCS calendar". Although Ms Harrison referred in commentary to Ms Carter, a member of the CKCSC, being on the health committee of "*the main breed club*", it did not consider that this one allusion to the (unnamed) CKCSC would have given rise to an inference that the concerns raised in the programme in relation to the CKCS were associated with the CKCSC. Although the CKCSC may have the largest membership of all the CKCS breed clubs across the country, combined membership only comprises around 20% of all the owners of this breed. The Committee noted that the CKCSC does not act as an umbrella organisation for those clubs. All the breed clubs are licensed and regulated by the Kennel Club. The Committee then considered each of the points raised under this head of complaint separately, as follows:

- i) The Committee first considered the complaint that the programme did not make clear that the CKCSC had raised considerable sums of money for research into health problems in the breed since the early 1980s and that little mention was made in the programme of the CKCSC's current efforts on health issues and its achievements over the last 20 years or so on these matters.

The Committee noted that there was no specific reference to the CKCSC in the programme in relation to health issues within the breed and research into those issues. There was no criticism of the club in this context and therefore it was not incumbent on the programme makers to mention the money the club had raised for research or its general efforts on health issues.

Notwithstanding this, the Committee noted that Ms Harrison referred in commentary to the heart screening programme for CKCSs.

The Committee also noted the following extract from the interview with Dr Sampson of the Kennel Club:

Dr Sampson *“There was a lot of work went on in the early days between the Kennel Club and the Cavalier Clubs to establish the wherewithal for their heart screening programme.”*

The Committee therefore took the view that this made it clear that there was a heart screening programme in place and that the various Cavalier clubs collectively had worked with the Kennel Club on this.

- ii) The Committee considered the complaint that the programme did not mention that hereditary cataracts had been virtually eliminated from the breed.

In the Committee’s view, it was not incumbent on the programme makers to refer to cataracts or to work carried out or supported by the CKCSC to tackle the problem. Given that the CKCSC was not referred to in the programme and this issue was not raised, viewers would not have formed any adverse impression of the club as a result of the omission of information regarding cataracts.

- iii) The Committee considered the complaint that the programme failed to adequately reflect the CKCSC’s endeavours to deal with MVD.

The Committee noted that there was no specific reference to the CKCSC in the programme in relation to MVD and no criticism of the club in this context.

- iv) The Committee considered the CKCSC’s complaint about the use of Mr Swift’s interview in the programme.

The Committee viewed the full interview with Mr Swift and considered that the extracts used for the programme accurately reflected his main points. The Committee considers that it is a matter for programme makers’ editorial discretion as to which parts of an interview to use for a programme, provided the selection does not result in unfairness. In this case, the Committee noted that Mr Swift’s comments that were included in the programme were general. The Committee therefore found no unfairness to the club as a result of the editing of his interview.

- v) The Committee considered the CKCSC’s complaint that the programme did not mention Dr Corcoran’s research into MVD or include footage of an interview with him.

The Committee noted the BBC’s position that the programme makers did not discuss MVD with Dr Corcoran and that his interview was not recorded or used in the programme. As set out under decision head b) iii) above, the

Committee considered that there was no unfairness to the CKCSC in relation to the programme's portrayal of MVD. As it is a matter for programme makers' editorial discretion as to which potential contributors to use in a programme there was no obligation to use any of Dr Corcoran's interview and it was not unfair to the CKCSC not to do so.

- vi) The Committee considered the complaint that the CKCSC's position on MRI scanning was not fairly represented.

The Committee noted that the programme commentary said that "*most breeders continue to breed from untested dogs*" and included Mrs Barwell's comment that she would not have her dogs MRI scanned, but did not go into any detail about MRI scanning. The Committee found (on a separate complaint from Mrs Barwell) that her interview was edited unfairly in respect of genetic testing. However, notwithstanding this, MRI scanning was not dealt with in detail in the programme nor was the CKCSC specifically mentioned. As a result, the Committee did not believe viewers would have formed any adverse impression of the Club in relation to this. There was therefore no unfairness to the CKCSC in this respect.

- vii) The Committee then considered the CKCSC's complaint about the figures given by Dr Rusbridge in the programme for the incidence of syringomyelia.

The Committee noted that the commentary said:

"No one knows exactly how many Cavaliers have syringomyelia but veterinary neurologist Clare Rusbridge believes up to one third or more of the breed could be affected".

The Committee considered that it was clear that this was the opinion of one expert and that she was not giving a definitive figure. The Committee also considered that, as the CKCSC was not specifically referred to in the programme, it was not incumbent on the programme makers to refer to the fact that the club had funded some of Dr Rusbridge's research. The Committee therefore found no unfairness to the club in this respect.

- viii) The Committee considered the complaint that the programme did not make clear that there was an absence of reliable data in relation to syringomyelia and that research was under way at the Animal Health Trust to correct the lack of reliable data and to devise better breeding guidelines for the CKCSC's members.

As set out under decision head b) vii) above, the Committee considered that it was clear from the programme that there was no definitive figure for the incidence of syringomyelia. It was not incumbent on the programme makers to refer to the Animal Health Trust research and, as there was no specific reference to the CKCSC in the programme, it was not unfair to the club that the research was not mentioned.

- ix) The Committee considered the complaint that the programme did not make clear that Ms Carter, a member of the CKCSC who was interviewed for the programme, had given personal views and had not spoken as a representative of the CKCSC.

The Committee noted that Ms Carter was captioned as a “*Cavalier breeder*” and considered that there was no suggestion in the programme that she was speaking on behalf of the club. Although there was a reference to her being “on the main breed club’s health committee” the Club was not named and the tenor of the exchange focused on her responsibility for syringomyelia.

The Committee therefore found no unfairness to the CKCSC in respect of the use of Ms Carter’s interview in the programme.

- c) The Committee considered the CKCSC’s complaint that Mrs Barwell, a member of the CKCSC, was interviewed by the programme makers and that only small extracts were included in the programme, which gave viewers the impression that CKCSC members were indifferent to health issues.

In considering this head of complaint the Committee took account of Practice 7.6 of the Code, as set out under decision head b) above.

The Committee noted that Mrs Barwell made two comments in the programme. Firstly she said:

“Some of the characteristics attributed to syringomyelia are not always what they seem. Dogs scratch. All dogs scratch”.

Then in relation to MRI scanning she said:

“I make no bones about it. I simply will not have my dogs MRI scanned”.

In considering a complaint from Mrs Barwell about the editing of her interview, the Committee found that her views on syringomyelia were not misrepresented but that her interview was not fairly edited in relation to her views on testing and, in particular, MRI scanning.

As regards whether the use of this interview resulted in unfairness to the CKCSC, the Committee noted that the BBC considered that Mrs Barwell was speaking as a spokesperson for the club, but that the CKCSC said that this was not the case. The Committee noted that Mrs Barwell was captioned “*former chairman Cavalier Club UK*” and therefore viewers may have understood that she had been associated with the CKCKS in the past. However she was not referred to as being a current member of the CKCSC and the programme made no other links between her and the Cavalier Club nor did it suggest in any way that she was speaking on behalf of the CKCSC. In these circumstances, the Committee considered that viewers would not have taken her comments as being made on behalf of or reflecting the views of the CKCSC.

There was therefore no unfairness to the CKCSC in this respect.

- d) The Committee next considered the complaint that the inclusion of extracts of Ms Costello’s interview in the programme gave viewers the impression that it was normal practice for CKCSC members to knowingly ignore health issues when breeding their dogs. It said that this was untrue, as evidenced by its record of members’ support for health schemes, health research, and its acknowledgment that much more was still to be achieved.

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

The Committee noted that the transcript on which the BBC relied and supplied to Ofcom, and which it quoted in its statement, did not accurately reflect the programme as broadcast. The transmitted programme referred to “*many people at the very highest level in the breed*” knowing that Rollo had syringomyelia, whereas the transcript provided stated this fact was known to “**many in the Cavalier Club**”. In view of this and taking into account the fact that the programme did not state that the Malvern Show was run by the CKCSC, the Committee did not consider that the criticisms of those who allowed Ms Costello’s dog to win the competition would have been understood by viewers to be aimed at the CKCSC. Nor did the Committee consider that this part of the programme suggested that members of the CKCSC specifically ignored health issues when breeding dogs.

The Committee found no unfairness to the CKCSC in this respect.

- e) The Committee considered the complaint that the programme portrayed members of the CKCSC as walking away from the programme makers when they were leaving a meeting at the House of Lords, giving the impression that the CKCSC’s members were indifferent to health issues and questioning their commitment to the health of the breed.

In considering this head of complaint the Committee took account of Practices 7.6, as set out under decision head b) above, and 7.12 of the Code. Practice 7.12 provides that where a person approached to contribute to a programme chooses to make no comment or refuses to appear in a broadcast, the broadcast should make clear that the individual concerned has chosen not to appear and should give their explanation if it would be unfair not to do so.

The Committee noted the following extract from the programme which showed people arriving for the CAWC meeting:

Ms Harrison *“The Companion Animal Welfare Council, CAWC, has called a top level meeting to try to find a way forward for the Cavalier. Many key players will be here, including the Kennel Club’s Jeff Sampson who looks quite pleased to see us.*

Dr Sampson *Good morning guys.*

Ms Harrison *Which is more than can be said for the Cavalier breeders.*

Mrs Hull *Surprised to see you here.*

Ms Harrison *Why? (no response)”*

The Committee noted that the commentary said the meeting was also attended by “*geneticists, a representative from the Government department that oversees animal health and welfare, and vets*”.

The programme then included the following footage, filmed after the meeting:

Ms Harrison *“Can I ask why you were so upset to see us this morning?”*

Mrs Hull *The Breed Club Championship Show, entering the ring and discussing with the Best in Show winner about syringomyelia was completely out of order.”*

The Committee noted that Mrs Hull was captioned as being the Chairman of the Southern Cavalier Club. It would therefore have been clear to viewers that she was not speaking on behalf of the CKCSC. Furthermore, there was nothing in this part of the programme that suggested that members of the CKCSC, as opposed to members of Cavalier breed clubs generally, were attending the meeting. There was therefore no suggestion that they were not making positive moves in relation to the health issues within the breed, nor was there any implication that members of the CKCSC specifically were walking away from or refusing to speak to Ms Harrison. Nor was there any adverse reflection on the CKCSC as a result of not making a statement to the programme makers following the meeting.

The Committee found no unfairness to the CKCSC in this respect.

- f) The Committee then considered the complaint that the programme made significant allegations about CKCS breeders, to which the CKCSC was not offered an opportunity to respond, having not been made aware of the allegations that were to be made.

