

# **Ofcom Broadcast Bulletin**

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## Introduction

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives<sup>1</sup>, Ofcom must include these standards in a code or codes. These are listed below.

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes, as well as licence conditions with which broadcasters regulated by Ofcom are required to comply. These include:

- a) Ofcom's Broadcasting Code ("the Code"), which, can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.
- b) the Code on the Scheduling of Television Advertising ("COSTA") which 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://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>.
- c) certain sections of the BCAP Code: the UK Code of Broadcast Advertising, which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
  - the prohibition on 'political' advertising;
  - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
  - 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising<sup>2</sup>.

The BCAP Code is at: [www.bcap.org.uk/The-Codes/BCAP-Code.aspx](http://www.bcap.org.uk/The-Codes/BCAP-Code.aspx)

- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information on television and radio licences can be found at: <http://licensing.ofcom.org.uk/tv-broadcast-licences/> and <http://licensing.ofcom.org.uk/radio-broadcast-licensing/>.

Other codes and requirements 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://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/>

It is Ofcom's policy to describe fully the content in television and radio programmes that is subject to broadcast investigations. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.

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<sup>1</sup> The relevant legislation is set out in detail in Annex 1 of the Code.

<sup>2</sup> BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases.

## Standards cases

### In Breach

#### The X Factor Results Show

ITV1, 23 October 2011, 20:00

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##### Introduction

This one hour live episode of *The X Factor* revealed which contestants had received the highest number of votes to keep them in the competition and included performances from guest singers such as Kelly Clarkson and Bruno Mars. Channel Television ("Channel TV" or "the Licensee") complied the programme on behalf of the ITV Network for ITV1.

A total of 108 complaints to Ofcom alerted us to the use of the most offensive language during this programme.

Ofcom noted that at approximately 20:42 presenter Dermot O'Leary announced that the contestant Frankie Cocozza had received enough votes to secure his place in the following week's show, to which Frankie Cocozza responded: "*Fucking have it. Get in there.*"

Ofcom considered the material raised issues warranting investigation under Rule 1.14 of the Code, which states:

"The most offensive language must not be broadcast before the watershed (in the case of television) ...".

We therefore asked Channel TV for its comments as to how this content complied with this Code rule.

##### Response

Channel TV said it deeply regretted Frankie Cocozza's "unexpected and unprompted outburst" and had already apologised directly to viewers who had contacted ITV to complain.

The Licensee said that to prevent the broadcast of offensive language on the show judges, contestants and guests are all briefed carefully before they take part in the programme. Channel TV said that until now "this has been all that was needed".

The Licensee explained that: members of staff in the main production gallery and sound gallery were listening to the ITV1 transmission output; however, given the amount of activity in these galleries during the live show, particularly towards the end, it appeared no one heard the offensive term immediately on broadcast. Channel TV said that "due to the noise of the audience at that point in the show, it is extremely unlikely that anyone in the studio [i.e. the judges, presenter, contestants and audience] would have heard Frankie's comment" either. Channel TV also stated that various members of staff watched the entire programme from an off-air feed on domestic televisions in different parts of the studio complex and no one heard the comment as it was broadcast.

Channel TV said: “Reviewing the footage it [i.e. Frankie Cocozza’s use of bad language] was barely audible above the studio furore but is just about discernable in a quieter domestic setting”. In its view not all viewers would have heard the offensive language as it was broadcast.

The Licensee explained that “had we appreciated that the comment was audible to viewers, we would have asked [presenter] Dermot O’Leary to make an immediate apology”. Channel TV said it only became apparent towards the end of the broadcast, through monitoring online social media activity, that in fact Frankie Cocozza had used some offensive language and that it had been heard by some viewers.

As a result, the hosts of *The Xtra Factor* on ITV2 (which is broadcast live immediately after *The X Factor Results Show*) apologised for any offence caused, as did Frankie himself. Channel TV said: “Although we are aware this was a delayed response, and we are very conscious that the digital audience is not a direct comparator to a pre-watershed family audience on ITV1, *The Xtra-Factor* was our earliest opportunity to respond to the issue”. It explained that it had to investigate whether or not Frankie Cocozza had in fact used offensive language during the live programme and if so, had the offensive language been broadcast. Channel TV explained that it investigated the matter instantly and dealt with it as quickly as possible given the circumstances.

The Licensee pointed out that an audio edit was made to remove the offensive language from ITV’s online catch up service (ITV Player).

Channel TV explained that as a result of this incident it has “re-briefed all the contestants and judges and we now ensure that at least one member of the team is watching the ITV1 transmission feed of the show” in a suitably quiet environment.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”. This duty is reflected in Section One of the Code.

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom’s research on offensive language<sup>1</sup> clearly notes that the word “fuck” and its derivatives are considered by audiences to be among the most offensive language. Such language is unacceptable before the watershed, whatever the audience profile of the channel.

In this case, only one instance of the most offensive language was broadcast. However, Ofcom noted that the word “*fucking*” was clearly audible to viewers who were watching the programme at approximately twenty minutes before the 9pm watershed. This was particularly unacceptable in the context of a programme that attracts a substantial family audience.

Ofcom went on to consider any mitigating factors. We noted first that this was a live broadcast, which in itself presents compliance challenges to broadcasters. However,

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<sup>1</sup> Published August 2010: <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

we noted no apology was broadcast in this programme after the word had been used, and that the Licensee's explanation for this was that no one in the production team had heard the offensive term due to the noise and activity in the main production gallery and sound gallery. Later that evening when the Licensee realised the offensive language had been audible to viewers, an apology was broadcast during a live interview with Frankie Cocozza on *The Xtra Factor* on ITV2. One of the hosts stated: "*Apologies to anyone who heard the swearing*" to which Frankie responded: "*yes, sorry*". Ofcom noted however that this apology was broadcast approximately 44 minutes after the offensive language occurred, and on a different channel.

We also noted that the Licensee said that extra compliance measures had been implemented in response to this incident: for example, the re-briefing of all contestants and judges about the requirement to avoid using the most offensive language before the 9pm watershed, and additional compliance measures implemented in the studio during transmission. Ofcom however considered that these measures demonstrated no more than the standard compliance arrangements expected of a licensee broadcasting a live family entertainment programme before the watershed.

Ofcom was particularly concerned that a high profile live programme such as this did not already have adequate systems in place to monitor the transmission output of the programme as it was broadcast. We considered that in this instance the offensive term was clearly audible to viewers. Had there been suitable compliance procedures in place the broadcaster could have responded in a more timely and appropriate fashion. Licensees are reminded that broadcasting live programme content can pose special challenges and as a result extra measures may be needed to ensure compliance with the Code.

The programme was in breach of Rule 1.14 of the Code.

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

Licensees are reminded that Ofcom has recently published guidance on the compliance of material broadcast before the watershed, which is available on the Ofcom website at:

<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>.

## In Breach

### ChatGirl TV

*Adult Channel (Channel 901), 4 November 2011, 21:00 to 21:30*

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#### Introduction

*ChatGirl TV* is a segment of interactive 'adult chat' advertising content broadcast on the licensed service known as the Adult Channel. This service is broadcast on Sky Channel 901. The service is freely available without mandatory restricted access and is situated in the 'adult' section of the Sky electronic programme guide ("Sky EPG"). Viewers are invited to contact onscreen presenters via premium rate telephony services ("PRS"). The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers.

The licence for the Adult Channel is owned and operated by Playboy UK TV Limited/ Benelux Ltd ("Playboy TV" or "the Licensee"). The content is supplied by a third party, Access All Media Ltd, but Playboy TV is responsible for the compliance of the service.

Ofcom received a complaint that the sexual content detailed below was too strong immediately after the watershed.

#### *ChatGirlTV, Adult Channel, 4 November 2011, 21:00 to 21:30*

The female presenter was wearing a one piece black and white patterned outfit. This consisted of two thin strips of fabric covering her nipples only joined by strings to a thin strip of fabric which covered her inner genital area only. Over the top of this outfit she wore leather-look hot pants which had a zip at the front which she pulled down at approximately 21:02 to reveal her pubic area and inside the thin fabric covering her inner genital area.

From 21:00 the presenter adopted various positions. She lay on her side gently thrusting her hips forward and at times lifted up a leg to reveal her crotch area in greater detail. In this position, she pulled tightly on the strings connecting the strip of fabric covering her inner genital area to emphasise her pubic area and she repeatedly stroked her legs and inner thighs. The camera regularly zoomed into the presenter's crotch in an intrusive and prolonged manner during the broadcast.

The presenter also lay on her front and pulled down her hot pants to under her buttocks and thrust her bottom upwards. The images of the bare buttocks, shot to the side to avoid genital detail, were at times close up and prolonged.

Ofcom considered this material raised issues warranting investigation under BCAP Code Rule 32.3, which states:

"Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them."

We therefore asked Playboy TV to provide comments on how this broadcast advertising content complied with this rule.

## Response

Playboy TV viewed the material and confirmed that it “did not conform to the guidelines” on adult PRS services<sup>1</sup>.

The content supplier, Access All Media, also wrote to Ofcom and conceded that “on some occasions her [the presenter’s] movements, together with the camera-work, have resulted in content which appears stronger than intended due to the skimpy nature of her outfit”. It further accepted that “the close-ups were unfortunate given the presenter’s outfit. We can now see how the combination of the close-ups and the presenter’s outfit served to increase the strength of the content beyond the intended threshold, for which we sincerely apologise”.

Playboy TV explained that it had a number of licences where the content was provided by a third party but as the Licensee it acknowledged its responsibility “to ensure all our content complies with the Code regardless of its source”.

Since 15 November 2011, the Licensee stated that it had taken considerable steps to introduce further measures to ensure material was compliant<sup>2</sup>. These steps included: recruiting two additional members of staff to comply adult PRS content; remaining in daily contact with the production companies to discuss potential issues; making visits to production companies to reiterate the guidance in detail with producers and presenters; and liaising with Ofcom to discuss compliance issues. Further, the content supplier also confirmed that it also had undertaken a rigorous compliance review with Playboy TV to ensure that no further incidents of this nature would occur.

Unfortunately, the Licensee explained, these additional measures were not in place on 4 November 2011 when this content was broadcast. However now they were fully operational they demonstrated a considerable effort to ensure “a robust and structured approach to compliance” going forward.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material. Ofcom has a duty to set such standards as appear to it best calculated to secure the standards objectives, one of which is that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”. This standards objective is reflected in the rules set out in the BCAP Code.

Since 1 September 2010 all PRS-based ‘daytime chat’ and ‘adult chat’ television services have no longer been regulated as editorial content but as long-form

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<sup>1</sup> The guidance referred to is Ofcom’s guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services updated and reissued on 27 July 2011: <http://stakeholders.ofcom.org.uk/binaries/broadcasting/guidance/bcap-guidance.pdf>.

<sup>2</sup> On 9 November 2011, Ofcom fined Playboy TV a total of £110,000 for various breaches of the BCAP Code concerning a number of ‘adult chat’ television services: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Just4Us-Sanction.pdf>.



advertising i.e. teleshopping. From that date the relevant standards code for such services became the BCAP Code rather than the Broadcasting Code.

The BCAP Code contains rules which permit 'adult chat' services to be advertised (and so broadcast) within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose. When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998. However, the advertising content of 'adult chat' services has much less latitude than is typically available to editorial material in respect of context and narrative. A primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

Rule 32.3 of the BCAP Code states: "Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them."

Appropriate timing restrictions are judged according to factors such as: the nature of the content; the likely number of children in the audience; the likely age of those children; the time of the broadcast; the position of the channel in the relevant electronic programme guide (e.g. the "adult" section); any warnings; and mandatory restricted access. It should be noted that the watershed starts at 21:00 and broadcast advertising material unsuitable for children should not, in general, be shown before 21:00 or after 05:30.

On 27 July 2011 Ofcom published revised guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services (the "Chat Service Guidance")<sup>3</sup>. This clearly sets out what Ofcom considers to be acceptable to broadcast on these services post-watershed. In particular, the Chat Service Guidance states that with regard to material broadcast after 21:00 'adult chat' broadcasters should ensure that:

- "After 9pm any move towards stronger – but still very restrained – material containing sexual imagery should be gradual and progressive. There should not for example be any miming of sexual acts between 9 and 10pm".

In addition, Ofcom has also made clear in numerous previous published findings that stronger material should appear later in the schedule and that the transition to more adult material should not be unduly abrupt at the 21:00 watershed<sup>4</sup>.