The Committee acknowledged that the programme raised serious concerns about health problems within the CKCSC breed and included a number of serious allegations about CKCS breeders. However, as set out under decision head b) above, the Committee noted that the CKCSC is one of a number of CKCS breed clubs and that membership of those breed clubs together comprised around 20% of CKCS owners. The CKCSC does not act as an umbrella organisation for the CKCS breed clubs. The programme did not refer to the CKCSC at all, so viewers were unlikely to have considered that criticisms of breeders were criticisms of the club. In these circumstances, it was not incumbent on the programme makers to offer the CKCSC an opportunity to respond to the allegations and no unfairness resulted to the Club as a result of the allegations not being put to it for a response.

The Committee therefore found no unfairness to the CKCSC in this respect.

Accordingly the Committee has not upheld the CKCSC's complaint of unfair treatment in the programme as broadcast.

Not Upheld

Complaint by Mr Michael Randall

Pedigree Dogs Exposed, BBC1, 19 August 2008

This Adjudication was originally published on 9 December 2009.

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

The BBC broadcast a documentary that examined health and welfare problems in pedigree dogs. The programme argued that pedigree dogs were “*dangerously inbred*” and that many of the problems were caused by competitive dog showing. The programme included footage of Mr Michael Randall handling a German Shepherd at a dog show.

Mr Randall complained to Ofcom that he was treated unfairly and that his privacy was unwarrantably infringed in the programme as broadcast. Mr Randall’s complaint was considered by Ofcom’s Fairness Committee, its most senior decision making body in matters of Fairness and Privacy.

In summary the Committee found the following:

- Mr Randall was not unfairly portrayed as “the face of all that’s bad with German Shepherd Dogs” or as a bad breeder. It was not unfair to him that the programme makers did not ask if the dog he was shown handling was from his kennel or make enquiries about the Zakasia German Shepherd.
- Mr Randall’s privacy was not unwarrantably infringed in the broadcast of the programme. It was not necessary for the programme makers to have obtained Mr Randall’s consent to film him and his participation in the Manchester Championship Show did not attract a legitimate expectation of privacy.

Introduction

On 19 August 2008, the BBC broadcast *Pedigree Dogs Exposed* on BBC1. The documentary programme examined the extent of health and welfare problems in pedigree dogs. The programme argued that pedigree dogs were “*dangerously inbred*” and that the cause of many health and welfare problems experienced by pedigree dogs was competitive dog showing. The programme included scenes of a King Charles Cavalier Spaniel with syringomyelia (a condition where the brain is too large for the skull) and a boxer suffering an epileptic fit. It also included footage from various dog shows, including Crufts, and extracts of interviews with representatives of the Kennel Club, the RSPCA’s Chief Vet, several pedigree dog owners and several pedigree dog breeders.

The programme included a comparison between “working” German Shepherds and “show dogs”. The programme’s director and narrator, Ms Jemima Harrison, said in commentary that:

“the show dogs have become more and more extreme, and it’s had a major impact on the way they move...Critics now refer to the show German Shepherd as half dog, half frog”.

The programme included footage of Mr Michael Randall, a dog breeder, showing a German Shepherd at Manchester Championship show. The image of Mr Randall with the German Shepherd was frozen while the programme compared the dog handled by Mr Randall with a “working” German Shepherd.

Mr Randall complained that he was treated unfairly and that his privacy was unwarrantably infringed in the programme as broadcast.

The Complaint

Mr Randall’s case

In summary, Mr Randall complained that:

- a) He was portrayed unfairly in the programme as broadcast in that:
 - i) He was portrayed as “the face of all that’s bad with German Shepherd Dogs”. By showing his face for such a lengthy time, the programme makers portrayed him in the programme as a bad breeder, which was unjustified.
 - ii) If the programme makers had asked him, they would have learned that the dog he was shown handling in the programme was not from his kennel. If they had investigated further, they would have discovered that, the dogs he bred (Zakasia German Shepherds) were “nothing like the type depicted” in the programme and that “the soundness in their movement would not have been up for debate”.

By way of background, he said that the broadcast of *Pedigree Dogs Exposed* would cause damage to his Zakasia kennel.

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

- b) Footage of him was broadcast without his consent. He had not been aware that he was being filmed when the filming took place. In the programme as broadcast, he was shown standing with a German Shepherd. An image of him was frozen, whilst the programme discussed “all that’s bad and changed with the breed”.

The BBC’s case

In summary, the BBC responded to Mr Randall’s complaint of unfair treatment as follows:

- a) The BBC said that the sequence in which Mr Randall appeared was designed to illustrate how much the appearance of certain breeds of dog had changed as a result of selective breeding. The sequence involving the German Shepherd offered a direct contrast between the traditional working dog, including those currently used by the police, and modern show dogs. The BBC said that Mr Randall appeared in a short shot standing beside a dog. The script did not draw any attention to him, there was no reference to him by name and no indication that he was a dog breeder. The BBC said that Mr Randall’s presence in the sequence was entirely secondary to the editorial point that was being made.

The BBC did not accept that viewers would have concluded Mr Randall was a breeder of dogs, and by association “a bad breeder”, on the basis of this single shot showing him standing next to a particular dog. The BBC also suggested that if Mr Randall had been genuinely concerned that any association with this type of German Shepherd might have had an adverse effect on his reputation in the dog breeding world, it was reasonable to assume that he would have refused to handle the dog at all in such a public forum.

The BBC said that the Zakasia German Shepherd was not mentioned in the programme. Viewers would therefore have been unaware that Mr Randall bred them and would not have drawn any negative inference in relation to Zakasia German Shepherds from the dog he was shown handling.

In summary, the BBC responded to Mr Randall’s complaint that his privacy had been unwarrantably infringed in the broadcast of the programme as follows:

- b) The BBC said that the footage of Mr Randall was filmed at a public dog show in Manchester. The camera crew had permission to film and were clearly visible throughout the event and that the filming was neither surreptitious nor invasive in nature. The BBC said that all those attending the dog show, including breeders, owners and members of the public were likely to have been aware that filming was taking place.

The BBC said that Mr Randall did not have a legitimate expectation of privacy in such a public place. None of the filming took place in an area of particular privacy or sensitivity and Mr Randall’s activity was not of a private nature but, on the contrary, intended to be seen by spectators. The BBC said that he participated in the dog show in an active and public capacity, in the knowledge that his actions were in full view of judges, breeders and members of the public.

On that basis, the BBC said there was no infringement of Mr Randall’s privacy and therefore no requirement to obtain his consent to use the material before broadcast.

Mr Randall’s comments

In summary Mr Randall responded to the BBC’s statement in relation to unwarranted infringement of privacy as follows:

- b) In response to the BBC’s submission that the programme makers had permission to film at the Manchester Championship Show (“the show”), Mr Randall said that they did not follow the rules and criteria set out in the show Schedule. Mr Randall said that, because of these rules and criteria, he had a legitimate expectation of privacy. He said that his privacy had been infringed because the footage of him was not cut out of or blurred in the programme.

The BBC’s comments

In summary, the BBC responded as follows:

- b) The BBC said that the show was open to members of the public and that admission was free and that, therefore, Mr Randall did not have a reasonable expectation of privacy when he participated in the show.

The BBC said that the show's secretary, Mr Paul Harding, had given permission to film during all four days of the show. Permission was first requested in a telephone conversation between the programme makers and Mr Harding on 11 January 2008, and in a follow-up email sent the same day. Mr Harding confirmed that permission to film had been given during a telephone conversation with the programme makers on 14 January and this was then confirmed in an email from the programme makers to Mr Harding sent the same day. The BBC said that Mr Harding was also filmed at the show, during which he confirmed that permission had been granted. The programme makers had also obtained a separate Location Release Form granting them permission to film at the show site.

In these circumstances, the BBC said that the programme makers understood that they had permission to film at the show and to conduct interviews with those present, provided they obtained prior consent for such interviews. The BBC said it was the responsibility of the organisers to inform the programme makers if there were any further restrictions regarding access or what they were allowed to film. No such restrictions were imposed and the programme makers filmed lengthy sequences and numerous interviews on each of the four days of the show. The BBC said therefore that the programme makers met the requirements of the show's rules.

The BBC said that the rules of the show allowed filming and photography from outside the judging ring at all times and that a breeder familiar with the rules, such as Mr Randall, would have been aware that he could have been filmed at any stage. The rules said that consent to film particular dogs should be obtained from exhibitors but since Mr Randall had made it clear that he was not exhibiting the German Shepherd dog in question, his consent to film would not have been required.

The BBC stated that it did not believe Mr Randall had a legitimate expectation of privacy when he took part in the show or that there was any requirement to hide his identity in the footage in question. The BBC said that Mr Randall was engaged in an activity to which members of the public had free access, in the knowledge that filming, whether for personal or professional purposes, was permitted by the organisers.

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 Randall's complaint was considered by Ofcom's Fairness Committee ("the Committee") its most senior decision making body in matters of Fairness and Privacy. In reaching its decision, the Committee carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, both parties' written submissions and untransmitted footage.

- a) The Committee first considered the complaint that Mr Randall was treated unfairly in that he was portrayed as “the face of all that’s bad with German Shepherd Dogs” and that by airing his face for such a lengthy time, the programme makers portrayed him in the programme as a bad breeder.

In considering this part of the complaint the Committee took account of Practice 7.9, 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.

- i) As regards the complaint that Mr Randall was portrayed as a “bad breeder”, the Committee considered the section of the programme which featured him. In the Committee’s view, this part of the programme was drawing attention to the effects of the breed standard, and the divergence it was causing between the pedigree and the working German Shepherds, not to the activities of breeders. The focus of the section stayed on the dogs themselves. Neither the commentary nor the images in the programme drew attention to the people handling the dogs at the show, and the footage was used purely in an illustrative manner. Mr Randall was not the only dog handler featured in the footage taken from the show, although the Committee did note that a still image of him with a dog was used for an extended period. However, there was no implication in the programme that Mr Randall was a breeder. Given the lack of any commentary referring to Mr Randall and the focus on the dogs in this part of the programme, the Committee took the view that Mr Randall was not portrayed as “the face of all that’s bad with German Shepherd Dogs”; nor as a bad breeder; nor even as a breeder at all.

The Committee next considered whether, given the context in which the clip was used, the programme makers should have made enquiries of Mr Randall as to the provenance of the dog he was handling. The Committee noted that the programme included no references to Zakasia German Shepherds and made no inferences that Mr Randall was either the breeder or owner of the dog. In these circumstances, the Committee did not consider that it was necessary for the programme makers to make such enquiries of Mr Randall, as these issues were not pertinent to the wider content of the programme or to the point the footage was used to convey.

- ii) As regards Mr Randall’s concern that the broadcast of the programme would cause damage to Zakasia German Shepherd Dogs, the Committee noted that this point did not directly relate to the complaint and was background information. However, as there was no mention of his kennel the Committee did not see how viewers could have been left with any negative image of it.

The Committee therefore found no unfairness to Mr Randall in these respects.

- b) The Committee next considered the complaint that Mr Randall’s privacy was unwarrantably infringed in the programme as broadcast because footage of him handling a German Shepherd dog was broadcast without his consent.

In considering this part of the complaint, the Committee took account of Practices 8.4, 8.6 and 8.8. Practice 8.4 states that broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organisation concerned, unless broadcasting without their consent is warranted

and Practice 8.6 provides that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. Practice 8.8 provides that when recording at an institution, organisation or agency programme makers should obtain permission from the relevant authority, unless it is warranted to film or record without permission.

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 in relation to 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 Ofcom's Broadcasting Code "the Code" which states:

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

In considering whether the broadcast of the programme infringed Mr Randall's privacy, the Committee considered whether he had a legitimate expectation of privacy in the circumstances that he was filmed.

The Committee noted that Mr Randall was shown handling a German Shepherd dog in a class at the Show while a judge inspected the dog; that his face was clearly visible but that he was not referred to by name in the broadcast footage; and that a still image of him with the dog was shown next to an image of the German Shepherd dog circa 1900 and then a modern working dog, to illustrate the difference between these and the modern show dog.

In assessing whether Mr Randall had a legitimate expectation of privacy in relation to the broadcast of footage of him filmed at the show, the Committee considered whether anything filmed in relation to Mr Randall was of a private or sensitive nature. The footage of Mr Randall consisted solely of images showing him handling a dog during the judging process, at a show that was open to members of the public and at which filming openly took place. This was necessarily a public act, integral to the competition's judging process and not of a sensitive nature.

The Committee was satisfied from the consent form signed by the show organisers and copies of emails supplied by the BBC that general filming at the show was carried out with the relevant permissions from the organisers.

The Committee also considered the untransmitted footage filmed at the show, from which it was evident that Mr Randall was not the deliberate subject of the filming and his appearance was incidental to the subject, namely the comparisons between different dogs. He was one dog handler among many and was not singled out for any particular reason. The Committee therefore considered that it was not necessary for the programme makers to have sought Mr Randall's consent to film him or to broadcast the footage filmed.

Taking into consideration all of the factors above, it was the Committee's view that Mr Randall did not have a legitimate expectation of privacy in relation to the broadcast of footage relating to his participation in the competition. Given this the

Committee therefore found that Mr Randall's privacy was neither infringed nor unwarrantably infringed in the broadcast of the programme.

Accordingly the Committee has not upheld Mr Randall's complaint of unfair treatment or unwarranted infringement of privacy in the broadcast of the programme.

Not Upheld

Complaint by Ms Penny Mellor

Panorama: A Very Dangerous Doctor, BBC1, 1 June 2009

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Ms Penny Mellor.

BBC1 broadcast an edition of its documentary series, *Panorama*, entitled “A Very Dangerous Doctor”. The programme investigated the events that led to paediatrician and leading expert in the diagnosis of Munchausen Syndrome by Proxy¹, Professor Southall, being removed from the medical register by the General Medical Council. One aspect examined by the programme was the role played by campaigners, including Ms Mellor, who were opposed to the diagnosis in parents of Munchausen Syndrome by Proxy.

Ms Mellor complained to Ofcom 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:

- The programme makers took reasonable care not to present the judge’s sentencing remarks in a way that was unfair to Ms Mellor.
- In reporting Ms Mellor’s criminal conviction, the programme took reasonable care not to present, omit or disregard material facts in a way that was unfair to Ms Mellor.
- References to Ms Mellor in the programme were not presented in a way that was unfair to her.
- In saying Ms Mellor advised a mother (Mrs Morris) who complained to the General Medical Council that Professor Southall had accused her of murdering her child, the programme makers took reasonable care not to present, omit or disregard material facts in a way that was unfair to Ms Mellor.
- As Ms Mellor had no legitimate expectation that visitors would not call at her front door, her privacy was not infringed by the programme makers’ visit.
- As Ms Mellor had no legitimate expectation that she would not receive unsolicited emails at her email address, her privacy was not infringed by receipt of an email from the programme makers.

Introduction

On 1 June 2009, BBC1 broadcast an edition of *Panorama*, a current affairs documentary series. This edition, entitled *A Very Dangerous Doctor*, investigated the events which had led to paediatrician, Professor David Southall, being removed from

¹ A disorder in which a person deliberately causes injury or illness to another person, usually to gain attention or some other benefit.

the medical register by the General Medical Council (“the GMC”) and to his appeal against that decision being rejected by the High Court.

The programme looked in particular at Professor Southall’s methods and diagnoses in parents of Munchausen Syndrome by Proxy (“MSPB”), a syndrome in which he was a leading expert. The programme said that his diagnoses of MSPB in parents had led to him being targeted on the internet by a US campaign group and by Ms Penny Mellor, who became the leader of the campaign in the UK. In the programme, Professor Southall described Ms Mellor’s campaign against him as “*a vendetta*” – an allegation denied by Ms Mellor.

The programme said that Professor Southall “*shopped*” Ms Mellor to the police after she took the law into her own hands and arranged for a child to be taken to Ireland, beyond the reach of the authorities, on behalf of a woman who was afraid that her daughter would be taken into care. The programme quoted the words of the judge who sentenced her for conspiracy to abduct a child:

“Impervious to debate, convinced that you are right, you have traduced, complained about and harried dedicated professional people. You manipulated the genuine distress of the family. You were pursuing your own agenda.”

The programme also referred to Mrs Mandy Morris, who complained to the GMC that Professor Southall had accused her of murdering her son. The programme said that:

“...advised by the campaigner Penny Mellor, Mandy Morris made a serious allegation to the GMC about what she said had happened.”

Professor Southall was found guilty of serious professional misconduct by the GMC in 2006 and removed from the medical register. The programme raised a number of concerns over the GMC’s finding and said that Mrs Morris “*had a history of making complaints*”.

Ms Mellor complained to Ofcom that she had been treated unfairly in the programme as broadcast and that her privacy had been unwarrantably infringed in the making of the programme.

The Complaint

Ms Mellor’s case

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

- a) She was portrayed unfairly because:
 - i) The programme broadcast only the most disparaging remarks made by the judge following her criminal conviction in March 2002 and omitted the more complimentary remarks made about her in the Court of Appeal and in the pre-sentence report prepared by the probation service.
 - ii) The programme gave more credence to the judge’s comments in sentencing her than it did to the judge’s comments in rejecting Professor Southall’s appeal.
 - iii) Ms Mellor was portrayed as being guilty and Professor Southall as innocent.

Ms Mellor said that she was found guilty of one offence and had always protested her innocence. This was not referred to in the programme.

- iv) The programme spent more time exposing Ms Mellor and her alleged motives than it did exposing Professor Southall and all the findings against him.
- v) The programme wrongly stated that Ms Mellor had advised Mrs Morris about what to say in her complaint to the GMC.

Ms Mellor said that she had helped Mrs Morris very briefly, but had no input into her complaint and had no contact with her for many years after she complained. Ms Mellor said that this was made clear and proven in the GMC hearing, transcripts of which were in the possession of the BBC.

Ms Mellor also provided a copy transcript of evidence given by Mrs Morris to the GMC and drew specific attention to the section where Mrs Morris confirmed that her contact with Ms Mellor amounted to one conversation which she took no further and that her letter of complaint to the GMC dated 15 March 2002 included the words:

“I wish to inform you that I DO NOT want Ms Mellor to have anything to do with my complaint which I will explain to you now”.

In summary, Ms Mellor complained that her privacy was unwarrantably infringed in the making of the programme in that:

- b) She was “doorstepped” by the programme makers, despite the fact that she had already informed them by telephone and by email that she did not wish to take part in the programme.
- c) Despite having told the programme makers that she would not take part in the programme and to leave her alone, she received a “threatening” email on 5 May 2009 from the producer requesting an interview.

The BBC’s case

The BBC responded to Ms Mellor’s complaints by setting out some background information. The BBC said that Ms Mellor was a prominent critic of the diagnosis of MSBP and had campaigned against Professor Southall and had publicly accused him of child abuse, perjury, perverting the course of justice and murder.

The BBC said that Ms Mellor’s campaign against Professor Southall began in the 1990s after it became known that he had obtained permission to secretly film parents who were suspected of abusing their children. The BBC said that she had encouraged parents involved to make repeated complaints about him to his NHS employers in a bid to force him out of a job and, as a result of her campaign, Professor Southall was initially suspended for two years from his job at North Staffordshire Hospital in 1999. The BBC said that Professor Southall told the programme that, in his opinion, Ms Mellor had waged a “*one on one vendetta*” against him.

The BBC said that Ms Mellor had made repeated allegations to various police forces accusing Professor Southall of serious criminal offences. However, complaints to the

Metropolitan Police, Hampshire, Sussex, Staffordshire and South Yorkshire had all resulted in initial inquiries being dropped.

The BBC said that the programme makers had also interviewed a number of parents who said they now regretted their involvement with Ms Mellor and that they believed she had used them for her own agenda.

The BBC said that it considered that it was editorially justified to include Ms Mellor in the programme and that she was portrayed in a fair and reasonable manner.

- a) In summary, the BBC responded to the complaint that Ms Mellor was portrayed unfairly as follows:
- i) The BBC said that Ms Mellor was found guilty of conspiracy to abduct a child and sentenced to two years in prison in 2002. The BBC said that her conviction was directly related to her campaign against child care professionals, such as Professor Southall, and so it was relevant to include the details in the programme. The BBC explained that Ms Mellor had encouraged a family to break the law and arranged for their child to be taken to Ireland to prevent it being taken into care. The BBC said that the judge who presided over her trial described her conduct as “wicked” and said that as a result of her actions, three members of the family “who were unlikely to have participated without your encouragement” had also been jailed. He also described Ms Mellor’s views on MSBP as “tiresome and eccentric”, her manipulation of the family of the child as “unforgiveable”, and said she showed a “cavalier disregard” for a previous High Court injunction.

The BBC said that the judge had heard all the evidence at Ms Mellor’s trial and that his remarks were an impartial assessment of her actions. The BBC believed that it was reasonable to include his remarks about her to give viewers a sense of her character and her motivation for campaigning against child care experts such as Professor Southall. The BBC said that it considered that the programme’s summary of the judge’s remarks was fair and accurate.