In applying BCAP Code Rule 32.3, Ofcom had first to decide if the broadcast material was unsuitable for children.

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<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>

<sup>4</sup> For example:

- *Elite Nights*, Elite TV and Elite TV 2: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb179/>
- *Dirty Talk Live*: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb171/>
- *Red Light 2*, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb196/obb196.pdf>

Ofcom noted that between 21:00 and 21:30, the female presenter wore extremely skimpy clothing that revealed the majority of her breasts and her pubic area. In addition, she pulled down her shorts to reveal her buttocks, opened the zip of the shorts fully to reveal her pubic area and pulled tightly on the outfit strings to emphasise her outer genital area. While wearing this very skimpy clothing, she adopted sexual positions – both with her legs open to the side and gently thrusting forward with her hips, and on her front with her bare buttocks raised and thrusting. During the broadcasts, Ofcom noted the presenter regularly stroked her breasts and inner thighs. The frequent close up onscreen images of her crotch area and buttocks were intrusive and prolonged.

In Ofcom's view, the revealing clothing, sexual positions and close up intrusive images were intended to be sexually provocative in nature. In light of this behaviour and imagery, Ofcom concluded that this material was clearly unsuitable for children.

Ofcom then considered whether relevant timing or scheduling restrictions had been applied by Playboy TV to this broadcast. Ofcom took account of the fact that the channel is in the 'adult' section of the Sky EPG. However, this material was broadcast on a channel without mandatory restricted access in the period immediately after the 21:00 watershed, when some children may have been available to view, some unaccompanied by an adult.

Ofcom also had regard to the likely expectations of the audience for programmes broadcast at this time of day on a channel in the 'adult' section of the Sky EPG without mandatory restricted access directly after the 21:00 watershed. In Ofcom's opinion, viewers (and in particular parents) would not expect such material to be broadcast and available to view so soon after 21:00, particularly given that material broadcast on such services prior to 21:00 should be non-sexual in tone and apparent intent. The broadcast of such sexualised content was inappropriate to advertise 'adult sex' chat so soon after the 21:00 watershed. This broadcast was therefore in breach of BCAP Code Rule 32.3.

Ofcom has recently recorded several breaches of the BCAP Code<sup>5</sup> against Playboy TV and Just4Us (a wholly owned subsidiary of Playboy TV Limited/Benelux Ltd). The breaches recorded in Bulletin 185 were considered to be so repeated and serious that Ofcom imposed a financial penalty on the Licensee totalling £110,000<sup>6</sup> on 9 November 2011. This present contravention of the BCAP Code is another example of poor compliance by the Licensee, given the strength of the material broadcast immediately following the watershed. However, Ofcom notes that the Licensee states it has taken several measures to improve its compliance since 15 November 2011. We would therefore anticipate no further similar breaches of the BCAP Code. Also the Licensee admitted promptly and fully that this content did not comply with the Chat Service Guidance. Playboy TV remains on notice however that any further similar contraventions of the BCAP Code will be considered for further regulatory action by Ofcom.

### **Breach of BCAP Code Rule 32.3**

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<sup>5</sup> See: Broadcast Bulletin 185, 4 July 2011: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb185/> and Broadcast Bulletin 196, 19 December 2011: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb196/>

<sup>6</sup> See: Broadcast Bulletin 194, 21 November 2011: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb194/>

## Resolved

### **Big Brother: Live Final**

*Channel 5, 11 November 2011, 21:00*

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#### **Introduction**

The 2011 series of *Big Brother* was the first television programme broadcast in the UK that invited viewers to pay to vote via the social networking website Facebook<sup>1</sup>.

Viewers wishing to vote using this method were required to purchase votes with Facebook 'credits', with one credit buying one vote. The cost of one vote was approximately 6.5p and votes were sold in blocks with a minimum spend of between 65p and £3.26 depending on the route of purchase. Viewers were told on air and when buying Facebook credits to purchase votes that they had to use those votes by the time voting closed in the Live Final.

Viewers could also vote by dialling a premium rate telephone number.

On several occasions during the Live Final, presenter Brian Dowling invited viewers to vote and gave details of both methods.

Ofcom received seven complaints from viewers who had been unable to access the Big Brother Facebook page during the final stages of the voting window. Therefore, they were unable to place votes that they had already purchased.

Ofcom considered that the case raised issues warranting investigation under Rule 2.14 of the Code which states:

“Broadcasters must ensure that viewer and listeners are not materially misled about any broadcast competition or voting.”

We therefore sought comments from Channel 5 Broadcasting Limited (“Channel 5” or “the Licensee”) as to how the vote complied with this rule.

#### **Response**

The Licensee said it “takes its obligations in respect of competitions and voting very seriously and has robust procedures in place which...ensure that the voting process is carried out competently and fairly”. It added that the Big Brother Facebook application was hosted by “one of Europe’s leading managed service providers” and that it “carefully planned the use of the Facebook application and server capability based on reasonable estimates of expected voting patterns using a new voting service”.

However, Channel 5 explained that in the final ten minutes of the voting window, the server was “temporarily overloaded due to exceptionally high traffic levels across the entire Big Brother application (i.e. not just traffic from those wishing to vote)”. Therefore, “the server was unable to cope with the surge in traffic on the whole Big

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<sup>1</sup> In Broadcast Bulletin 188 (available to view at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb188/>), Ofcom announced the launch of a year long trial allowing broadcasters to offer paid-for viewer participation for audience voting and competition schemes using web-based applications.

Brother Facebook application and some Facebook users were either unable to vote expediently or at all.”

The Licensee said that the incident was reported to have occurred at 21:48 and at 21:50 it ran a series of tests “to determine whether there was in fact an issue with the server”. Further tests and discussions with the service provider meant that “[b]y the time the engineers were able to conclude their tests, all voting for the series had already closed.”

Regardless of this incident, Channel 5 argued that “[v]iewers were not misled, certainly not materially so as is the test set out in rule 2.14 of the Code”. It also pointed to Sections 29 and 40 of its Terms and Conditions in relation to Big Brother and voting, the location of which, it said, was “routinely referenced on-air”:

Section 29: “Please note that Big Brother voting credits are non-transferable and non-refundable and are only valid for the 2011 series of Celebrity Big Brother and Big Brother.”

Section 40: “Channel 5...do not accept any responsibility whatsoever for any technical failure or malfunction or any other problem in any telephone network or line, system, server, provider or otherwise which may result in any vote being lost or not properly registered or recorded.”

Whilst acknowledging that some users were unable to lodge their pre-paid votes via the Facebook application, referring to Section 40 of its Terms and Conditions, Channel 5 said it was “not liable for any Facebook votes not being registered or recorded due to the technical failure it had with the server.” However, it “decided that any person (i.e. irrespective of the whether they were affected by the technical difficulties during this period)” who had remaining votes could use them in the subsequent Celebrity Big Brother series broadcast in January 2012. Alternatively, Channel 5 said it would, “upon reasonable request within a reasonable timeframe”, provide users with a refund to the value of their remaining credits.

To reduce the likelihood of a similar incident occurring in future series, the Licensee said that capacity on the server hosting the Facebook application was being increased “sevenfold” and it was “confident that this level of capacity exceeds the expected traffic throughout the forthcoming series”. It added that its procedures “have been further tightened so that any such issues can be detected and resolved sooner” and that its Digital team will “continue to monitor similar potential issues during future series of Big Brother and Celebrity Big Brother so that the prevention of potentially serious issues can be achieved.”

The Licensee also provided Ofcom with voting information. Having assessed this information, Ofcom was satisfied that the problems experienced on the Facebook application server would not have affected the outcome of the vote.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material”.

These objectives are reflected in, among other rules, Rule 2.14, which serves to prevent broadcast competitions and voting from misleading the audience in such a way as to cause material harm, such as financial loss.

Ofcom noted that this was the first time that a UK television programme had used such a voting mechanism and acknowledged that there may be elements of uncertainty about its operation and demand for the service. Nonetheless, under the terms of its Ofcom licence, Channel 5 is responsible for ensuring that all of its audience voting systems are robust. Ofcom was therefore concerned that the systems in place were not sufficiently robust to handle the increase in demand that occurred at 21:48.

Ofcom also noted Channel 5's reference to Sections 29 and 40 of the Licensee's voting Terms and Conditions regarding liability for "unregistered" or "lost" votes. Ofcom takes this opportunity to remind Channel 5 that this does not absolve it of its responsibilities to viewers in respect of Rule 2.14 of the Code. Ofcom accepted that Channel 5 did not deliberately intend to mislead viewers about the Facebook voting process. Nevertheless, given that viewers had been told they could use their votes until voting closed in the Live Final, and voting via the Facebook application in the final ten minutes was not possible for a number of users, Ofcom considered those users were misled as to the timeframe in which they could place their votes, however unintentionally.

However, Ofcom noted the Licensee's decision to allow unregistered votes either to be refunded or used for the subsequent *Celebrity Big Brother* series, and to increase server capacity for the *Big Brother* Facebook application thereby reducing the risk of a similar incident occurring in future Big Brother series. Ofcom also noted the action undertaken by Channel 5 to improve the speed at which any such incidents would be identified and reported. Taking these actions into account, Ofcom considers the matter resolved.

In view of the Licensee's precautionary measures, Ofcom does not expect a recurrence of the matter and takes this opportunity to remind Channel 5 of its obligations under the Code in this area and its responsibilities under its licence in relation to its communications with viewers.

**Resolved**

## Note to Broadcasters

The trial period referred to in the opening paragraph of this Finding began on Monday 22 August 2011 and will end on Monday 20 August 2012.

In brief, the pilot period allows broadcasters to refer on air to self-standing websites or apps downloadable to mobile phones and related devices, or both, as means for viewers to vote or submit competition entries, subject to other relevant Code rules. The pilot period applies only to audience voting and competition schemes and a premium rate telephony (PRS) means of entry must be one of the routes available.

Licensees interested in taking advantage of the opportunities provided by the trial period are urged to read the full note published in Broadcast Bulletin 188 and available at the link given in footnote 1 above.

After the close of the pilot period Ofcom will assess its impact and associated issues. If appropriate in the light of that assessment we may decide to undertake a more wide-ranging formal review of this area of the Code and its application.

Broadcasters should contact John Stables at Ofcom ([john.stables@ofcom.org.uk](mailto:john.stables@ofcom.org.uk)) if they have any questions about the pilot period.

## Fairness and Privacy Cases

### Upheld

#### Complaint by Dr James De Meo

*The Sex Researchers, Channel 4, 23 June 2011*

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**Summary:** Ofcom has upheld this complaint of unjust or unfair treatment in the programme as broadcast made by Dr James De Meo.

This programme, about the work of researchers into human sexuality, referred to the work of Dr Wilhelm Reich, an Austrian born psychiatrist and psychoanalyst (who died in 1957). The programme claimed that Dr Reich had suggested that the better the sexual orgasm a person experienced, the more energy, which he termed “orgone”, appeared to be released and that Dr Reich encouraged people to have as many orgasms as possible to bring health and harmony to the world. The programme stated that Dr Reich began to:

*“...break Freud’s strict rules in his psychoanalytical sessions by encouraging patients to undress and pressing hard on what he termed their ‘body armour’ until the patient climaxed and released wave upon wave of orgone”.*

The programme’s commentary was accompanied by a dramatic reconstruction depicting Dr Reich engaged in “orgone therapy” with a naked woman lying on a couch and reaching orgasm. The programme went on to say that although popular with his patients, many of Dr Reich’s colleagues considered that he had crossed the line of acceptable behaviour for a psychoanalyst and questions about his methods lead to rumours about his mental health.

Interview footage of Dr De Meo was shown during this part of the programme. He was also shown demonstrating how an “orgone accumulator” worked and explaining how the accumulator harnessed orgone energy that was then, he believed, transferred into the body.

Dr De Meo complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast.

Ofcom found that:

- The broadcaster and programme makers had failed to take sufficient steps to ensure that Dr De Meo’s consent for his contribution to the programme remained valid after significant changes were made to the nature of the programme.
- Although Dr De Meo’s contribution was not edited unfairly in the programme as broadcast, the manner in which Dr De Meo was presented in the programme was likely to have materially affected viewers’ understanding of Dr De Meo and his research in a way that was unfair to him.

#### Introduction

On 23 June 2011, Channel 4 broadcast the second episode of a three part series of programmes entitled *The Sex Researchers*. The series looked at the work of scientists and researchers who have studied human sexuality and examined some of the experiments that have been conducted to try and understand it, and in some

instances, enhance sexual pleasure. The programme contained interviews with a number of scientists and researchers in the field and also included dramatic reconstructions to illustrate the work of some of the early pioneers in researching human sexuality.