- ii) The BBC said that Ms Mellor had mounted a sustained public campaign against Professor Southall, calling into question his methods, his ethics and his conduct. It considered that it was justified to include the remarks of her trial judge to demonstrate that she was prepared to go to extreme lengths to achieve her aims, including breaking the law and encouraging others to do so. The BBC said that the programme’s portrayal of Ms Mellor was fair and accurate and said that the programme makers had gathered extensive evidence that Ms Mellor was the leading figure in the campaign against Professor Southall. This included:
- A confidential Metropolitan Police report about the allegations of Ms Mellor which characterised her as “a self-appointed advocate for women who have been accused of Munchausen Syndrome”, conducting a “rather insulting campaign against Professor Southall and other doctors through an internet bulletin board” and explaining “She has orchestrated a campaign of writing to MPs and police services to demand actions on her allegations”.
 - The minutes of a Strategy Group Meeting involving the police and the GMC which recorded the Metropolitan Police saying “The MAMA website

posted by Penny Mellor (PM) is relentless in pursuit of these doctors, particularly Dr Southall. The allegations are of murder, false consent, assault, administering CO₂. There are currently no enquiries being carried out within the Metropolitan Police Service into the allegations made by PM”.

- iii) The BBC said that the programme presented a fair and reasonable representation of Ms Mellor’s actions and motivation and had included an extract from an American documentary in which she explained how she had used the internet to publicise her concerns about the diagnosis of MSBP and to bring her campaign to the attention of the media. The BBC said that *Panorama* explained that “*she’d become known as a champion of those who had [had children taken away from them]*” and accurately reported how she had taken the law into her own hands on behalf of a family who had been concerned that their daughter was going to be taken into care.

The BBC considered that there was no unfairness to Ms Mellor in omitting from the programme the fact that she pleaded not guilty at her criminal trial. She was convicted by a jury and so her claim of innocence was immaterial.

- iv) The BBC said that the programme was an investigation into the allegations made against Professor Southall and whether he had been treated fairly and appropriately by the medical authorities. It gave a detailed summary of his initial suspension, his intervention in the Clarke case² and the subsequent decision of the GMC to remove him from the medical register. It considered the way the case against him had been handled, the use of expert witnesses and the reasons why he had lost his High Court appeal against his removal from the medical register. The BBC said that throughout the programme there were a number of interviews with Professor Southall in which he was challenged to explain and justify his actions and to respond to the claims made about him.

As part of this investigation, the BBC said that the programme highlighted the role played by Ms Mellor in drawing public attention to Professor Southall’s methods. The BBC said that this was editorially justified and in the public interest because Ms Mellor and her campaign were a significant factor in the allegations against Professor Southall which led to him being repeatedly investigated by the medical authorities. However, the BBC explained that this formed only a small part of the overall programme and that the programme did not give undue weight or emphasis to Ms Mellor’s involvement.

- v) The BBC said that Professor Southall conducted an interview with Mrs Mandy Morris in April 1998 on behalf of Shropshire County Council, after concerns were raised that she might be suffering from MSBP.

The BBC said that the programme did not say that Ms Mellor advised Mrs Morris specifically in relation to the evidence she gave to the GMC hearing, which was not held until 2006. The BBC considered that the programme had clearly referred to Professor Southall’s interview with Mrs Morris in 1998 and stated:

² Professor Southall accused solicitor Sally Clarke’s husband of murdering their two babies on the basis of a television documentary interview he had watched.

“... a little afterwards, and advised by the campaigner Penny Mellor, Mandy Morris made a serious allegation to the GMC about what she said had happened.”

The BBC said that the truth was that Ms Mellor had initiated contact with Mrs Morris in 1998 and had suggested that she should act as her advocate in connection with her complaint about Professor Southall. This was confirmed by Mrs Morris during her evidence to the GMC.

However, the BBC pointed out that the section of the hearing transcript which Ms Mellor had drawn attention to was, in fact, only one of the references to her in the course of Mrs Morris' evidence. The BBC said it did not give the full picture of Ms Mellor's contact with Mrs Morris.

The BBC said that while Mrs Morris may have written to the GMC on 15 March 2002, after Ms Mellor had been convicted of conspiracy to abduct a child, to say she did not wish Ms Mellor to “have anything to do with my complaint”, the BBC referred to the section of the transcript where it said that Mrs Morris confirmed she had previously written directly to her hospital trust in January 2000, authorising Ms Mellor to act as an advocate for herself and her son.

The BBC said that this made it clear that not only did Ms Mellor offer to act on Mrs Morris' behalf in her case, but that Mrs Morris agreed to this course of action and gave permission for Ms Mellor to have access to medical files relating to herself and her son. The BBC considered that it was indisputable that Ms Mellor sought to offer advice to Mrs Morris in relation to her complaint about Professor Southall and so there was no unfairness to Ms Mellor in referring to the fact that she had acted as an adviser to Mrs Morris at some point between April 1998 and March 2002.

- b) In summary, the BBC responded to Ms Mellor's complaint that her privacy was unwarrantably infringed in the making of the programme in that she was “doorstepped” by the programme makers as follows:

The BBC said that a producer first contacted Ms Mellor on 4 February 2009 via email to request her involvement in the programme. The BBC said that there was a short telephone conversation between Ms Mellor and the producer on 5 February 2009, following which Ms Mellor sent an email in which she apologised for being unable to take part in the programme because of half term and concluded with:

“I don't want to film or take part in anything at present”.

The BBC said that it believed that it was reasonable for the programme makers to assume from the email, and the tone in which it was written, that Ms Mellor remained open to the possibility of contributing to the programme at a later date. The producer therefore visited Ms Mellor on 18 February 2009, while in the Midlands on a separate matter. The BBC explained that it was standard journalistic practice to seek a face-to-face meeting where there were grounds to believe that a potential contributor might be persuaded to take part in a programme. The BBC did not regard this as an unwarranted infringement of Ms Mellor's privacy.

The BBC said that the producer was unaccompanied and, as there was no attempt to film or record Ms Mellor in any way, it did not consider that the visit fell within the generally understood meaning of the phrase “doorstep”. The BBC said that the producer did not question her on any matters of substance and left once Ms Mellor made it clear that she did not wish to speak.

- c) In summary, the BBC responded to Ms Mellor’s complaint that her privacy was unwarrantably infringed in the making of the programme in that she received a “threatening” email requesting an interview as follows:

The BBC confirmed that the senior producer of the programme sent an email to Ms Mellor on 5 May 2009. The BBC said that this followed two months of further investigation into the allegations made against Professor Southall and a number of interviews with him, in which he made specific allegations against Ms Mellor. The senior producer therefore contacted Ms Mellor to outline the allegations that it intended to broadcast in the programme and to give her a fair and timely opportunity to respond. The BBC said that the senior producer used an email address which Ms Mellor had previously used to communicate with the programme and which was included on her public blog site. The BBC said it believed that the offer of a “right to reply” was appropriate in the circumstances and it did not accept that it was an infringement of Ms Mellor’s privacy. The BBC said that the email from the senior producer had set out the allegations to be made in the programme in a polite and measured manner and that it did not believe that there was anything in the email which could legitimately be described as “threatening”.

The BBC said that it noted that Ms Mellor’s response to the email did not refer to the alleged “threatening” nature of the request and that it began by stating:

“I am sorry to seem so evasive on this matter”

and concluded with:

“Good luck!”.

Ms Mellor’s comments

In summary, and in response to the BBC’s statement, Ms Mellor commented as follows:

Ms Mellor said that she had always publicly stated that should parents have a problem with a doctor and could prove wrongdoing on the part of that professional, they should report them, but that was not the same as encouraging parents involved to make repeated complaints. Ms Mellor also said that she only began challenging Professor Southall’s work when she moved to Staffordshire in 1998.

Referring to the BBC’s statement that the programme makers had obtained statements from parents, who now regretted their involvement with her, Ms Mellor said she considered the statements were irrelevant to her complaint. She didn’t believe it was justified to portray her on the basis of evidence that hadn’t been aired and couldn’t be addressed, as she could not verify the veracity or the truthfulness of those that had allegedly made those statements.

- a) In summary, Ms Mellor commented on the BBC’s statement in response to her complaint that she was portrayed unfairly as follows:

- i) Ms Mellor said that she had appealed to the Court of Appeal against both conviction and sentence and that the Court of Appeal judges viewed her character entirely differently to her trial judge and said so.

Ms Mellor said that her appeal against conviction was of relevance to her persistent claims of innocence which were not reflected in the programme.

Ms Mellor said that the Court of Appeal judgment revealed that her trial judge had called her names prior to her standing trial before him and that at one point the judgment stated:

“The judge at one stage, and this is undoubtedly correct, had described the appellant as a “dangerous eccentric” and accepted that he had made that derogatory comment.”

Ms Mellor said that she did not consider her trial judge was impartial, as the reduction in sentence and the acceptance that the trial judge had made a number of derogatory remarks against her, painted an entirely different picture. Ms Mellor said that the Court of Appeal does not quash a sentence and reduce it by six months without very good reason to do so, in this case she said that they felt her sentence was too harsh.

Ms Mellor said that she considered the programme gave an entirely unfair portrayal of the circumstances and her “motives”.

- ii) Ms Mellor said she had never seen the documents referred to in the BBC’s statement and she could not therefore address the specific comments.

Ms Mellor said that she had never encouraged others to break the law and would not do so.

- iii) Ms Mellor said that having brought into play her conviction and the trial judge’s remarks about her, her claims of innocence were of equal value to Professor Southall’s protestations of innocence and victimisation, even more so, given that Professor Southall singled her out. Ms Mellor said *Panorama* used her trial judge’s remarks to portray her in a certain manner and then failed to caveat that with the Court of Appeal reducing her sentence, including the clearly biased view her trial judge had of her prior to her trial before him, and adding the other remarks made by the Court of Appeal.

- v) Ms Mellor said that as far as Mrs Morris was concerned, she considered that the transcripts spoke for themselves. Ms Mellor said that Mrs Morris was a nurse and that Ms Mellor did not need to “help” Mrs Morris do anything as she was more than aware of how to make a complaint and who to make it to, as a member of the medical profession.

Ms Mellor said that Mrs Morris had gone public in a woman’s magazine about Professor Southall, talking about what had happened to her and how she was going to take matters further prior to Ms Mellor’s involvement with her. Ms Mellor said that it was through that article that she tracked Mrs Morris down. Ms Mellor said that she did not encourage Mrs Morris to do anything, and that Mrs Morris was already making complaints herself.

Ms Mellor explained why she contacted Mr Morris. Ms Mellor said that she had instigated an unrelated complaint against Professor Southall on behalf of a falsely accused parent. As part of that complaint she wanted to refer to medical evidence in other cases, but was uncomfortable discussing personal details in those cases without the parties' consent. Ms Mellor said that was the reason she obtained permission to act as advocate on behalf of Mrs Morris, but that was her one and only involvement with Mrs Morris.

- b) In summary, Ms Mellor commented in response to the BBC's statement about her "doorstepping" complaint as follows:

Ms Mellor said that because she politely said in emails that she did not wish to participate, it did not mean that she was saying "if you're in the area give me a knock in case I change my mind". Ms Mellor said that if she had been rude or blunt, she had no way of knowing how those emails would have been portrayed in the programme. Ms Mellor said that she politely told the programme makers that she was not taking part and she meant it. Ms Mellor said that she was extremely angry that they turned up at her door. Ms Mellor said that they had her telephone contact details and could have phoned her prior to turning up to see if it was convenient or emailed, but they didn't.

- c) In summary, Ms Mellor commented in response to the BBC's statement about a "threatening" email as follows:

Ms Mellor said that she felt as if she was being told, "either give us your version or we're going out with this version". Ms Mellor said that the programme makers couldn't reasonably expect her to email them back stating "I feel threatened". Ms Mellor said that she could, however, provide a significant amount of witnesses who would state that she felt threatened by the email. Ms Mellor said that the "Good Luck" comment was sarcastic, hence the exclamation mark.

The BBC's final response

In summary, and in response to Ms Mellor's comments, the BBC said it noted that Ms Mellor did not appear to deny making the extreme and public allegations against Professor Southall which were highlighted in the programme. The BBC said it had referred to the comments made by various parents in its statement to illustrate the extent of the evidence the programme makers had to justify the claims made about Ms Mellor. The BBC said that the comments were not broadcast in the programme and so there was no requirement to provide details to Ms Mellor.

- a) In summary, the BBC responded to Ms Mellor's comments in respect of the complaint that she was unfairly portrayed as follows:
- i) The BBC said that Ms Mellor was found guilty by the jury at her trial and it did not believe it was unfair to Ms Mellor to have accurately summarised the judge's conclusions.

The BBC said that from the copy of the Court of Appeal judgment, the judges who heard her appeal did not find any grounds to support her claim that the trial judge was biased in any way. The BBC said that the Court of Appeal's conclusion was:

"For all those reasons we have come to the view that there is nothing in any of these detailed grounds of appeal. The judge was justified in

continuing to hear the case. The summing-up contained nothing which was defective or wrong in law, and there is nothing, in our judgement, about the conviction which followed which is even arguably unsafe.”

The BBC said that Ms Mellor’s conviction was not overturned on appeal and so it did not believe there was any unfairness to Ms Mellor in not referring directly to her appeal.

- ii) The BBC said that it was generally understood and accepted that journalists use information provided on a confidential basis to inform their investigations. The information summarised in the BBC’s statement, and used to justify the allegations made about Ms Mellor, was provided on just such a confidential basis and so the programme had no obligation to provide copies to Ms Mellor.
- v) The BBC said it noted that Ms Mellor had provided no evidence to support her explanation that the reason she asked Mrs Morris to allow access to her personal medical files was so that Ms Mellor could refer to them when giving evidence in an unrelated hearing. The BBC said it believed this was contradicted by the evidence already presented.

The BBC said that Ms Mellor had confirmed in her submissions in this matter that she sought out Mrs Morris, apparently on the basis of an article in a magazine, and referred to “my involvement with her”. The BBC said that this suggested, at the very least, a degree of personal interaction which went beyond a single conversation.

The BBC said that it believed it was accurate for the programme to state that Mrs Morris was “advised” by Ms Mellor and that there was no unfairness to Ms Mellor as a result.

Decision

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

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.

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

Unfair treatment

- a) Ofcom first considered the complaint that Ms Mellor was treated unfairly in the programme as broadcast in that she was portrayed unfairly.

Ofcom considered whether the programme makers' actions ensured that the programme as broadcast avoided unjust or unfair treatment of an individual, as set out in Rule 7.1 of the Ofcom Broadcasting Code ("the Code"). In particular, Ofcom considered whether the programme makers took reasonable care to satisfy themselves that material facts were not presented, disregarded or omitted in a way that was unfair to an individual (as outlined in Practice 7.9 of the Code). Taking this Practice into account, Ofcom addressed separately each of Ms Mellor's individual points of complaint under this head concerning the programme's treatment of her.

- i) Ofcom first addressed the complaint that the programme broadcast only the most disparaging remarks made by the judge following Ms Mellor's criminal conviction in March 2002 and omitted the more complimentary remarks made about her in the Court of Appeal and in the pre-sentence report prepared by the probation service.

Ofcom noted that the programme stated:

"Sentencing her, the Judge had this to say about Penny Mellor: 'Impervious to debate, convinced that you are right, you have traduced, complained about and harried dedicated professional people. You manipulated the genuine distress of the family ... you were pursuing your own agenda.'"

Ofcom also considered the transcript of the judge's sentencing remarks provided by the BBC and noted that it also included words such as "wicked" and "unforgivable". It also referred to two aspects of the case that the Court of Appeal considered were particularly aggravating features: the undoubted distress and additional trauma suffered by the child as a result of the events substantially engineered by Ms Mellor, and that members of the child's family were persuaded to a course of criminal conduct which resulted in not insubstantial prison sentences, an outcome that may not have occurred but for Ms Mellor's involvement.

Ofcom noted Ms Mellor's suggestion that the judge's sentencing remarks could not be relied upon as a fair portrayal of her because, as demonstrated by the Court of Appeal judgment, the judge was not impartial. However, not only did Ofcom consider that there was no support for such a suggestion in the judgment of the Court of Appeal, but as the question of the trial judge's impartiality did not form part of Ms Mellor's complaint, Ofcom did not need to consider the suggestion further.

Ofcom did note that more complimentary remarks about Ms Mellor were made in both the judgment of the Court of Appeal and in her pre-sentence report. Ofcom considered that the references could be best summed up as falling into three categories:

- Ms Mellor's undoubted passion and genuine commitment to the welfare of children whose parents were accused of abuse had led to her current situation;
- Ms Mellor was of good character with no previous convictions; and

- since imprisonment, Ms Mellor had been an exemplary and trusted prisoner with an open and polite manner.

Ofcom next considered whether the more complimentary remarks amounted to material facts in the context of the programme.

Ofcom noted that the programme was an investigation into the allegations made against Professor Southall and whether he had been treated fairly and appropriately by the medical authorities. It looked at how the publicity and complaints generated by campaigners, including Ms Mellor, had led to repeated investigations by the medical authorities. It included a detailed summary of his initial suspension, his intervention in the Clarke case and the subsequent decision of the GMC to remove him from the medical register. It also considered the way the case against him had been handled and the reasons why he lost his High Court appeal against the GMC's decision.

Ofcom recognised that deciding what to include or exclude from a programme is a matter of editorial discretion, provided the broadcaster complies with its obligation to ensure that the programme as broadcast does not result in unfairness to an individual or organisation.

Ofcom noted that in exercise of its editorial discretion, the BBC only broadcast the remarks of the trial judge which illustrated the nature of the opposition faced by Professor Southall and the lengths Ms Mellor had gone in pursuit of her firmly held belief that there was no such thing as MSPB and that it was a misdiagnosis designed to cover up medical negligence. Ofcom noted that the BBC chose not to broadcast those remarks made by the trial judge that Ofcom considered were more critical of Ms Mellor, but which did not illustrate that point.

In Ofcom's view, none of the more complimentary remarks about Ms Mellor referred to above related to or materially counterbalanced the impact of the remarks of the trial judge that were included in the programme and, in Ofcom's view, did not therefore amount to material facts, the omission of which resulted in unfairness to Ms Mellor.

Ofcom therefore found no unfairness to Ms Mellor in this respect.

- ii) Ofcom next addressed the complaint that the programme gave more credence to the judge's comments in sentencing Ms Mellor than it did to the judge's comments in rejecting Professor Southall's appeal. In order to establish whether Ms Mellor was portrayed unfairly in respect of these comments, it was only necessary for Ofcom to consider the programme's portrayal of Ms Mellor.

Ofcom noted the sentencing remarks of Ms Mellor's trial judge included in the programme as broadcast as set out in decision head a)i) above.

Ofcom also considered the context in which the sentencing remarks had been broadcast as referred to in decision head a)i) above. The remarks appeared in a programme primarily about Professor Southall and were included to give an indication of the nature of the opposition he had faced from campaigners, including Ms Mellor.

Ofcom also took into account the evidence that the programme makers had obtained about the activities and allegations of Ms Mellor and from parents who, with hindsight, believed she had used them for her own agenda, all of which verified the judge's sentencing remarks.

In all the circumstances, and in the absence of anything to cast doubt on the sentencing remarks of the judge included in the programme, Ofcom was satisfied that the programme makers had taken reasonable care when broadcasting the remarks not to present, omit or disregard material facts in a way that was unfair to Ms Mellor.

Ofcom therefore found no unfairness to Ms Mellor in this respect.

- iii) Ofcom next addressed the complaint that Ms Mellor was portrayed as being guilty and Professor Southall as innocent. In order to establish whether Ms Mellor was portrayed unfairly in respect of her guilt, it was only necessary for Ofcom to consider the programme's portrayal of Ms Mellor.

Ofcom noted Ms Mellor's complaint that she had always protested her innocence and that it was unfair to her not to have referred to that in the programme.

Ofcom considered whether it was unfair to Ms Mellor to portray her as guilty of the criminal offence for which she was convicted, which conviction was not overturned on appeal.

Ofcom took into account the fact that, in exercising their editorial discretion, the programme makers considered it was relevant to give some indication of the nature of the opposition Professor Southall had faced from campaigners, including Ms Mellor, and that they had referred to Ms Mellor's criminal conviction in order to do so.

Ofcom also noted that in response to the programme makers' email of 5 May 2009 to Ms Mellor which outlined the allegations they were likely to make about her in the programme and gave her an opportunity to respond, Ms Mellor did not inform the programme makers of her protestations of innocence or anything else that could have cast doubt upon her conviction.

In light of the above factors, Ofcom was satisfied that the programme makers took reasonable care when referring to Ms Mellor's conviction, not to present, omit or disregard material facts in a way that was unfair to Ms Mellor.

Ofcom therefore found no unfairness to Ms Mellor in this respect.

- iv) Ofcom next addressed the complaint that the programme spent more time exposing Ms Mellor and her alleged motives than it did exposing Professor Southall. In order to establish whether Ms Mellor was treated unfairly in this respect it was only necessary for Ofcom to consider the programme's portrayal of Ms Mellor.

Ofcom noted that references to Ms Mellor represented only a relatively minor part of the programme as broadcast and that the programme did not spend more time referring to Ms Mellor than Professor Southall.

Ofcom also noted that the programme makers considered that it was relevant to give some indication of the nature of the opposition Professor Southall had faced from campaigners, including Ms Mellor.

In reaching its decision about this complaint, Ofcom weighed up the programme makers' right to use their editorial discretion when deciding what should be included in the programme and how the report should be presented with the need for the programme makers to present material facts in a fair way.

In Ofcom's view, the references to Ms Mellor in the programme were neither excessive nor beyond the limits of editorial discretion and, as a consequence, Ofcom was satisfied that the programme makers took reasonable care not to present material facts in a way that was unfair to Ms Mellor.