One such early twentieth century pioneer featured in the programme was Dr Wilhelm Reich, an Austrian born psychiatrist and psychoanalyst, who, the programme said, believed that there existed “a real sex energy” that “animated every living thing”. The programme stated that Dr Reich thought that he had discovered a type of energy that was fuelled by the “power of orgasm” and which would revolutionise scientific understanding of sex and health.

At this point in the programme, footage of Dr James De Meo, an environmental scientist and Director of the Orgone Biophysical Research Laboratory in Oregon USA, was included. Dr De Meo was introduced in the programme as follows:

*“80 years later, high up in the mountains of Oregon, Dr James De Meo is still pursuing these ideas. He demonstrates how Reich’s sexual energy can be trapped and even measured”.*

Dr De Meo was then shown with a replica of one of Dr Reich’s inventions and demonstrated how, he claimed, it measured the strength of a person’s “energy field” by placing someone’s hand near a special electrified metal plate. The programme then said that Dr Reich called this energy “orgone” and set about trying to measure the electrical discharge from his penis during masturbation. This was accompanied by a dramatic reconstruction which depicted Dr Reich masturbating while connected to an electrical measuring device. The programme went on to state that Dr Reich had suggested that the better the orgasm, the more energy appeared to be released and that he encouraged people to have as many orgasms as possible to bring health and harmony to the world.

The programme included interview footage of Dr De Meo saying that “Reich looked at sexual repression as a cornerstone for social chaos and fascism”.

The programme then stated that Dr Reich began to:

*“...break Freud’s strict rules in his psychoanalytical sessions by encouraging patients to undress and pressing hard on what he termed their ‘body armour’ until the patient climaxed and released wave upon wave of orgone”.*

This commentary was accompanied by another dramatic reconstruction of a scene depicting Dr Reich with a patient engaged in “orgone therapy” with Dr Reich laying his hands on the shoulders of a naked woman lying on a therapist’s couch and her reaching orgasm.

The programme went on to say that although popular with his patients, many of Dr Reich’s colleagues considered that he had crossed the line and questions about his methods led to rumours about Dr Reich being mentally ill. The programme said that Dr Reich had had to flee from Nazi Germany and had settled in the “American wilderness” where he reinvented his career by constructing special boxes (“orgone accumulators”) to collect orgone energy that was then transferred into the body of the person sitting inside the accumulator.

Dr De Meo was then shown in the programme demonstrating how an orgone accumulator worked by sitting in one of a number of working replicas that he had built



and explaining how the accumulator harnessed the orgone energy that was then, he believed, transferred into the body.

Towards the end of the particular part of the programme that related to Dr Reich, the commentary said that Albert Einstein had initially been intrigued by Dr Reich's accumulators and had tried it. However, the programme said that Einstein had concluded that the orgone energy was nothing more than heat transfer and that *"when Reich mentioned to Einstein that people thought him mad, Einstein replied 'I can believe that'"*. The programme went on to say that Dr Reich's reputation became as tarnished in America as it had been in Europe and that his orgone accumulators were described as a fraud. The programme concluded by stating that Dr Reich was imprisoned for contempt of court in relation to a court case and died within a year of heart failure.

Following the broadcast of the programme, Dr De Meo complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast.

### **Summary of complaint and the broadcaster's response**

- a) Dr De Meo said that his contribution to the programme was obtained without his "informed consent". In particular, Dr De Meo said that he was misled as to the nature and purpose of the programme.

Dr De Meo said that he had agreed to contribute to the programme on the basis of the programme makers' avowed serious intent and Channel 4's journalistic integrity. He said that while he had understood that not all of his lengthy interview would be broadcast in the programme, he had not expected that his contribution would be intercut with the "offending incorrect material" relating to Dr Reich. Dr De Meo said that had he known that the programme makers were to take a "malicious approach" to smear Dr Reich in the programme, he would never have been associated with it. Dr De Meo said that the programme makers had obtained his consent to be interviewed under false pretences.

Channel 4 said in response that Dr De Meo was first informed about the programme by the programme makers in an email of 24 January 2011 which set out information for him upon which to base his decision to participate. Channel 4 said that the email stated that:

- The series would be a three part documentary for Channel 4 with the working title *The Sex Researchers*;
- The documentary would look into the lives and work of the 20th century's most important researchers in the field of sex and sexual behaviour "...to show the challenges they faced when carrying out their work, and celebrate the strength of character that made them true pioneers";
- Dr Reich would be of "vital importance to the story" – "It appears that too often, his complex and wide-reading work has been over-simplified in the press, leading to a lack of understanding of its true significance";
- It would be crucial to show how essential discoveries resulted from Dr Reich's initial research into sex and the orgasm;
- The producers would like to show how "...his discovery of the physical biological energy and orgone can bring about a new understanding of drought, cancer cells, warfare and aggression among many other things. We'd also like to discuss the therapeutic properties of the orgone accumulator"; and

- The producer noted that although "...Reich's sex research was actually just one element in a huge body of work ... this series will be a good way to highlight his important contribution to the field".

Channel 4 said that on 25 January 2011, Dr De Meo responded by email thanking the programme makers for their interest in interviewing with him. In the email, Dr De Meo made it clear to the programme makers that:

- He had "about 40 years of personal experience making serious scholarly and experimental investigations of Reich's findings, in both the social and physical sciences", and included an online publications list;
- He stated his opinion that "There probably is no figure in 20th Century science whose work and life-history has been so badly maligned and distorted than Dr. Wilhelm Reich...";
- His primary interest was "...to see that only facts get presented, with an end to the many lies and distortions which - unfortunately as you should know -- have come from both the advocates of Big Medicine, as well as from their media allies";
- He had been supportive in the past of Channel 4 documentaries that challenged "...the mainstream-orthodox world-view..." such as *The Great Global Warming Swindle* and *The AIDS Catch*; and
- He had further questions "...to establish where you and those involved are coming from, where they are going with it all, and to gain some clarity". These questions were in the main about who the other potential contributors to the programme would be and who the other sex researchers the programme would be focussing upon.

Channel 4 said that on the same day, the programme makers responded to Dr De Meo's questions and reassured him that Channel 4 was an "*extremely forward-thinking and open minded channel, which is why I'm confident that the programme will be able to give Dr Wilhelm Reich the recognition he so clearly deserves*". The programme makers also said to Dr De Meo that they were "*quite bowled over by the breadth and depth of your work on Reich's findings. If we are able to set up an interview, I have no doubt that you'd be able to tell us everything we'd need to know*".

Channel 4 said that as evidenced in this trail of communication, Dr De Meo was clearly made aware of subject matter and title of the series and that a range of other sex researchers would be looked at in the programmes. It was also made clear to Dr De Meo why he had been approached to participate and that his contribution would be in the form of a filmed interview. Channel 4 said that the programme makers had acknowledged that Dr Reich's work covered a very wide area but they made it clear to Dr De Meo that the programme would only focus on Dr Reich's contribution to sex research. Channel 4 said that around 7 February 2011, the programme makers telephoned Dr De Meo and explained to him again the subject matter of the series and made it clear that "...although I was aware Reich's ideas are wide ranging, we would only be able to cover his ideas relating to sex, in particular orgasm and orgone energy".

However, Channel 4 said that in the months that followed the filming of Dr De Meo's interview, the focus and style of the programme became more defined. It said that although the style and tone of the programme was still "celebratory", it became clearer that it would adopt a more playful and entertaining tone, aimed at engaging a broad range of viewers in historical and scientific issues. Specifically,

Channel 4 said that it became apparent to the programme makers that the final programme would not be going into detail about Dr Reich's ongoing legacy and that it would include dramatic depictions designed to entertain a broad range of viewers. Channel 4 said that, in light of the representations made to Dr De Meo earlier by the programme makers and his stated position with regard to Dr Reich, these were changes to the programme that the programme makers should reasonably have considered might affect Dr De Meo's continuing informed consent to participate. Therefore, Channel 4 said that the programme makers should have updated him as to how the programme had developed. Channel 4 said that it found no evidence to suggest that the producers had deliberately misled Dr De Meo.

Dr De Meo said in response to Channel 4's statement that the tone of the programme was neither "celebratory" nor "playful", but rather constituted "a salacious slander and defamation, a distortion of scientific and historical facts, and revisionism of the worst sort". He said that all other scientists or interviewed contributors were treated quite respectfully, without any hint of "personal slander or defamation directed at them". However, he said that he was, by voice-overs and intermixing of scenes, subjected to a very personal slander and defamation by virtue of the intentionally malicious and fraudulent image of Dr Reich which had been created. Dr De Meo said that he was personally singled out for special treatment in the programme.

b) Dr De Meo said that the way in which his contribution was edited and used in the programme resulted in him being portrayed unfairly. In particular, Dr De Meo said that:

- His contribution was intercut with fictionalised dramatic reconstructions of Dr Reich's work in such a way as to lead viewers into believing that he was an "advocate and approver of those falsified claims". He said that this:
  - implied that he approved of conduct that he did not;
  - called into question his expertise by making it appear that he believed in events which never happened (i.e. the masturbation of patients by Dr Reich); and
  - called into question his moral character, personal reputation and professional standing.

Channel 4 said in response that it did not agree with Dr De Meo that his contribution was edited unfairly. It said that approximately two minutes of material featuring Dr De Meo was selected from the unedited interview for inclusion in the final programme.

Channel 4 said that the original meaning of Dr De Meo's full interview had not been altered or distorted by the editing process and although extracts of his interview sat alongside voiceover commentary and reconstructions, there was never an explicit or implicit link made between what Dr De Meo said in the programme and what the programme makers were saying. Channel 4 said that all the material featuring Dr De Meo stood alone and retained the same meaning it held in the original interview.

Channel 4 said that at no point did the programme claim that Dr Reich sexually abused vulnerable patients. Channel 4 said that the programme makers had felt comfortable using the reconstructed scene that depicted a naked woman lying on a couch as illustration not just on the basis of the

background research they had done, but also because it was so obviously a dramatic depiction and one that was clearly consistent with the playful tone that characterised the series. It said that this would have been evident to viewers watching at this stage of the programme. Channel 4 said that although the scene gently parodied the work undertaken by Dr Reich in a way that has upset Dr De Meo, it did not make the claim that Dr Reich sexually abused his patients.

Channel 4 said that in researching material for the programme, the programme makers looked at a range of sources as a basis for this section of the programme and the creation of the dramatic depiction of the naked woman on the couch. These included writings from Dr Reich himself and from Mr Christopher Turner who has written an authoritative biography of Dr Reich, called 'Adventures in the Orgasmatron', based on numerous interviews with people connected to Dr Reich and his research.

Channel 4 said that it was an established fact that Dr Reich practiced a number of "hands-on" therapies with his patients which was considered at the time to be unconventional and by many to be crossing the line established by Dr Sigmund Freud as to the role of the analyst in a patient/analyst relationship.

Channel 4 said that the programme makers believed that the scene was a perfectly reasonable dramatic depiction of a therapy which Dr Reich himself described as "Orgasmotherapy". The programme did not suggest that Dr Reich masturbated his patients. However, Channel 4 said that there was evidence that he conducted "hands-on" therapies that brought his patients to orgasm, as shown in the dramatic depiction. For instance, Channel 4 said that Dr Reich's biographer, Mr Turner, quoted one of Dr Reich's patients in his biography:

"This was experienced all over and especially in the genitals as a nice and living current [...] which was not always of a sexual nature but a sensation of life and carnality [...] the real goal in all of Reich's treatments was that the patient should reach a full orgasm".<sup>1</sup>

Channel 4 said that it did not accept that the programme maker's dramatic depiction of the scene constituted a material error of fact, or that the cutting of a section of Dr De Meo's interview alongside this dramatic depiction was in itself unfair to Dr De Meo.

Channel 4 said that Dr De Meo did not specify in his complaint the piece of his contribution that he believed was misused in relation to this scene. It said that the only piece of Dr De Meo's interview used around this scene was where he said "*Reich looked at sexual repression as a cornerstone for social chaos and fascism.*" Channel 4 said that this statement was both factually accurate and entirely fairly edited and not misrepresentative of Dr De Meo. It said that there was no voiceover commentary or other link made between the dramatic depiction of Dr Reich and the work or research of Dr De Meo himself. Channel 4 said that it did not accept that the use of this piece of interview at this point in the programme implied that Dr De Meo endorsed what was shown in the dramatic depiction, specifically in Dr De Meo's words

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<sup>1</sup> Christopher Turner, *Adventures in the Orgasmatron*, pages 176-178. Turner in turn included references to another book by Siersted, *Wilhelm Reich in Denmark*, page 7.

“the sexual abuse of vulnerable patients”. Channel 4 said that it also did not believe that the scene would lead any reasonable viewer to call into question Dr De Meo’s own moral character and judgement or impugn his personal reputation or seriously endanger his professional standing.

Channel 4 said that there is no suggestion either expressly or implicitly in the programme that Dr De Meo engaged in similar practices; neither does it call into question his expertise by making it appear that he believed in events which never happened; and it does not call into question Dr De Meo’s own moral character, personal reputation and professional standing.

Channel 4 said it did not accept that that Dr De Meo himself or his own research were misrepresented in the programme. It said that even to the extent that the programme makers had made any material errors of fact in the presentation of Dr Reich and his research, these would have been clearly separate and distinguishable from Dr De Meo and his work and contribution. The only person to whom such a material error of fact would have been unfair is Dr Reich – not Dr De Meo. Channel 4 said that there were no material errors of fact in relation to Dr De Meo’s own work or contribution and, accordingly, there was no unfairness to him.

- Dr De Meo said that he had been emphatic in explaining in interview and discussions with the programme makers during the programme making process that Dr Reich did not “masturbate patients” and that such malicious rumours had been generated by Dr Reich’s “Freudian and Communist Party enemies” to “destroy him”. Dr De Meo said that these parts of his interview and discussions with the programme makers were omitted from the programme as broadcast.

Channel 4 said in response that it was clear from the unedited footage of Dr De Meo’s interview that at no point did he make a reference to these matters. In addition, it said that neither the Assistant Producer nor Director, who were both at the interview, recalled having any ‘off-camera’ conversations with Dr De Meo about Dr Reich masturbating patients. Channel 4 said that the programme makers completely denied Dr De Meo’s accusation that they were deliberately repeating scurrilous rumours generated by Dr Reich’s “Freudian and Communist enemies”.

- Dr De Meo said that his work that was included in the programme was taken out of context and “inserted” because he might have used the words “sex” or “orgasm” and these could then have been used to imply he meant something entirely different.

Channel 4 said in response that at no point during his interview did Dr De Meo use the words “orgasm” or “sex”. It said that he did use the word “sexual” but only in the entirely factually accurate and fairly edited comment that *“Reich looked at sexual repression as a cornerstone for social chaos and fascism”*. Channel 4 said that it could not see that there was any basis in this part of his claim to support Dr De Meo’s complaint of unfair editing.

In relation to the unedited footage of Dr De Meo’s contribution to the programme, Dr De Meo said that it appeared to him that Channel 4 had failed to provide Ofcom with a full set of the unedited interview footage of him. He said that two “critical” interview segments of him were missing. Dr De Meo said that the programme makers had spend half a day filming him and his laboratory facilities

and that he would imagine that the unedited footage submitted to Ofcom by Channel 4 (and copied to Dr De Meo) covered that time. Dr De Meo questioned whether Channel 4 deliberately withheld the extra footage.

In response to Dr De Meo's belief that a full set of the unedited footage of his interview and laboratory was not provided to Ofcom (and subsequently to him), Channel 4 said that the programme makers had assured it that all unedited material from the filmed interview with Dr De Meo had been provided. It said that it was a serious allegation to suggest that Channel 4 or programme makers would deliberately withhold footage from Ofcom and it was a suggestion strongly denied.

## **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 unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes 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.

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, both parties' written submissions and a recording and transcript of the unedited footage of Dr De Meo's interview. Ofcom also took into account representations made by the parties in response to its preliminary view on the complaint.

When considering complaints of unjust and unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its decision on the individual heads of complaint detailed below.

- a) Ofcom considered Dr De Meo's complaint that said that his contribution to the programme was obtained without his "informed consent". In particular, Dr De Meo said that he was misled as to the nature and purpose of the programme.

In addressing this head of complaint, Ofcom considered whether the broadcaster and the programme makers were fair in their dealings with Dr De Meo as a potential contributor to the programme (as outlined in Practice 7.2 of the Code). In particular, it considered whether Dr De Meo gave his "informed consent" to participate in the programme as outlined in Practice 7.3 of the Code. This Practice sets out that in order for a person who is invited to contribute to a programme to be able to make an informed decision about taking part, they should be given sufficient information about: the programme's nature and purpose; their likely contribution; be informed about the areas of questioning and wherever possible, the nature of other contributors; and, any significant changes to the programme that might affect their decision to contribute.

Ofcom noted that on 24 January 2011, the programme makers sent an email to Dr De Meo in which they invited him to participate in the making of the programme. The email explained that the programme had the “working title” of *The Sex Researchers* and that it would be a series of three programmes that would look into the life and work of the most important nineteenth and twentieth century researchers into sex and sexual behaviour and the challenges they faced “particularly in the case of Reich”, to show how their discoveries resulted from initial research into “sex and the orgasm”. Ofcom noted that programme makers made particular reference to the importance of Dr Reich’s work and that they intended to show in the programme that “his complex and wide-reading work was over simplified” which led to a “lack of understanding of its true significance”. The programme makers had also said that the programme would like to show how Dr Reich’s discovery of the “physical biological energy and orgone” could bring about new understanding of “drought, cancer cells and warfare aggression” and to discuss the “therapeutic properties of the orgone accumulator”. Ofcom went on to note that the programme makers said that they felt the series of programmes would be a good way to highlight Dr Reich’s “important contribution to the field” and that they wished to interview an expert (i.e. Dr De Meo) who was continuing Dr Reich’s “legacy”. The email concluded by inviting Dr De Meo to be interviewed at his own research laboratory. Ofcom recognised that Dr Reich was a significant, controversial and interesting figure in the field of psychology and psychiatry in the early twentieth century.

On the following day, 25 January 2011, Dr De Meo responded to the programme makers by email. Ofcom noted that Dr De Meo said that Dr Reich’s life and work had been maligned and distorted and that Dr De Meo’s “interest was primarily to see that only facts get presented”. Dr De Meo posed a number of questions in his email in an attempt to clarify the aim of the programme. In particular, Ofcom noted that Dr De Meo asked for clarification as to who the other contributors to the programmes would be and who would conduct the interview with him. Later on the same day, (i.e. 25 January 2011), the programme makers responded to Dr De Meo’s questions. Between this date and the interview at Dr De Meo’s laboratory, Ofcom noted that a series of emails were exchanged and telephone calls made between Dr De Meo and the programme makers largely regarding logistical arrangements for the interview and the likely content of the questioning.

However, Ofcom then went on to consider Channel 4’s submission that, in the months following the filming of Dr De Meo’s interview, the “style and focus” of the programme changed and became “more defined”. Ofcom noted that Channel 4 said that it had been decided that the programme would adopt a more “playful and entertaining tone” which would include dramatic reconstructions and that, in particular, the programme would not go into detail about Dr Reich’s on-going legacy. Ofcom noted that Channel 4 accepted that the subsequent changes made to the programme were such that the programme makers should reasonably have considered that they might have affected Dr De Meo’s continuing informed consent to participate.

Having carefully examined the exchange of emails and notes made of telephone conversations between Dr De Meo and the programme makers prior to the broadcast of the programme, Ofcom took the view that the programme makers had, at least at the outset of the programme making process, given sufficient information to Dr De Meo about the nature and purpose of the programme for him to make an informed decision whether or not to take part. It considered that, from the content of these email and telephone conversations that it would have been reasonable for Dr De Meo to have formed an expectation, that the programme

would take a reasonably serious, scientific approach to Dr Reich's life and work. Ofcom considered that it was on this basis that Dr De Meo gave his "informed consent" to participate in the programme.

However, it was apparent to Ofcom, from the nature and tone of the emails and communication between the programme maker and Dr De Meo and from the broadcaster's own admission, that in the time between the interview with Dr De Meo and the broadcast of programme, the emphasis of the programme changed and that the programme makers decided to present the programme in a style and format that might not have been consistent with that which Dr De Meo would have reasonably expected. Ofcom noted from Dr De Meo's email of 25 January 2011 to the programme makers that he praised the Channel 4 programmes, *The Great Global Warming Swindle* (first broadcast in 2007) and *The Aids Catch* (broadcast in 1990), and that in reply, one of the programme makers affirmed that Channel 4 was an "extremely forward-thinking and open minded channel, which is why I'm confident that the programme will be able to give Dr Wilhelm Reich the recognition he so clearly deserves". From this email exchange between Dr De Meo and the programme makers, Ofcom considered that Dr De Meo would have reasonably expected that the programme he was being invited to contribute to would be made in a similar format and style of *The Great Global Warming Swindle* and *The AIDS Catch*: i.e. a serious documentary-style programmes exploring controversial science based topics and that challenged the mainstream-orthodox views. However, the final programme as broadcast (as Channel 4 acknowledged in its submissions) had a relatively "playful and entertaining tone".

From Ofcom's examination of the pre-broadcast contact between Dr De Meo and the programme makers, Ofcom took the view that there was nothing to suggest that the programme makers had deliberately set out to mislead Dr De Meo into taking part in the programme. However, the change in the style and tone of the programme as detailed above was significant in Ofcom's opinion and, as such, had the potential to change the status of Dr De Meo's consent to participate. Ofcom considered, therefore, that the nature and format of the programme significantly changed during the programme making process in a manner that affected Dr De Meo's consent to participate. Ofcom concluded that the programme makers and the broadcaster had not taken sufficient measures to ensure that the consent given by Dr De Meo to contributing to the programme remained "informed consent".

Having reached this conclusion, Ofcom then went on to consider whether the lack of "informed consent" had led to unfairness to Dr De Meo in the programme as broadcast under head b) below.

- b) Ofcom considered the complaint that Dr De Meo said that the way in which his contribution was edited and used in the programme resulted in him being portrayed unfairly.

In considering this head of Dr De Meo's complaint, Ofcom took account of Practices 7.6 and 7.9 of the Code. Practice 7.6 states that when a programme is edited, contributions should be represented fairly. Practice 7.9 states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom noted the following five edited extracts of the contribution made by Dr De Meo and included in the programme as broadcast:



Extract 1 (Dr De Meo shown driving)

*“A lot of experiments of Dr Reich only work optimally when you have a very high altitude location, which is free from electromagnetic field phenomenon and ideally in an area with forests and a lot of life”.*

Extract 2 (Dr De Meo shown demonstrating scientific device)

*“This is a solid state reproduction of one of Dr Reich’s inventions and this particular device is able to register the strength of your energy field by the proximity to this little metal plate which is the sensor for it...and the stronger is your energy charge, the greater will be the deflection of the needle”.*

Extract 3 (Dr De Meo talking to the camera)

*“Reich looked at sexual repression as a cornerstone for social chaos and fascism”.*

Extract 4 (Dr De Meo shown demonstrating orgone accumulator)

*“So you can see it’s all lined with metal, and we’ve got two other orgone accumulators that are made for sitting inside. And then you simply sit inside these things, for a while, and close the door”.*

Extract 5 (Dr De Meo shown inside orgone accumulator)

*“Typically when you use these you strip down to your underwear so that the radiation from the walls of the accumulator penetrates into your body and you can feel it as a warmth, a tingling radiant feeling and it charges you up”.*

In considering whether or not Dr De Meo’s contribution to the programme had been edited unfairly, Ofcom also carefully examined the full unedited footage of his interview and demonstrations of his scientific equipment and compared this with the extracts included in the programme. Ofcom has marked in bold below the parts of Dr De Meo’s contribution that were included in the programme.

Unedited Extract 1

In response to a question by the interviewer about the reasons for choosing to set up his laboratory in its present location, Dr De Meo said:

**“Well, a lot of the err, experiments of Dr Reich on the orgone energy accumulator only work optimally when you have a, a very high altitude location which is free from electro-magnetic field phenomenon, and ideally in an area with forests and a lot of life,** the whole concept of life energy requires for the accumulator to give its most optimal result, a strong inherent charge of this life energy in the natural life environment...”.