Ofcom therefore found no unfairness to Ms Mellor in this regard.

- v) Ofcom next addressed the complaint that the programme wrongly stated that Ms Mellor had advised Mrs Morris about what to say in her complaint to the GMC.

Ofcom noted that the programme stated:

"What did Professor Southall say to Mandy Morris? ... because a little afterwards, and advised by the campaigner Penny Mellor, Mandy Morris made a serious allegation to the GMC about what she said had happened..."

In Ofcom's view the programme did not state that Ms Mellor had advised Mrs Morris about what to say in her complaint to the GMC. In fact, it merely stated that Ms Mellor had advised Mrs Morris.

Ofcom noted that in her complaint to Ofcom, Ms Mellor said that she had "helped Mrs Morris very briefly", which appeared to confirm the statement made in the programme that Ms Mellor had advised Mrs Morris.

Ofcom also noted Ms Mellor's subsequent explanation of her contact with Mrs Morris, but as Ofcom is not a fact finding body and, in this case it was only necessary for it to determine whether at the time of broadcast the programme makers took reasonable care in presenting material facts, Ofcom did not believe it was necessary for it to consider or make a finding as to Ms Mellor's actual relationship with Mrs Morris.

Ofcom considered whether, in stating that Ms Mellor advised Mrs Morris, the programme makers took reasonable care to satisfy themselves that material facts were not presented in a way that was unfair to Ms Mellor.

Ofcom noted that the programme makers' email of 5 May 2009 to Ms Mellor which outlined the allegations they were likely to make about her in the programme and gave her an opportunity to respond, stated:

"Since you were one of the leaders of the campaign, who coordinated many of the complaints against him [Professor Southall] (and acted as Advocate for some complainants, including Mandy Morris, in complaints to the GMC), we were very keen to examine all of the evidence ..."

Ofcom also noted that while Ms Mellor addressed this point in her email in response, she declined to clarify what her involvement with Mrs Morris had been, merely stating:

“With regard to the allegation regarding Mrs M[orris], I suggest you read the transcripts of the GMC hearing before you continue along these lines.”

Ofcom considered the transcript of the evidence Mrs Morris gave to the GMC so far as it referred to Ms Mellor and noted that in the first reference to Ms Mellor, Mrs Morris confirmed that at some point after April 1998 she had been contacted by Ms Mellor who had wanted to become an advocate for her in relation to complaints relating to Professor Southall.

Ofcom noted that in the second reference to Ms Mellor, and the extract relied upon by Ms Mellor, Mrs Morris stated that her contact with Ms Mellor amounted to one communication which she took no further and that her letter of complaint to the GMC dated 15 March 2002 stated:

“I am writing further to our telephone conversation regarding the possibility of a Ms Penny Mellor writing to you on my behalf i.e. a complaint against Professor David Southall, North Staffordshire Hospital. I wish to inform you that I DO NOT want Ms Mellor to have anything to do with my complaint with which I will explain to you now.”

Ofcom noted that in the final reference to Ms Mellor, and the extract relied upon by the BBC, Mrs Morris confirmed that she had written a letter to the hospital trust on 10 January 2000 in the following terms:

“To whom it may concern.
I ... give permission for Penny Mellor to advocate for myself and my son.
... I also give permission for Penny Mellor to have access to any medical files or any other files relating to myself or my son.”

In Ofcom’s view, the transcript made clear that Ms Mellor contacted Mrs Morris between April 1998 and 10 January 2000 offering to act as advocate for her. Mrs Morris then wrote to the hospital trust giving permission for Ms Mellor to act as advocate for both Mrs Morris and her son and for Ms Mellor to have access to their medical and other records. Then on 15 March 2002 (shortly after Ms Mellor’s criminal conviction) Mrs Morris wrote to the GMC stating that she did not want Ms Mellor to have anything to do with her complaint to the GMC. Ofcom noted that the letter began by stating:

“... further to our telephone conversation regarding the possibility of a Ms Penny Mellor writing to you on my behalf i.e. a complaint against Professor David Southall, North Staffordshire Hospital.”

This suggested to Ofcom that there had been a conversation between Mrs Morris and the recipient of the letter at a time when Mrs Morris anticipated Ms Mellor would be making her complaint to the GMC for her.

Ofcom noted that the programme makers had put their claim about Mrs Morris to Ms Mellor in their email of 5 May 2009 and had given her an appropriate and timely opportunity to respond. Ms Mellor’s response, rather than inform the programme makers of the nature and purpose of her contact

with Mrs Morris, warned them that they may have got their claim wrong and referred the programme makers to the GMC transcript. Ofcom noted that between putting their claim to Ms Mellor and the broadcast of the programme, the programme makers changed their claim from one that Ms Mellor acted as Advocate for Mrs Morris in her complaint to the GMC to a claim that Ms Mellor had advised Mrs Morris.

In Ofcom's view, the transcript of the evidence of Mrs Morris to the GMC suggested, at least, that Ms Mellor had offered advice to Mrs Morris. In the circumstances, Ofcom was satisfied that in stating Ms Mellor advised Mrs Morris, the programme makers had taken reasonable care to satisfy themselves that material facts were not presented in a way that was unfair to Ms Mellor.

Ofcom did not therefore consider that Ms Mellor had been treated unfairly in this respect.

Privacy

- b) Ofcom then considered the complaint that Ms Mellor's privacy was unwarrantably infringed in the making of the programme in that she was "doorstepped" by the programme makers, despite the fact that she had already informed them by telephone and by email that she did not wish to take part in the programme.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about 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.

In considering this complaint, Ofcom also took account of the definition in the Code of "doorstepping" which states that it is the filming or recording of an interview or attempted interview with someone without any prior warning.

Ofcom noted that while the producer's visit to Ms Mellor was without prior warning, he made no attempt to film or record Ms Mellor. In the circumstances, Ofcom did not consider that his visit came within the definition of doorstepping in the Code and proceeded to consider this head of complaint as a complaint about an unwanted visit, rather than a complaint about doorstepping.

Ofcom then considered whether Ms Mellor had a legitimate expectation of privacy in the circumstances.

While Ofcom recognised that individuals generally have an expectation of privacy in their homes, it considered whether Ms Mellor had a legitimate expectation of privacy in the sense that she legitimately expected she would not receive an unsolicited or unwanted visit to her front door from the programme makers.

Ofcom noted that there was no indication that Ms Mellor had prohibited access to her front door and, in the circumstances, considered she had no legitimate expectation that she would not generally receive unwanted visitors.

In relation to the programme makers, Ofcom reviewed the exchange of emails between Ms Mellor and the producer prior to his visit on 18 February 2009 and noted the relevant parts of Ms Mellor's email to the programme makers of 5 February 2009 which stated:

"I haven't got time at present, half term etc, really sorry about this..."

"I don't want to film or take part in anything at present".

In Ofcom's view, there was nothing in Ms Mellor's email that suggested she wished to discourage or prohibit the programme makers from visiting her at home or would never be open to participating in the programme in the future. In the circumstances, Ofcom considered that Ms Mellor did not have had a legitimate expectation that she would not receive an unwanted visit from the programme makers.

Having concluded that Ms Mellor had no legitimate expectation of privacy in relation to a visit from the programme makers, Ofcom found that Ms Mellor's privacy was not infringed by the producer's visit on 18 February 2009, and it was not necessary for Ofcom to further consider whether any infringement of privacy was warranted.

- c) Finally, Ofcom considered the complaint that Ms Mellor's privacy was unwarrantably infringed in the making of the programme in that even though Ms Mellor told the programme makers that she would not take part in the programme and to leave her alone, she received a "threatening" email on 5 May 2009 from the producer requesting an interview.

In considering this complaint, Ofcom took account Rule 8.1 of the Code.

Ofcom considered Ms Mellor's email to the programme makers sent shortly after the visit of the producer on 18 February 2009, the relevant sections of which stated:

"It compounds my decision not to take part in this documentary."

"I want this to stop ...".

Ofcom noted that the email indicated that Ms Mellor did not wish to take part in the programme and did not wish to be contacted further about it.

Ofcom then considered the programme makers' email of 5 May 2009, two and a half months later, which Ofcom noted was sent by the programme makers to Ms Mellor in compliance with their obligation to give her an appropriate and timely opportunity to respond to serious allegations about her that they were likely to include in the programme. In Ofcom's view, the email set out the allegations the programme makers were proposing to broadcast in a clear and reasonable manner and gave Ms Mellor an opportunity to respond. Although Ofcom noted that Ms Mellor said she felt threatened by the email, Ofcom did not consider there was anything in the email that objectively could be characterised as threatening.

Ofcom then considered whether Ms Mellor had a legitimate expectation of privacy in the circumstances.

While Ofcom recognised that individuals generally have an expectation of privacy in their homes, it considered whether Ms Mellor had a legitimate expectation of privacy in the sense that she legitimately expected she would not receive unsolicited or unwanted communications to her email address.

Ofcom noted that the email address used by the programme makers to contact Ms Mellor on 5 May 2009 was an email address that Ms Mellor had previously used to communicate with them, which she had not requested the programme makers to stop using and which Ms Mellor had voluntarily placed in the public domain via her public blog site.

In the circumstances, Ofcom considered that Ms Mellor did not have had a legitimate expectation that she would not receive unwanted emails from the programme makers or anyone else at that email address. Having concluded that Ms Mellor had no legitimate expectation of privacy in relation to her email address, Ofcom found that Ms Mellor's privacy was not infringed by the programme makers' email of 5 May 2009, and it was not necessary for Ofcom to further consider whether any infringement of privacy was warranted.

Accordingly Ofcom has not upheld Ms Mellor's complaint of unfair treatment in the programme as broadcast and of unwarranted infringement of privacy in the making of the programme.

Not Upheld

Complaint by Miss Sandeep Bhardwaj

London Tonight, ITV1, 3 June 2009

Summary: Ofcom has not upheld this complaint of unwarranted infringement of privacy made by Miss Sandeep Bhardwaj.

This regional news programme featured an item about Miss Bhardwaj's conviction for parking-related offences. The item included a photograph of Miss Bhardwaj and surveillance footage of her car. Miss Bhardwaj complained that her privacy was unwarrantably infringed in the making and broadcast of the programme.

In summary Ofcom found that, because of Miss Bhardwaj's criminal offences, for which she was convicted and which were a matter of public record, she did not have a legitimate expectation of privacy in relation to the obtaining and use of images for the programme. In these circumstances, the broadcaster was not required to seek her consent to the broadcast of the photograph and surveillance footage.

Introduction

On 3 June 2009, ITV broadcast an edition of its regional news programme *London Tonight*, which included a report about the conviction of a council worker, Miss Sandeep Bhardwaj, for illegally using a fake disabled badge to park outside her office.