Unedited Extract 2

In response to a question from the interviewer asking what he was demonstrating, Dr De Meo said:

**“This is a solid state reproduction of one of Dr Reich’s inventions** which is the orgone energy field meter, **and this particular device is able to**

**register the strength of your energy field on this instrument, by the proximity to this little metal place which is the sensor for it. And the stronger is your energy charge. The greater will be the deflection of the needle”.**

### Unedited Extract 3

In response to the interviewer’s question about Dr Reich’s concern that sexual repression was going to have a very damaging effect on society, Dr De Meo said:

“Oh yes absolutely, **Reich looked at sexual repression as a cornerstone for err, social chaos and fascism, his whole book, the mass psychology of fascism**, is a discussion on the role of sexual oppression in authoritarian societies”.

### Unedited Extracts 4 and 5

When explaining to the interviewer how the orgone accumulators worked, Dr De Meo said:

**“So, you can see it’s lined with metal**, then there’s an insulating layer behind. **[a]nd we’ve got two other orgone accumulators in here that are made for sitting** inside. This one here. And this one here.

I, I have a something like this inside my house, so I don’t like to come out here in middle of the winter, when it’s freezing cold. Because **[T]ypically when you use these you strip down to your underwear so that the energy** will react to your skin more directly. You don’t want to have fabric, uh, interfering with the energy into your body. And then **you err, simply, sit inside these things, for a while and close the door”.**

### Unedited Extract 5

In explaining how the accumulator collects orgone energy and passes it through the body, Dr De Meo said:

“**The radiation from the walls of the accumulator penetrates into your body and you can feel it as a warmth, as a tingling, radiant feeling and** you sit in for half an hour, 45 minutes and **it charges you up** and most people will readily admit they can feel this and it’s not some, some kind of fantasy, and I will talk a little bit later about some of the controlled studies that have been done in universities testing this out, and they verify that Reich was correct...”.

Ofcom recognises that programme makers can legitimately select and edit material from interview footage or general footage of a contributor for inclusion in a programme and that this is an editorial decision for the programme makers and broadcaster to make. However, in editing such material, broadcasters must ensure that they do so in a manner that represents the contribution fairly.

Having compared the material included in the programme and the unedited footage of Dr De Meo’s contribution, Dr De Meo’s contribution clearly was edited and summarised in the programme. Ofcom noted that not all Dr De Meo’s contribution was used and that part of his explanation about how the orgone accumulator worked and collected orgone energy (see Extracts 4 and 5 above) was comprised of selected

parts of longer explanation given by Dr De Meo (see unedited Extracts 4 and 5 above). Nonetheless, Ofcom took the view that the edited version set out his explanation adequately.

From its comparison of both the edited and unedited footage of Dr De Meo's contribution, Ofcom considered that there was no evidence to suggest that the content of his contribution was edited in a way that misrepresented what he had said in interview. Furthermore, Ofcom considered that there was no suggestion from the unedited material of Dr De Meo's interview and demonstrations of the scientific equipment that his contribution was selected because "he might have used the word sex or orgasm". It also considered that it was clear from the unedited material provided to Ofcom that a discussion between Dr De Meo and the programme makers about the accusation that Dr Reich masturbated his patients did not occur.

Ofcom recognises that it is a matter of editorial discretion for broadcaster and programme makers to decide what to or not to include in programmes, so long as it does not create unfairness. However, in this particular case, Ofcom was satisfied that the editing of Dr De Meo's contribution had been conducted fairly and that no significant omissions were made that would have materially affected viewers' understanding of the content of Dr De Meo's contribution. In this respect, Ofcom considered that Dr De Meo's contribution to the programme was not edited in a way that represented his views unfairly.

However, despite concluding that Dr De Meo's contribution was not edited unfairly in the programme as broadcast, Ofcom considered whether or not the context in which it was used in the programme resulted in portraying him unfairly. In reaching its decision on whether or not the programme portrayed Dr De Meo unfairly, Ofcom considered the manner in which his contribution was used and presented in the programme.

As already set out in head a) of the decision above, the nature and format of the programme had significantly changed during the programme making process in a manner that, Ofcom considered, affected Dr De Meo's consent to participate in the programme. Ofcom took the view that the programme that was broadcast was not of a style or tone that Dr De Meo had understood when consenting to contribute to the programme.

In considering whether or not the way in which his contribution was presented in the programme resulted in him being unfairly portrayed, Ofcom first noted the introductory sequence of the programme. The programme began by its narrator stating:

*"Sex is now in the hands of the scientist. As well as researching what we do with our bodies, they now read our brains, decode our genes and offer instant solutions to our sexual problems. [...] The motives and methods of these often flawed but pioneering scientists have been fiercely attacked. These controversial scientists are 'The Sex Researchers'."*

Ofcom noted that the introduction was read, as well as commentary throughout the rest of the programme, by Mr Robert Webb, a well-known British actor and comedian. His voice is likely, Ofcom considered, to have been familiar to many of the programme's viewers, who would have associated it with his comic persona. It also noted that the introduction was accompanied by a montage of images from archive footage and dramatic reconstructions depicting some nudity and scenes of an adult sexual nature. Ofcom also noted that sound effects of sexualised moaning and

groaning were also a feature throughout the programme. In Ofcom's view, the style and tone of the programme would have been clear to viewers from the outset and that, although the introduction indicated that it would be addressing genuine and important topics relating to sexual research, it would be presented in a way that would be, as Channel 4 have accepted in its own submission as being, "entertaining" and "playful".

Ofcom went on to note where extracts of Dr De Meo's contribution featured in the programme and the context in which they were presented to viewers.

Ofcom noted that Dr De Meo was first introduced to viewers in the part of the programme that looked at the life and work of Dr Reich, who was the second "sex researcher" to be featured in this particular episode of the programme. The programme's commentary began by stating that Dr Reich had believed that the concept of the libido developed by Dr Sigmund Freud was "*a real, physical sex energy - an invisible, fundamental force that animated every living thing*" which was accompanied by a dramatic reconstruction of Dr Reich in a laboratory. Immediately following this statement, footage of Dr De Meo was shown driving a van and commenting on the choice of location for his own laboratory (see Extract 1 above).

The programme's commentary then introduced Dr De Meo by saying "*Eighty years later, high in the mountains of Oregon, Dr James De Meo is still pursuing these ideas. He demonstrates how Reich's sexual energy can be trapped, and even measured*". After this, Dr De Meo was shown demonstrating an electronic device and explaining how it worked (see Extract 2 above). The commentary went on to state that Dr Reich believed that he had discovered a type of energy ("*orgone energy*") that he claimed was "*fuelled by the power of the orgasm*" and that Dr Reich had "*set about trying to measure the electrical discharge from his penis during masturbation. He found that, the better the orgasm, the more energy appeared to be released*". This commentary was accompanied by a dramatic reconstruction of Dr Reich apparently masturbating while connected to an electrical measuring device, not too dissimilar in Ofcom's view, to the device demonstrated by Dr De Meo.

Following this dramatic reconstruction, Ofcom noted that the commentary stated that Dr Reich "*encouraged people to have as many orgasms as possible*" and that this would "*lead to health and harmony throughout the world*" after which Dr De Meo was again shown in interview (see Extract 3 above). At this point of the programme began a dramatic reconstruction of Dr Reich with a naked woman lying on a therapists' couch. The commentary stated:

*"Reich began to break Freud's strict rules in his psychoanalytic sessions, encouraging his patients to undress and pressing hard on what he termed their 'body armour', until the patient climaxed and released wave upon wave of orgone. This became the chief goal of the Reichian therapy, each orgasm topping up the world's supply of orgone. Although popular with some of his patients, for many of his colleagues, Reich had crossed the line"*.

Ofcom noted that the dramatic reconstruction up to this point of the commentary depicted the character of Dr Reich laying his hands on the shoulders of the naked woman who was, in turn, depicted reaching orgasm. This was accompanied with the sound of sexualized moaning. The commentary then stated:

*"Questions were asked about his [Dr Reich's] methods, and as rumours began to spread that he was mentally ill, he fled Europe for the American wilderness. Here,*

*he reinvented his career and began constructing special boxes to harness orgone energy - his famed orgone accumulators”.*

Ofcom noted that this commentary was accompanied by a dramatic reconstruction of Dr Reich looking wide-eyed and manic before shifting to actual images of mountainous terrain. Dr De Meo was then shown outside his laboratory. The programme said that *“James De Meo has a number of working replicas”* and Dr De Meo was shown demonstrating how the orgone accumulator worked (see Extract 4 and Extract 5 above).

While Dr De Meo did not appear any further in the programme, Ofcom noted, however, that the part of the programme that focused on Dr Reich concluded with the narrator stating that although Albert Einstein had been initially intrigued by Dr Reich’s research, when Dr Reich had mentioned to him that people thought him mad, Albert Einstein had replied *“I can believe that”*. The programme also stated that *“his [Dr Reich’s] orgone accumulators were declared a ‘fraud of the first magnitude’”*.

The Code recognises the importance of freedom of expression and the need to allow broadcasters the freedom to broadcast matters of a genuine public interest. However, broadcasters also, when representing contributions and presenting material facts, have an obligation to take reasonable care not to do so in a way that would cause unfairness to an individual or an organisation.

In the circumstances of this particular case, Ofcom considered that it was legitimate for the broadcaster and programme makers to make programmes about scientific topics and to present them in a format that is entertaining for viewers. However, broadcasters and programme makers must ensure that those contributing to such programmes are made aware of the nature and purpose of the programme in which their contribution would be used and the format and style the programme would take to ensure that their “informed consent” was secured.

As already set out in detail at head a) of the decision above, the nature and format of the programme changed in the months between filming Dr De Meo’s contribution and the broadcast of the programme and these changes were significant. Ofcom considered that the change to the style and tone of the programme was of such significance that Dr De Meo should have been notified of the changes prior to broadcast and should have been given an opportunity to review whether or not his consent to participate in the programme remained “informed consent”. The fact that he was not given this opportunity in the circumstances of this case rendered his original consent invalid.

Having concluded that Dr De Meo’s “informed consent” had not been secured by the broadcaster to the programme in its altered form, Ofcom also considered the editing of Dr De Meo’s contribution. As set out in the preceding paragraphs, Ofcom concluded that the manner in which Dr De Meo’s contribution was edited did not raise any issue of unfair treatment. However, the context in which his contribution was used in the programme had materially changed from that which Dr De Meo would have reasonably understood from his correspondence and contact with the programme makers when originally consenting to participate in the programme.

In conclusion and taking all the factors detailed in heads a) and b) of the decision above, Ofcom took the view that the inclusion of Dr De Meo’s contribution in the section of the programme about Dr Reich (which included dramatic reconstructions depicting Dr Reich masturbating and the depiction of a female patient reaching orgasm) had the effect of representing Dr De Meo to viewers as an advocate of Dr

Reich's controversial practices (which Dr De Meo maintained that he was not) and presenting Dr De Meo's own work and research out of context. Ofcom acknowledged Channel 4's representations that his contribution was not misrepresented or used out of context and so did not portray him unfairly. However, Ofcom considered that viewers would have been left with the impression that Dr De Meo had given his consent to appear in the programme and to be associated with the programme's particular depiction of Dr Reich and his methods, when, in fact, Dr De Meo was unaware that his contribution would be included in a documentary which was not a serious programme described by Channel 4 as "playful and entertaining" in tone and style. In Ofcom's view, the context in which Dr De Meo's contribution was presented in the programme was likely to materially and adversely affect viewers' perception of Dr De Meo and his work.

Given the context in which Dr De Meo's contribution was presented in the programme, and that his "informed consent" had not been secured prior to the broadcast of the programme despite the significant change in its nature and format, Ofcom concluded, on balance and in the particular facts of this case, that Dr De Meo was treated unfairly in the programme as broadcast.

**Accordingly, Ofcom has upheld Dr De Meo's complaint of unjust or unfair treatment in the programme as broadcast and has found that the broadcaster is in breach of Rule 7.1.**

## Upheld

### Complaint by Mr Harbans Mehmi

*Siri Guru Ravidass Sabha, MATV, 6 March 2011*

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**Summary:** Ofcom has upheld this complaint of unfair or unjust treatment in the programme as broadcast by Mr Harbans Mehmi.

This programme was a live broadcast which involved interaction with members of the Sikh community and Sikh religious figures in Strood, Kent. The programme included an interview with the incumbent president of the committee of the Siri Guru Ravidass Sikh temple (“the temple”) in Strood, Kent who was asked questions relating to the financial management of the previous temple committee. The presenter stated that when the incumbent committee took over the management of the temple, the temple’s treasury was found to be missing £65,000. The president of the incumbent committee responded that:

“The previous committee had taken the money; their president was involved; their secretary was involved. They did a very bad thing. You cannot do worse with your community than to steal money from the Guru’s house [i.e. the temple]”.

The complainant, Mr Mehmi, held the position of president of the previous committee of the temple. He complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast.

Ofcom found the following:

- In Ofcom’s view, the comments made in the programme relating to Mr Mehmi as the president of the previous committee were likely materially and adversely to affect viewers’ perception of him. It considered that the comments alleged that Mr Mehmi had been involved in misappropriating a considerable amount of money from the temple’s treasury and had committed not only a criminal offence, but also a gross breach of trust. Ofcom therefore found that Mr Mehmi was portrayed unfairly in the programme as broadcast in this respect.
- Ofcom considered that the broadcaster failed to ensure that the programme did not present material facts in a way that was unfair to Mr Mehmi.

### Introduction

MATV is a television service providing programming for the Asian community. It can be accessed throughout the UK and Europe via British Sky Broadcasting Limited television with selected programming available around the world via the internet.

A transcript in English (translated from the original Hindi and Punjabi) of the relevant part of the programme broadcast on 6 March 2011 was prepared by an independent translation company for Ofcom. A copy of the translated transcript was provided to the parties when the complaint was entertained by Ofcom. The translated transcript has been relied on by Ofcom to construct the following introductory paragraphs and to adjudicate on this complaint.

On 6 March 2011, MATV broadcast a programme that celebrated the birth of Siri Ravi Dass Ji, a fifteenth century Sikh Guru. This particular programme was a live

broadcast which involved interaction with members of the Sikh community and Sikh religious figures in Strood, Kent. The programme included an interview with, Mr Harjinder Bagga, the incumbent president of the temple committee (“the new committee”) who was asked by the presenter questions relating to the financial management of the previous committee to the temple (“the previous committee”). The presenter stated that when the new committee took over the management of the temple, £65,000 was missing from the temple’s treasury. Mr Bagga responded that:

*“The previous committee had taken the money; their president was involved; their secretary was involved. They did a very bad thing. You cannot do worse with your community than to steal money from the Guru’s house [i.e. the temple]”.*

The complainant, Mr Harbans Mehmi, held the position of secretary of the previous committee of the temple.

Following the broadcast of the programme, Mr Mehmi complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast.

### **Summary of the complaint and the broadcaster’s response**

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

- a) Mr Mehmi complained that he was portrayed unfairly in the programme in that he was accused of stealing £65,000 from the temple funds. In particular, Mr Mehmi said that the programme’s presenter inappropriately and incorrectly made reference in the programme to a sum of money (£65,000) that was allegedly misappropriated from the temple account. Mr Mehmi said that this allegation was inaccurate and false and that it was slur upon his character.

Mr Mehmi said that there was a dispute between the previous and new committees and that the money referred to in the programme was being withheld by the previous committee until the dispute was resolved. The presenter, who was not in possession of the full facts, should have kept an impartial stance on the subject. Mr Mehmi said that the allegation made in the programme had given him a “bad name” in the community. Mr Mehmi said that a police investigation had taken place into the allegation of theft of the funds of the temple and that the police had concluded that the matter was a “civil dispute”.

In response, MATV said that the programme was a broadcast of a live religious event and that the comments of the religious leaders and preachers featured were broadcast unedited owing to it being a live event. MATV said that it normally ran a disclaimer before the broadcast of a live event which states that MATV does not subscribe to the views expressed by participants during a live event. Such a disclaimer was broadcast before this particular live event.

MATV said that the presenter referred to in the complaint was not an employee of the channel. It said that she was an independent presenter who presented shows for a variety of other channels and events.

MATV said that there was an ongoing dispute between the previous and new committees with each side blaming the other. MATV said that as a broadcaster it did not want to hurt any one’s religious or personal sentiments and would not have done so knowingly. However, the programme covered a live event and the conversation complained about was broadcast live.



- b) Mr Mehmi complained that he was not given the opportunity to respond to the allegations made against him in the programme.

In response, MATV said that Mr Mehmi had not made any approach to it since the broadcast of the programme. MATV said that the programme covered a live event and that if Mr Mehmi had approached it to put forward his view, MATV would not have hesitated in broadcasting his views. MATV said that Mr Mehmi was welcome to visit the studio for a live interview so that he can put his views forward.

## 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 unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, 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.

In reaching its decision, Ofcom considered all the relevant material provided by both parties. This included a recording of the programmes as broadcast, a transcript of the report and written submissions and supporting material from both parties.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code. Ofcom also took into account Practice 7.9 of the Code which states that before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

- a) Ofcom considered first whether Mr Mehmi was treated unjustly or unfairly in the programme as broadcast in that he was portrayed unfairly in the programme in that he was accused of stealing £65,000 from the temple funds.

Ofcom noted that the programme contained a live broadcast of a religious event from the Siri Guru Ravidass Sikh temple in Strood, Kent and that a number of contributors were interviewed about the temple and its significance to the local community. One such interview included the president (Mr Harjinder Ram Bagga), the secretary (Mr Des Raj Bungad), and other committee members of the new committee who had taken over from the previous committee in June 2010.

Ofcom noted that the following exchange in the programme between the presenter and the president and the secretary of the new Committee:

Presenter: *"I want to ask you a special question; I hope you will not mind me asking but when you formed this committee, and began to manage the temple affairs, it was found that £65,000 were missing. If £5 is lost in a home budget, it gets difficult to manage it [sic]. But you*

*managed to stabilise the situation and manage such a large temple; how did you do it?*

Mr Bagga: *We were able to do so because the whole community supported us, the committee cooperated with us. The previous committee had taken this money; their president was involved, their secretary was involved. They did a very bad thing. You cannot do worse with your community, than to steal money from the Guru's House [i.e. the temple].*

Presenter: *It was a lot of money; a big loss; how was it compensated? How did the rest of the committee and the community help?*

Mr Bungad: *My name is Desh Raj Bungar [sic] and I am the general secretary of the Guru's House. It was a very sad thing; as our president has told you, when the [new] committee took over in June, there was £65,000 missing. The president appealed and pleaded for the return of this money but it has not been returned though we hope so because it is collective money, it belongs to the community and it should be put back in the treasury. The community donates and we collect pennies to gather funds. The community knows about it and all that we can do is to keep appealing".*

Ofcom observed from this particular exchange that the presenter had stated in her question that £65,000 was found to be missing from the temple's treasury when the new committee took control of the management of the temple's affairs. This was immediately followed by Mr Bagga's response in which he said that the previous committee had taken the money and that the previous committee's president and secretary "were involved". He also stated that "You cannot do worse with your community, than to steal money from the Guru's House". Ofcom noted too that Mr Bungad, the secretary of the new committee, commented that £65,000 was missing and that Mr Bagga had "pleaded" for it to be returned as it belonged to the "community".

Ofcom considered that the language used by Mr Bagga and Mr Bungad was accusatory in nature and would have left viewers in no doubt that they claimed that the previous committee, and in particular the president and the secretary of the previous committee, had been responsible for the misappropriation of the £65,000. In particular, Mr Bagga's statement that "you cannot do worse with your community, than to steal money from the Guru's House" was unequivocal and Ofcom considered that viewers would have understood that Mr Bagga and the new committee held the view that the money had been stolen, and that the former president (i.e. Mr Mehmi) and previous secretary had been involved. This allegation of criminal wrongdoing was, in Ofcom's view, very serious and it went on to consider whether the inclusion of this allegation in the programme as broadcast resulted in unfairness to Mr Mehmi.

Ofcom noted Mr Mehmi's complaint that there was a dispute between the previous committee and the new committee and that the £65,000 referred to in the programme had not gone "missing", but was being withheld by the previous committee until the issues in dispute had been resolved. The existence of the dispute between the new and previous committees was acknowledged by the broadcaster in its statement in response to the complaint.

Ofcom recognised that the programme was broadcast live and that the broadcaster said that the presenter was an “independent presenter” who was not an MATV employee. It also recognised the broadcaster’s right to freedom of expression and the right of members of the Sikh community to exchange views on air on topics of genuine public interest. Ofcom acknowledged that the coverage of the religious event at the temple was such a topic. However, with this right comes the responsibility for the broadcaster to ensure that material facts are not presented, omitted or disregarded in a way that creates unfairness to an individual or organisation.

Ofcom took into account the fact that the comments concerning Mr Mehmi and the money were made by contributors to the programme, that is Mr Bagga and Mr Bungad, who gave interviews on a programme broadcast live. While Ofcom was aware that the presenter herself did not make the comments relating to the alleged misappropriation of the £65,000, it noted however that she did not at any point challenge or query Mr Bagga’s or Mr Bungad’s comments. Ofcom noted too that the presenter did not intervene, for the benefit of viewers, to clarify that there was a dispute between the new and previous committees regarding the money and/or that neither the president nor the secretary of the previous committee was present to respond to the allegation of theft. The programme’s presenter therefore did not present the circumstances surrounding the money in context. In addition, and after taking into account MATV’s statement in response to the complaint, Ofcom noted that the broadcaster had provided no evidence to demonstrate that it had taken steps to verify the validity of the allegations made by Mr Bagga and Mr Bungad that Mr Mehmi and the president of the previous committee had been involved in the misappropriation of £65,000 from the temple’s treasury. Ofcom also considered that it was not sufficient in avoiding the potential for unfairness to individuals referred to in programmes for the broadcaster to rely on the inclusion of a general disclaimer before the broadcast of live programmes disassociating it from the comments that may be made by contributors.

Ofcom considered that, as the president of the previous committee specifically referred to by Mr Bagga, Mr Mehmi had been depicted as being involved in the misappropriation of a considerable amount of money from the temple’s treasury and as having committed, not only a criminal offence, but also a gross breach of trust. Mr Bagga’s and Mr Bungad’s accusations went unchallenged in the programme, and no possible alternative reasons for the money not being available to the new committee were given. The allegations were thus presented as not being disputed. In Ofcom’s view, the presentation of these allegations in the programme was likely materially and adversely to affect viewers’ perception of Mr Mehmi. Consequently, taking all these factors into account, Ofcom concluded that the broadcaster did not take reasonable care to satisfy itself that material facts surrounding the circumstances of the dispute and the alleged missing money were not presented, disregarded or omitted in a way that was not unfair to Mr Mehmi. Ofcom therefore found that Mr Mehmi was portrayed unfairly in the programme as broadcast in this respect.

- b) Ofcom then considered Mr Mehmi’s complaint that he was not given the opportunity to respond to the allegations made against him in the programme.

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

For the reasons given in Head a) above, Ofcom considered that the inclusion of the accusations made by Mr Bagga and Mr Bungad in interview amounted to a serious allegation of wrongdoing about Mr Mehmi (namely, that he had, in his position of president of the previous committee, been involved with the misappropriation or theft of £65,000 from the temple's treasury). Normally, where significant allegations are made about an individual in a programme, as they were in this particular case, then that individual should be given an appropriate and timely opportunity to respond to them. However, Ofcom recognised that in certain formats of programming, such as news reporting or live events coverage, and in particular live interviews and studio discussions, it is not always possible for the broadcaster to obtain responses from others prior to or during the broadcast. However, in such circumstances, Ofcom considers that when including material that has the potential to amount to a significant allegation, reasonable care must be taken by the broadcaster to ensure that the broadcast material is consistent with the requirements of the Code and that it does not mislead viewers or portray individuals in a way that is unfair.

In this particular case, Ofcom considered that it was impracticable for the broadcaster to have given Mr Mehmi an appropriate and timely opportunity to respond to the allegations made in the interviews owing to the live format of the programme. Nevertheless, there remained an obligation on the broadcaster to ensure that it avoided unjust or unfair treatment of individuals in programmes. Ofcom noted that there was a dispute between the previous and the new committees about the "missing" money (a fact not contested by the broadcaster), and that it appeared that as a result of this dispute the previous committee had withheld the money from the new committee and would do so until such time as the dispute was resolved.

Ofcom also noted, as it did in Head a) of the Decision above, that at no stage during the interview did the presenter make clear to viewers that neither Mr Mehmi nor the president of the previous committee were in a position (owing to them not being present) to respond to the allegations. Nor for example did the presenter explain that the allegations and comments made by Mr Bagga and Mr Bungad were their personal views and not endorsed by the broadcaster. Ofcom however considers that it would have been possible and helpful in the circumstances of this case if the presenter had reacted to the serious criminal allegations made against Mr Mehmi by placing them in context, by for example challenging or querying their background or basis. Ofcom did not accept as a reason for these allegations going unchallenged in the programme that the presenter was not an employee of MATV but was an "independent presenter". It is the responsibility of the broadcaster to ensure that a presenter takes any appropriate and necessary action to ensure material facts are not presented unfairly in its programmes. In this particular case, MATV failed to fulfil its responsibility to ensure that material facts were not presented unfairly in this programme.