The report included a photograph of Miss Bhardwaj and images of her car, including close up shots of the registration number plate. The programme presenter stated that:

"A council worker who used a fake disabled badge to park outside her office was fined £250 today and ordered to pay more than a £1000 in costs. Sandeep Bhardwaj, who worked in the parking department of Harrow council, was caught parking her car illegally six times in a fortnight".

Miss Bhardwaj complained to Ofcom that her privacy was unwarrantably infringed in the making and broadcast of the programme.

The Complaint

Miss Bhardwaj's case

In summary, Miss Bhardwaj complained that her privacy was unwarrantably infringed in the making of the programme in that:

- a) A photograph of her was obtained and her car and its registration number plate were filmed for the news report. Miss Bhardwaj said that she did not supply the photograph to anyone for the purposes of broadcasting it as part of the news item, nor did she give permission for her car and its registration number plate to be filmed.

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

- b) Her privacy was infringed as a result of the broadcast of her photograph and footage of her car and its registration number plate.

ITV's case

ITV provided a statement in response on behalf of ITN for the London regional Channel 3 service.

- a) In response to the complaint of unwarranted infringement of privacy in the making of the programme, ITV said that the surveillance footage and the photograph of Miss Bhardwaj that were included in the programme were provided by the council that brought the prosecution. It said that it was common practice for prosecuting authorities to make available to the media photographs of the defendant and key items of evidence to assist in the reporting of court proceedings. The photograph and footage was provided by the council to inform the public about the case, which had been heard in the public forum of a criminal court.

ITV said that informing the public of criminal convictions was an important part of news reporting, to ensure the public were made aware of crime in the community and to act as a deterrent to others. ITV said that there could be no legitimate expectation of privacy for a defendant in relation to the obtaining of a photograph identifying them as the convicted person or surveillance footage as evidence of their offence in the context of a report about their admitted criminal activity and that Miss Bhardwaj's consent was not required for the footage to be obtained.

- b) In response to the complaint of unwarranted infringement of privacy in the programme as broadcast, ITV said that Miss Bhardwaj had no expectation of privacy. It was legitimate to identify her using her photograph and to include footage of her car and number plate as these were central to the facts of her conviction. ITV said it would be unreasonable to suggest that a news organisation needed consent from a defendant in a criminal case in order to include a photograph of them or filmed evidence used to secure their conviction in a news report about that conviction. ITV said that, in these circumstances, no permission was requested or obtained from Miss Bhardwaj, the use of the material did not infringe Miss Bhardwaj's privacy and it was warranted to include the material in order to identify her to the public as the person convicted of the offence.

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.

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

- a) Ofcom first considered the complaint that Miss Bhardwaj's privacy was unwarrantably infringed in the making of the programme in that a photograph of her and footage of her car and its registration number plate were obtained for the news report.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy, Ofcom 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 Ofcom's Broadcasting Code ("the Code") which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted. Ofcom also had regard to Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with the person's consent or be otherwise warranted.

In considering whether Miss Bhardwaj's privacy was infringed in the making of the programme, Ofcom first considered whether she had a legitimate expectation of privacy in respect of the material that was obtained and whether any expectation was affected by the way it was obtained. Ofcom noted that her photograph and the footage of her car and its registration number plate were provided to the programme makers by the council that brought the prosecution, and that the footage was the surveillance material used as evidence in the case. This was provided by the council in accordance with normal practice for court reporting, it was in the public domain, and it related to offences to which Miss Bhardwaj pleaded guilty. In Ofcom's view, given that the footage related to criminal offences committed by Miss Bhardwaj and that it was provided by the prosecuting authority, Miss Bhardwaj did not have a legitimate expectation of privacy in relation to the material or the way in which this material was obtained nor was her consent required for the release of photograph or footage by the council.

Having concluded that Miss Bhardwaj did not have a legitimate expectation of privacy, Ofcom found that her 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.

- b) Ofcom next considered the complaint that Miss Bhardwaj's privacy was unwarrantably infringed in the broadcast of the programme.

In considering this complaint Ofcom took into account Practice 8.6 of the Code which includes 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 is warranted.

Ofcom again considered first whether Miss Bhardwaj had a legitimate expectation of privacy. Ofcom noted that Miss Bhardwaj was convicted of offences relating to parking her car illegally in an area reserved for disabled drivers, whilst working for the council's parking department. Her conviction was a matter for public record and the inclusion of her photograph and the footage was directly relevant to the report, which did not reveal any information of a private nature. In these circumstances, Ofcom found that Miss Bhardwaj did not have a legitimate expectation of privacy in relation to the use of her photograph of the footage of her car in the programme as broadcast.

Having concluded that Miss Bhardwaj did not have a legitimate expectation of privacy, Ofcom concluded that her privacy was not infringed in the broadcast of the programme. It was not therefore necessary for Ofcom to further consider whether any infringement of privacy was warranted.

Accordingly Ofcom has not upheld Miss Bhardwaj's complaint of unwarranted infringement of privacy in either the making or broadcast of the programme.

Other Programmes Not in Breach

Up to 30 November 2009

Programme	Transmission Date	Channel	Category	Number of complaints
50 Cent ft Justin Timberlake	17/10/2009	TMF	Sex/Nudity	1
Akash Radio	26/08/2009	Akash Radio	Due Impartiality/Bias	1
Any Questions	14/11/2009	BBC Radio 4	Generally Accepted Standards	1
Beautiful People	24/11/2009	BBC 1	Religious Offence	1
Best Ever Worst Dance Moments	21/11/2009	ITV1	Generally Accepted Standards	1
Breakfast	12/11/2009	BBC 1	Generally Accepted Standards	1
Breakfast	06/11/2009	96.3 Rock Radio	Offensive Language	1
Cast Offs (trailer)	19/11/2009	Channel 4	Generally Accepted Standards	1
Cast Offs (trailer)	24/11/2009	Channel 4	Offensive Language	1
Cast Offs (trailer)	24/11/2009	E4	Offensive Language	1
Channel 4 News	14/11/2009	Channel 4	Violence	1
Chris Moyles	05/11/2009	BBC Radio 1	Generally Accepted Standards	2
Clueless	15/11/2009	Channel 4	Offensive Language	1
Coach Trip	08/11/2009	Sky Three	Generally Accepted Standards	1
Come Dine with Me	21/11/2009	Channel 4	Offensive Language	4
Comedy Showcase	06/11/2009	Channel 4	Generally Accepted Standards	5
Confessions Of A Traffic Warden	19/11/2009	Channel 4	Generally Accepted Standards	1
Continuity	12/11/2009	E4	Inaccuracy/Misleading	1
Coronation Street	11/11/2009	ITV1	Generally Accepted Standards	57
Coronation Street	13/11/2009	ITV1	Generally Accepted Standards	3
Coronation Street	05/11/2009	ITV1	Generally Accepted Standards	1
Coronation Street	23/11/2009	ITV1	Inaccuracy/Misleading	1
Coronation Street	16/11/2009	ITV1	Violence	1
CSI: New York	24/11/2009	Five	Violence	1
Deal or No Deal	24/11/2009	Channel 4	Generally Accepted Standards	1
Deal or No Deal	17/11/2009	Channel 4	Generally Accepted Standards	1
Derren Brown Presents The 3D Magic Spectacular	16/11/2009	Channel 4	Animal Welfare	1
Derren Brown Presents The 3D Magic Spectacular	16/11/2009	Channel 4	Suicide/Self Harm	1
Derren Brown: How to Control The Nation	18/09/2009	Channel 4	Unconscious influence/hypnosis/subliminal	5
Dispatches: Who Took Your Pension?	05/10/2009	Channel 4	Inaccuracy/Misleading	2
Doctor Who	15/11/2009	BBC 1	Generally Accepted	5

			Standards	
Emmerdale	19/11/2009	ITV1	Dangerous Behaviour	1
Extraordinary Breastfeeding	03/11/2009	Watch	Generally Accepted Standards	1
FA Cup Replay Live	11/11/2009	ITV4	Offensive Language	2
Fiddles, Cheats and Scams	10/11/2009	ITV1	Generally Accepted Standards	1
Generation Kill	12/11/2009	Channel 4	Advertising	1
George Galloway	06/11/2009	Talksport	Generally Accepted Standards	2
Harry Hill's TV Burp	21/11/2009	ITV1	Generally Accepted Standards	12
Harry Hill's TV Burp	21/11/2009	ITV1	Harm/Food	1
Hit40UK	17/11/2009	4 Music	Violence	1
Hollyoaks Omnibus	15/11/2009	Channel 4	Under 18's in Programmes	1
Hot Sexy Girls	16/10/2009	4Music	Sex/Nudity	1
Hotel Room Service	16/10/2009	Chart Show TV	Sex/Nudity	1
How to Look Good Naked	17/11/2009	Channel 4	Sex/Nudity	2
I'm a Celebrity, Get Me Out of Here Now!	17/11/2009	ITV2	Animal Welfare	2
I'm a Celebrity, Get Me Out of Here Now!	22/11/2009	ITV2	Generally Accepted Standards	1
I'm a Celebrity, Get Me Out of Here Now!	16/11/2009	ITV2	Sex/Nudity	2
I'm a Celebrity, Get Me Out of Here!	18/11/2009	ITV1	Advertising	1
I'm a Celebrity, Get Me Out of Here!	16/11/2009	ITV1	Animal Welfare	2
I'm a Celebrity, Get Me Out of Here!	18/11/2009	ITV1	Animal Welfare	10
I'm a Celebrity, Get Me Out of Here!	19/11/2009	ITV1	Animal Welfare	2
I'm a Celebrity, Get Me Out of Here!	20/11/2009	ITV1	Animal Welfare	9
I'm a Celebrity, Get Me Out of Here!	22/11/2009	ITV1	Animal Welfare	1
I'm a Celebrity, Get Me Out of Here!	21/11/2009	ITV1	Animal Welfare	11
I'm a Celebrity, Get Me Out of Here!	26/11/2009	ITV1	Animal Welfare	1
I'm a Celebrity, Get Me Out of Here!	27/11/2009	ITV1	Animal Welfare	1
I'm a Celebrity, Get Me Out of Here!	15/11/2009	ITV1	Commercial References	1
I'm a Celebrity, Get Me Out of Here!	16/11/2009	ITV1	Generally Accepted Standards	2
I'm a Celebrity, Get Me Out of Here!	17/11/2009	ITV1	Generally Accepted Standards	6
I'm a Celebrity, Get Me Out of Here!	18/11/2009	ITV1	Generally Accepted Standards	20
I'm a Celebrity, Get Me Out of Here!	19/11/2009	ITV1	Generally Accepted Standards	7
I'm a Celebrity, Get Me Out of Here!	21/11/2009	ITV1	Generally Accepted Standards	1
I'm a Celebrity, Get Me Out of Here!	22/11/2009	ITV1	Generally Accepted Standards	2