Taking all the factors referred to above into account, Ofcom concluded that, although it was not practicable (owing to the live broadcast format of the programme) for the broadcaster to provide Mr Mehmi with an opportunity to respond to the allegations made in the programme, the broadcaster failed to avoid unfairness to him.

**Accordingly, Ofcom has upheld Mr Mehmi's complaint of unjust or unfair treatment in the programme as broadcast and has found that the broadcaster is in breach of Rule 7.1.**

**Ofcom directed MATV to broadcast a summary of this finding.**

## Upheld

### Complaint by Mr Chaman Lal Sandhu

*Siri Guru Ravidass Sabha, MATV, 6 March 2011*

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**Summary:** Ofcom has upheld this complaint of unfair or unjust treatment in the programme as broadcast by Mr Chaman Lal Sandhu.

This programme was a live broadcast which involved interaction with members of the Sikh community and Sikh religious figures in Strood, Kent. The programme included an interview with the incumbent president of the committee of the Siri Guru Ravidass Sikh temple (“the temple”) in Strood, Kent who was asked questions relating to the financial management of the previous temple committee. The presenter stated that when the incumbent committee took over the management of the temple, the temple’s treasury was found to be missing £65,000. The president of the incumbent committee responded that:

“The previous committee had taken the money; their president was involved; their secretary was involved. They did a very bad thing. You cannot do worse with your community than to steal money from the Guru’s house [i.e. the temple]”.

The complainant, Mr Sandhu, held the position of secretary of the previous committee of the temple. He complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast.

Ofcom found the following:

- In Ofcom’s view, the comments made in the programme relating to Mr Sandhu as the secretary of the previous committee were likely materially and adversely to affect viewers’ perception of him. It considered that the comments alleged that Mr Sandhu had been involved in misappropriating a considerable amount of money from the temple’s treasury and had committed not only a criminal offence, but also a gross breach of trust. Ofcom therefore found that the Mr Sandhu was portrayed unfairly in the programme as broadcast in this respect.
- Ofcom considered that the broadcaster failed to ensure that the programme did not present material facts in a way that was unfair to Mr Sandhu.

#### Introduction

MATV is a television service providing programming for the Asian community. It can be accessed throughout the UK and Europe via British Sky Broadcasting Limited television with selected programming available around the world via the internet.

A transcript in English (translated from the original Hindi and Punjabi) of the relevant part of the programme broadcast on 6 March 2011 was prepared by an independent translation company for Ofcom. A copy of the translated transcript was provided to the parties when the complaint was entertained by Ofcom. The translated transcript has been relied on by Ofcom to construct the following introductory paragraphs and to adjudicate on this complaint.

On 6 March 2011, MATV broadcast a programme that celebrated the birth of Siri Ravi Dass Ji, a fifteenth century Sikh Guru. This particular programme was a live

broadcast which involved interaction with members of the Sikh community and Sikh religious figures in Strood, Kent. The programme included an interview with, Mr Harjinder Bagga, the incumbent president of the temple committee (“the new committee”) who was asked by the presenter questions relating to the financial management of the previous committee to the temple (“the previous committee”). The presenter stated that when the new committee took over the management of the temple, £65,000 was missing from the temple’s treasury. The Mr Bagga responded that:

*“The previous committee had taken the money; their president was involved; their secretary was involved. They did a very bad thing. You cannot do worse with your community than to steal money from the Guru’s house [i.e. the temple]”.*

The complainant, Mr Chaman Lal Sandhu, held the position of secretary of the previous committee of the temple.

Following the broadcast of the programme, Mr Sandhu complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast.

### **Summary of the complaint and the broadcaster’s response**

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

- a) Mr Sandhu complained that he was portrayed unfairly in the programme in that he was accused of stealing £65,000 from the temple funds. In particular, Mr Sandhu said that the programme’s presenter inappropriately and incorrectly made reference in the programme to a sum of money (£65,000) that was allegedly misappropriated from the temple account. Mr Sandhu said that this allegation was inaccurate and false and that it was slur upon his character.

Mr Sandhu said that there was a dispute between the previous and new committees and that the money referred to in the programme was being withheld by the previous committee until the dispute was resolved. The presenter, who was not in possession of the full facts, should have kept an impartial stance on the subject. Mr Sandhu said that the allegation made in the programme had given him a “bad name” in the community. Mr Sandhu said that a police investigation had taken place into the allegation of theft of the funds of the temple and that the police had concluded that the matter was a “civil dispute”.

In response, MATV said that the programme was a broadcast of a live religious event and that the comments of the religious leaders and preachers featured were broadcast unedited owing to it being a live event. MATV said that it normally ran a disclaimer before the broadcast of a live event which states that MATV does not subscribe to the views expressed by participants during a live event. Such a disclaimer was broadcast before this particular live event.

MATV said that the presenter referred to in the complaint was not an employee of the channel. It said that she was an independent presenter who presented shows for a variety of other channels and events.

MATV said that there was an ongoing dispute between the previous and new committees with each side blaming the other. MATV said that as a broadcaster it did not want to hurt any one’s religious or personal sentiments and would not

have done so knowingly. However, the programme covered a live event and the conversation complained about was broadcast live.

- b) Mr Sandhu complained that he was not given the opportunity to respond to the allegations made against him in the programme.

In response, MATV said that Mr Sandhu had not made any approach to it since the broadcast of the programme. MATV said that the programme covered a live event and that if Mr Sandhu had approached it to put forward his view, MATV would not have hesitated in broadcasting his views. MATV said that Mr Sandhu was welcome to visit the studio for a live interview so that he can put his views forward.

## **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 unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, 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.

In reaching its decision, Ofcom considered all the relevant material provided by both parties. This included a recording of the programmes as broadcast, a transcript of the report and written submissions and supporting material from both parties.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code. Ofcom also took into account Practice 7.9 of the Code which states that before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

- a) Ofcom considered first whether Mr Sandhu was treated unjustly or unfairly in the programme as broadcast in that he was portrayed unfairly in the programme in that he was accused of stealing £65,000 from the temple funds.

Ofcom noted that the programme contained a live broadcast of a religious event from the Siri Guru Ravidass Sikh temple in Strood, Kent and that a number of contributors were interviewed about the temple and its significance to the local community. One such interview included the president (Mr Harjinder Ram Bagga), the secretary (Mr Des Raj Bungad), and other committee members of the new committee who had taken over from the previous committee in June 2010.

Ofcom noted that the following exchange in the programme between the presenter and the president and the secretary of the new Committee:

Presenter: *"I want to ask you a special question; I hope you will not mind me asking but when you formed this committee, and began to manage the temple affairs, it was found that £65,000 were missing. If £5 is lost in a home budget, it gets difficult to manage it [sic]. But you managed to stabilise the situation and manage such a large temple; how did you do it?"*

Mr Bagga: *We were able to do so because the whole community supported us, the committee cooperated with us. The previous committee had taken this money; their president was involved, their secretary was involved. They did a very bad thing. You cannot do worse with your community, than to steal money from the Guru's House [i.e. the temple].*

Presenter: *It was a lot of money; a big loss; how was it compensated? How did the rest of the committee and the community help?*

Mr Bungad: *My name is Desh Raj Bungar [sic] and I am the general secretary of the Guru's House. It was a very sad thing; as our president has told you, when the [new] committee took over in June, there was £65,000 missing. The president appealed and pleaded for the return of this money but it has not been returned though we hope so because it is collective money, it belongs to the community and it should be put back in the treasury. The community donates and we collect pennies to gather funds. The community knows about it and all that we can do is to keep appealing".*

Ofcom observed from this particular exchange that the presenter had stated in her question that £65,000 was found to be missing from the temple's treasury when the new committee took control of the management of the temple's affairs. This was immediately followed by the Mr Bagga's response in which he said that the previous committee had taken the money and that the previous committee's president and secretary "were involved". He also stated that "You cannot do worse with your community, than to steal money from the Guru's House". Ofcom noted too that Mr Bungad, the secretary of the new committee, commented that £65,000 was missing and that the Mr Bagga had "pleaded" for it to be returned as it belonged to the "community".

Ofcom considered that the language used by Mr Bagga and Mr Bungad was accusatory in nature and would have left viewers in no doubt that they claimed that the previous committee, and in particular the president and the secretary of the previous committee, had been responsible for the misappropriation of the £65,000. In particular, Mr Bagga's statement that "you cannot do worse with your community, than to steal money from the Guru's House" was unequivocal and Ofcom considered that viewers would have understood that Mr Bagga and the new committee held the view that the money had been stolen, and that the former president and previous secretary (i.e. Mr Sandhu) had been involved. This allegation of criminal wrongdoing was, in Ofcom's view, very serious and it went on to consider whether the inclusion of this allegation in the programme as broadcast resulted in unfairness to Mr Sandhu.

Ofcom noted Mr Sandhu's complaint that there was a dispute between the previous committee and the new committee and that the £65,000 referred to in the programme had not gone "missing", but was being withheld by the previous committee until the issues in dispute had been resolved. The existence of the



dispute between the new and previous committees was acknowledged by the broadcaster in its statement in response to the complaint.

Ofcom recognised that the programme was broadcast live and that the broadcaster said that the presenter was an “independent presenter” who was not an MATV employee. It also recognised the broadcaster’s right to freedom of expression and the right of members of the Sikh community to exchange views on air on topics of genuine public interest. Ofcom acknowledged that the coverage of the religious event at the temple was such a topic. However, with this right comes the responsibility for the broadcaster to ensure that material facts are not presented, omitted or disregarded in a way that creates unfairness to an individual or organisation.

Ofcom took into account the fact that the comments concerning Mr Sandhu and the money were made by contributors to the programme, that is Mr Bagga and Mr Bungad, who gave interviews on a programme broadcast live. While Ofcom was aware that the presenter herself did not make the comments relating to the alleged misappropriation of the £65,000, it noted however that she did not at any point challenge or query Mr Bagga’s or Mr Bungad’s comments. Ofcom noted too that the presenter did not intervene, for the benefit of viewers, to clarify that there was a dispute between the new and previous committees regarding the money and/or that neither the president nor the secretary of the previous committee was present to respond to the allegation of theft. The programme’s presenter therefore did not present the circumstances surrounding the money in context. In addition, and after taking into account MATV’s statement in response to the complaint, Ofcom noted that the broadcaster had provided no evidence to demonstrate that it had taken steps to verify the validity of the allegations made by Mr Bagga and Mr Bungad that Mr Sandhu and the president of the previous committee had been involved in the misappropriation of £65,000 from the temple’s treasury. Ofcom also considered that it was not sufficient in avoiding the potential for unfairness to individuals referred to in programmes for the broadcaster to rely on the inclusion of a general disclaimer before the broadcast of live programmes disassociating it from the comments that may be made by contributors.

Ofcom considered that, as the secretary of the previous committee specifically referred to by Mr Bagga, Mr Sandhu had been depicted as being involved in the misappropriation of a considerable amount of money from the temple’s treasury and as having committed, not only a criminal offence, but also a gross breach of trust. Mr Bagga’s and Mr Bungad’s accusations went unchallenged in the programme, and no possible alternative reasons for the money not being available to the new committee were given. The allegations were thus presented as not being disputed. In Ofcom’s view, the presentation of these allegations in the programme was likely materially and adversely to affect viewers’ perception of Mr Sandhu. Consequently, taking all these factors into account, Ofcom concluded that the broadcaster did not take reasonable care to satisfy itself that material facts surrounding the circumstances of the dispute and the alleged missing money were not presented, disregarded or omitted in a way that was not unfair to Mr Sandhu. Ofcom therefore found that the Mr Sandhu was portrayed unfairly in the programme as broadcast in this respect.

- b) Ofcom then considered Mr Sandhu’s complaint that he was not given the opportunity to respond to the allegations made against him in the programme.