I'm a Celebrity, Get Me Out of Here!	24/11/2009	ITV1	Generally Accepted Standards	1
I'm a Celebrity, Get Me Out of Here!	22/11/2009	ITV1	Sex/Nudity	1
I'm a Celebrity, Get Me Out of Here!	19/11/2009	ITV1	Sex/Nudity	1
I'm a Celebrity, Get Me Out of Here!	19/11/2009	ITV1	Undue Prominence	1
I'm a Celebrity, Get Me Out of Here!	18/11/2009	ITV1	Use of Premium Rate Numbers	1
I'm Sorry I Haven't a Clue	16/11/2009	BBC Radio 4	Offensive Language	1
In the Line of Fire	18/11/2009	ITV1	Due Impartiality/Bias	1
In the Line of Fire	18/11/2009	ITV1	Generally Accepted Standards	1
Inside Out Yorkshire and Lincolnshire	02/11/2009	BBC 1	Sex/Nudity	1
James Whale Show	12/11/2009	LBC 97.3	Generally Accepted Standards	1
John Sergeant on The Tourist Trail	17/11/2009	ITV1	Generally Accepted Standards	1
Jonathan Lampon	16/11/2009	BBC Radio London 94.9 FM	Generally Accepted Standards	1
Jonotar Moncho	10/11/2009	Bangla TV	Inaccuracy/Misleading	1
Killer in the Family (trailer)	11/11/2009	History HD	Inaccuracy/Misleading	1
Lady Ga Ga	11/11/2009	Clubland TV	Sex/Nudity	1
Little Shop of Horrors	22/11/2009	Living	Offensive Language	1
Live Ford Super Sunday	08/11/2009	Sky Sports 1	Generally Accepted Standards	2
Live from Studio Five	16/11/2009	Five	Generally Accepted Standards	3
Loose Women	24/11/2009	ITV1	Offensive Language	1
Match of the Day	07/11/2009	BBC 1	Flashing images	1
Match of the Day 2	22/11/2009	BBC 2	Offensive Language	2
Michael Jackson: The Live Seance	06/11/2009	Sky1	Generally Accepted Standards	22
Michael Jackson: The Live Seance	14/11/2009	Sky1	Generally Accepted Standards	1
Midsomer Murders	19/11/2009	ITV1	Violence	1
Mldsomer Murders	20/11/2009	ITV1	Violence	1
Miranda	09/11/2009	BBC 2	Sex/Nudity	2
Misfits	12/11/2009	E4	Generally Accepted Standards	3
Misfits	26/11/2009	E4	Generally Accepted Standards	1
Misfits	12/11/2009	E4	Offensive Language	1
Mock the Week	03/11/2009	Dave Ja Vu	Generally Accepted Standards	1
Morning Report	10/11/2009	Sky Sports News	Generally Accepted Standards	1
Most Haunted Live: Halloween 2009	31/10/2009	Living	Inaccuracy/Misleading	1
Most Shocking	22/11/2009	Virgin 1	Offensive Language	1
Muslimah Talk	01/11/2009	Iqra TV	Generally Accepted Standards	1

My Wife and Kids	10/11/2009	Virgin 1	Generally Accepted Standards	1
Never Mind the Buzzcocks	08/10/2009	BBC 2	Generally Accepted Standards	1
Never Mind the Buzzcocks	26/11/2009	Dave	Generally Accepted Standards	1
Never Mind the Buzzcocks	02/11/2009	Dave	Religious Offence	1
News	n/a	Press TV	Due Impartiality/Bias	1
News	n/a	Press TV	Due Impartiality/Bias	13
News	15/06/2009	Press TV	Inaccuracy/Misleading	1
News	03/07/2009	Press TV	Due Impartiality/Bias	1
News at Ten	16/11/2009	ITV1	Due Impartiality/Bias	1
Night Cops	17/11/2009	Sky2	Generally Accepted Standards	1
North East Tonight	11/11/2009	ITV1 Tyne Tees	Due Impartiality/Bias	1
Panjab Radio	02/11/2009	Panjab Radio	Use of Premium Rate Numbers	1
Party Political Broadcast	19/11/2009	BBC 1 Scotland	Dangerous Behaviour	1
Pedigree Dogs Exposed	19/08/2008	BBC1	Animal Welfare	5
Pedigree Dogs Exposed	19/08/2008	BBC1	Inaccuracy/Misleading	36
Pedigree Dogs Exposed	19/08/2008	BBC1	Generally Accepted Standards	
PS3 sponsorship of UEFA Champions League	04/11/2009	ITV1	Crime (incite/encourage)	1
Return To Africa's Witch Children (trailer)	21/11/2009	Channel 4	Violence	1
River Cottage	12/11/2009	Channel 4	Offensive Language	2
Rude Tube	19/11/2009	E4	Generally Accepted Standards	1
Rugby Union: England v Australia	07/11/2009	Sky Sports 2	Generally Accepted Standards	1
Russell Howard's Good News	29/11/2009	BBC 3	Generally Accepted Standards	1
Saturday Kitchen Live	07/11/2009	BBC 1	Harm/Food	1
Saturday Live	07/11/2009	BBC Radio 4	Crime (incite/encourage)	1
Sea Patrol UK	17/11/2009	Five	Generally Accepted Standards	1
Sky News	30/09/2009	Sky News	Due Impartiality/Bias	3
Sky News	12/11/2009	Sky News	Generally Accepted Standards	1
Sky News	19/11/2009	Sky News	Generally Accepted Standards	1
Sky Sports News	21/11/2009	Sky Sports News	Generally Accepted Standards	1
Soccer AM	31/10/2009	Sky Sports 1	Generally Accepted Standards	2
Spider-Man 2	15/11/2009	Five	Violence	1
Spooks	18/11/2009	BBC 1	Generally Accepted Standards	1
Spooks	18/11/2009	BBC 1	Violence	1
Star Wars: Episode III - Revenge of the Sith	07/11/2009	ITV1	Generally Accepted Standards	1
Strictly Come Dancing	21/11/2009	BBC 1	Generally Accepted Standards	1

Supersize v Superskinny	17/11/2009	E4	Generally Accepted Standards	1
TalkTalk sponsorship of The X Factor	14/11/2009	ITV2	Inaccuracy/Misleading	1
The Alan Brazil Sports Breakfast with Ronnie Irani	18/11/2009	Talksport	Due Impartiality/Bias	1
The Alan Brazil Sports Breakfast with Ronnie Irani	19/11/2009	Talksport	Generally Accepted Standards	1
The Alan Titchmarsh Show	12/11/2009	ITV1	Offensive Language	4
The Alan Titchmarsh Show	23/11/2009	ITV1	Religious Offence	1
The Alan Titchmarsh Show	12/11/2009	ITV1	Substance Abuse	1
The Armstrong and Miller Show	13/11/2009	BBC 1	Crime (incite/encourage)	1
The Armstrong and Miller Show	23/10/2009	BBC 1	Religious Offence	1
The F Word	17/11/2009	Channel 4	Animal Welfare	1
The F Word	16/11/2009	Channel 4	Religious Offence	1
The Family	11/11/2009	Channel 4	Under 18's in Programmes	1
The Graham Norton Show	16/11/2009	BBC 1	Generally Accepted Standards	1
The Greatest Scot (trailer)	12/11/2009	STV	Inaccuracy/Misleading	1
The News Quiz	23/10/2009	BBC Radio 4	Generally Accepted Standards	1
The News Quiz	13/11/2009	BBC Radio 4	Generally Accepted Standards	1
The Noughties... Was That It?	07/11/2009	BBC 3	Generally Accepted Standards	1
The Paul O'Grady Show	18/11/2009	Channel 4	Generally Accepted Standards	1
The Sarah Jane Adventures	29/10/2009	CBBC	Violence	1
The Showbiz Variety Club Awards 2009	22/11/2009	Five	Generally Accepted Standards	1
The Simpsons	12/11/2009	Sky1	Advertising	1
The Simpsons	16/11/2009	Channel 4	Sex/Nudity	1
The Thick of It	14/11/2009	BBC 2	Offensive Language	1
The Thick of It	21/11/2009	BBC 2	Offensive Language	1
The Trisha Goddard Show	13/11/2009	Five	Generally Accepted Standards	2
The Weekend Sports Breakfast	28/11/2009	Talksport	Generally Accepted Standards	1
The Wright Stuff	13/11/2009	Five	Due Impartiality/Bias	1
The Wright Stuff	19/11/2009	Five	Generally Accepted Standards	1
The X Factor	14/11/2009	ITV1	Advertising	1
The X Factor	15/11/2009	ITV1	Commercial References	1
The X Factor	21/11/2009	ITV1	Competitions	1
The X Factor	10/10/2009	ITV1	Flashing images	1
The X Factor	15/11/2009	ITV1	Generally Accepted Standards	6
The X Factor	14/11/2009	ITV1	Generally Accepted Standards	2
The X Factor	22/11/2009	ITV1	Generally Accepted Standards	2

The X Factor	21/11/2009	ITV1	Generally Accepted Standards	4
The X Factor	28/11/2009	ITV1	Generally Accepted Standards	2
The X Factor	08/11/2009	ITV1	Offensive Language	1
The X Factor	22/11/2009	ITV1	Offensive Language	1
The X Factor	15/11/2009	ITV1	Sex/Nudity	1
The X Factor	14/11/2009	ITV1	Under 18's in Programmes	1
The Xtra Factor	22/11/2009	ITV2	Generally Accepted Standards	1
This Morning	12/11/2009	ITV1	Generally Accepted Standards	1
This Morning	16/11/2009	ITV1	Generally Accepted Standards	1
This Week	23/10/2009	BBC 1	Generally Accepted Standards	2
Today	03/11/2009	BBC Radio 4	Religious Offence	1
Top 50 Beach Bodies	17/10/2009	MTV Dance	Sex/Nudity	1
Top Gear	15/11/2009	BBC 2	Dangerous Behaviour	2
Top Gear	15/11/2009	BBC 2	Generally Accepted Standards	2
Top Gear	27/11/2009	BBC 3	Offensive Language	1
Top Gear	22/11/2009	BBC 2	Sex/Nudity	1
Top Gear	25/11/2009	BBC 2	Sex/Nudity	1
Top Gear	28/11/2009	BBC 3	Sex/Nudity	1
Toyota Auris sponsors ITV Mystery Drama	06/09/2009	ITV1	Advertising	1
Traffic Cops	11/09/2009	BBC 1	Flashing images	1
Waybuloo	23/11/2009	CBeebies	Religious Issues	1
Welcome to Yorkshire sponsors ITV3 Peak	n/a	ITV3	Generally Accepted Standards	1
Wife Swap	30/10/2009	E4	Religious Offence	1
Young Dracula	28/10/2009	CBeebies	Violence	1