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

For the reasons given in Head a) above, Ofcom considered that the inclusion of the accusations made by Mr Bagga and Mr Bungad in interview amounted to a serious allegation of wrongdoing about Mr Sandhu (namely, that he had, in his position of secretary of the previous committee, been involved with the misappropriation or theft of £65,000 from the temple's treasury). Normally, where significant allegations are made about an individual in a programme, as they were in this particular case, then that individual should be given an appropriate and timely opportunity to respond to them. However, Ofcom recognised that in certain formats of programming, such as news reporting or live events coverage, and in particular live interviews and studio discussions, it is not always possible for the broadcaster to obtain responses from others prior to or during the broadcast. However, in such circumstances, Ofcom considers that when including material that has the potential to amount to a significant allegation, reasonable care must be taken by the broadcaster to ensure that the broadcast material is consistent with the requirements of the Code and that it does not mislead viewers or portray individuals in a way that is unfair.

In this particular case, Ofcom considered that it was impracticable for the broadcaster to have given Mr Sandhu an appropriate and timely opportunity to respond to the allegations made in the interviews owing to the live format of the programme. Nevertheless, there remained an obligation on the broadcaster to ensure that it avoided unjust or unfair treatment of individuals in programmes. Ofcom noted that there was a dispute between the previous and the new committees about the "missing" money (a fact not contested by the broadcaster), and that it appeared that as a result of this dispute the previous committee had withheld the money from the new committee and would do so until such time as the dispute was resolved.

Ofcom also noted, as it did in Head a) of the Decision above, that at no stage during the interview did the presenter make clear to viewers that neither Mr Sandhu nor the president of the previous committee were in a position (owing to them not being present) to respond to the allegations. Nor for example did the presenter explain that the allegations and comments made by Mr Bagga and Mr Bungad were their personal views and not endorsed by the broadcaster. Ofcom however considers that it would have been possible and helpful in the circumstances of this case if the presenter had reacted to the serious criminal allegations made against Mr Sandhu by placing them in context, by for example challenging or querying their background or basis. Ofcom did not accept as a reason for these allegations going unchallenged in the programme that the presenter was not an employee of MATV but was an "independent presenter". It is the responsibility of the broadcaster to ensure that a presenter takes any appropriate and necessary action to ensure material facts are not presented unfairly in its programmes. In this particular case, MATV failed to fulfil its responsibility to ensure that material facts were not presented unfairly in this programme.

Taking all the factors referred to above into account, Ofcom concluded that, although it was not practicable (owing to the live broadcast format of the programme) for the broadcaster to provide Mr Sandhu with an opportunity to

respond to the allegations made in the programme, the broadcaster failed to avoid unfairness to him.

**Accordingly, Ofcom has upheld Mr Sandhu's complaint of unjust or unfair treatment in the programme as broadcast and has found that the broadcaster is in breach of Rule 7.1.**

**Ofcom directed MATV to broadcast a summary of this finding.**

## Upheld

### Complaint by Mr Heath Ferguson

*North West Tonight, BBC1 (North West), 4 August 2011*

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**Summary:** Ofcom has upheld this complaint of unjust or unfair treatment in the programme as broadcast made by Mr Heath Ferguson.

The programme included a report about a company called Car Planet. The owners of this company had allegedly defrauded customers who had either bought outright or paid deposits for cars it was selling. During the report a sign for a different company, Top Coat Limited, a car repair company that operated from the same site as Car Planet (owned by Mr Heath Ferguson), was shown.

Ofcom found that the programme resulted in unfairness to Mr Ferguson in respect of his complaint that the report mistakenly focused on his company's sign outside Car Planet while talking about the alleged fraud committed by the owners of Car Planet.

#### Introduction

On 4 August 2011, BBC 1 North West broadcast an edition of its daily regional news programme, *North West Tonight*. This edition of the programme included a report about a company called Car Planet based in Warrington. The report said that the owners of Car Planet had vanished with deposit money from customers and with cars customers had already bought outright. The report included two shots lasting a total of about six seconds - including a close up with a duration of around three seconds - of a sign for a different company, Top Coat Limited ("Top Coat"), a car repair company that operates from the same site as Car Planet.

Following the broadcast of the programme, Mr Heath Ferguson, who owns Top Coat, complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast.

#### Summary of the complaint and the broadcaster's response

The details of Mr Ferguson's complaint are set out below, followed by the BBC's response.

In summary, Mr Ferguson complained that he was treated unjustly or unfairly in the programme as broadcast in that the report mistakenly focused on his company's sign outside Car Planet while talking about the alleged fraud committed by the owners of Car Planet and thereby associated his company with criminal activity and ruined his excellent reputation.

By way of background to the complaint Mr Ferguson said that following the broadcast he received threatening telephone calls (Top Coat's telephone number was on the sign shown during the report) and he indicated that he could lose business as a result of the report.

In response to the complaint, the BBC said on 5 August 2011 (the day after the news report was broadcast) Mr Ferguson complained directly to the BBC that a promotional poster for his company, Top Coat, was in vision on the wall of the premises of a company called Car Planet during the programme's report into

fraudulent practice by the latter company. The broadcaster said that a correction was broadcast in both the early and late editions of *North West Tonight* that evening, at the same time as the original report. The script of the correction was as follows:

*“Last night we featured a report on Car Planet, a company in Warrington where customers say vehicles they've bought, or paid deposits for, have vanished along with the company's owners. In the item we inadvertently featured this poster for a company called Top Coat. We'd like to make it clear that Top Coat is not the subject of any complaint or inquiry.”*

The BBC added that it also emailed a response to Mr Ferguson on 5 August 2011 in which it informed him that that it would broadcast an on-air clarification on that night's edition of *North West Tonight* “to point out that although your signage adjoins their premises, your company is not connected to Car Planet, the company which was the subject of last night's coverage”.

The BBC said that Mr Ferguson replied on 6 August 2011 indicating that due to the short notice of the BBC's plan to broadcast a correction he had been unable to view it or to inform his clients about it. He therefore asked the BBC to rebroadcast the correction in both the early and late evening editions of *North West Tonight* on the following Monday (8 August 2011).

The BBC did not rebroadcast the correction and Mr Ferguson subsequently complained to Ofcom. In its response to Mr Ferguson's Ofcom complaint, the BBC said that it believed that the action taken in response to this inadvertent error was appropriate and timely and that no useful purpose would have been served by issuing a further broadcast correction. However, it added that it would be happy to provide Mr Ferguson with a letter confirming the text and transmission times of the broadcast correction, along with a recording of it, in order to enable him to reassure any of his customers who were concerned by the report's implications about his company.

## **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 connection with the obtaining of material in, 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.

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and both parties' written submissions.

When considering complaints of unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code (“the Code”). Ofcom had regard to this Rule when reaching its decision on the complaint detailed below.

Ofcom considered Mr Ferguson's complaint that he was treated unjustly or unfairly in that the report mistakenly focused on his company's sign outside Car Planet while talking about the alleged fraud committed by the owners of Car Planet and thereby associated his company with criminal activity and ruined his excellent reputation.

In considering this part of the complaint, Ofcom had regard to 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, and that anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.

Ofcom noted the script of the report was as follows:

*"Dozens of customers of a car centre in Warrington say vehicles they have bought or paid deposits for have vanished along with the company's owners. One man said he'd given the Car Planet on Farrell Street more than £180,000 for four luxury vehicles but when he came to collect them there was no trace. A Japanese trader also said she is waiting on £300,000 worth of stock which has been paid for. Police enquiries continue".*

Ofcom observed that the initial image which accompanied this report was of a sign pointing towards Car Planet. However, it also observed that the report subsequently showed images of a business premises with a sign for Top Coat outside it and that one of the images included in the report was a close up of this Top Coat sign.

Given the inclusion of these images in the report, Ofcom considered that some viewers might have understood that Top Coat was associated with Car Planet and potentially implicated in the fraud allegedly carried out by Car Planet. Ofcom observed that Top Coat had no association with Car Planet (other than that it rented space from it) and that the BBC acknowledged this both in its correspondence with the complainant and in its response to this complaint.

Ofcom recognised that as soon as it became aware of its error the BBC took swift and appropriate action by broadcasting a correction in the following day's editions of *North West Tonight*. However, in light of the factors noted above it concluded that the programme on its own (i.e. in the absence of the follow up correction in the next day's editions of same programme) could have adversely affected viewers' perceptions of Top Coat. Therefore, Ofcom found that the broadcaster had failed to take reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Top Coat and that the programme resulted in unfairness to Mr Ferguson in this respect.

**Accordingly, Ofcom has upheld Mr Ferguson's complaint of unjust or unfair treatment in the programme as broadcast and has found that the broadcaster is in breach of Rule 7.1.**

## Not Upheld

### Complaint by Ms Maria Del Carmen Marchese

*U Be Dead, ITV1, 5 September 2010*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Ms Maria Marchese.

In September 2010 ITV1 broadcast a dramatisation of the story of Ms Marchese. She was convicted in 2006 of harassment, making threats to kill and perverting the course of justice, after stalking Dr Jan Falkowski (a psychiatrist who had treated Ms Marchese's partner for depression) and his then fiancée, Ms Debbie Pemberton.

Ms Marchese complained that she was treated unfairly in the programme as broadcast and that her privacy was unwarrantably infringed in the programme as broadcast.

In summary, Ofcom found that:

- The programme did not portray Ms Marchese, or the events that led to her imprisonment, in a way that was unfair to her;
- It was not incumbent on the programme makers to have given Ms Marchese an appropriate and timely opportunity to respond to her portrayal in the programme;
- Ms Marchese did not have a legitimate expectation of privacy with regard to the information about her disclosed in the programme; and
- It was not incumbent on the broadcaster to have informed Ms Marchese that it planned to broadcast the programme or to seek her consent before broadcasting the programme.

#### Introduction

On 5 September 2010, ITV1 broadcast *U Be Dead*, a feature-length dramatisation of the story of Maria del Carmen Marchese. Ms Marchese was convicted in 2006 of harassment, making threats to kill and perverting the course of justice, after stalking Dr Falkowski (a psychiatrist who had treated Ms Marchese's partner for depression) and his then fiancée, Ms Debbie Pemberton. Ms Marchese is currently serving a nine year prison sentence. All of the people featured in the programme were played by actors.

The programme portrayed the reactions of Dr Falkowski, Ms Pemberton and their families, to Ms Marchese's actions - and in particular the strain on Dr Falkowski's and Ms Pemberton's relationship and later on Dr Falkowski's relationship with his subsequent girlfriend, Ms Bethan Ancell. The programme included a portrayal of an occasion on which Dr Falkowski and Ms Pemberton returned to Dr Falkowski's boat to find that someone had broken in and turned on the gas, and of the occasion when they pretended that they were going ahead with their planned wedding ceremony in order to lure the person stalking them into the open. At the end of this section of the programme Ms Marchese was seen being arrested.

The programme showed that the criminal charges laid at that time against Ms Marchese were dropped because the Crown Prosecution Service (“the CPS”) did not consider that it had sufficient evidence to take the case against her to trial. The programme then included the following: a portrayal of Ms Marchese accusing Dr Falkowski of drugging and raping her; his arrest on that charge; and, the CPS dropping the case brought against Dr Falkowski when it was proved that Ms Marchese had fabricated the evidence on which the case was based. The programme indicated that Ms Marchese had placed semen from a discarded condom, which she had taken from a bin outside Dr Falkowski’s house, in an item of her underwear. It also depicted Mr Damian Falkowski (Dr Falkowski’s brother) talking about how Ms Marchese had made threats against his children and indicated that Ms Marchese had harassed Ms Kay Scudder, the CPS lawyer who had been handling the case against Dr Falkowski. The programme also showed Ms Marchese’s subsequent trial and conviction on charges of harassment, making threats to kill and perverting the course of justice.

Following the broadcast of the programme, Ms Marchese complained to Ofcom that she was treated unjustly or unfairly in the programme as broadcast and that her privacy was unwarrantably infringed during the making of the programme and in the programme as broadcast.

On 17 May 2011, Channel Television (“Channel TV”), the ITV company responsible for ensuring the programme complied with the requirements of the Code, submitted a response to the complaint. Ms Marchese was provided with a copy of Channel TV’s response and responded in detail on 31 May 2011. Channel TV made a final submission replying to Ms Marchese’s response on 22 June 2011. We have taken all these submissions into account in coming to our decision.

## **The Complaint and Subsequent Correspondence**

### Unjust or unfair treatment

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

- a) She was not informed that the programme would be broadcast; did not give her consent for it to be broadcast; was not given the opportunity to read the transcript or view the programme prior to broadcast; and her legal team was unable to check its contents were accurate.

By way of background, Ms Marchese said that other parties depicted in the programme were given an opportunity to contribute.

Channel TV confirmed that Ms Marchese was not consulted about the content of the programme or informed about its intended transmission. Channel TV said that a decision had been taken at an early stage not to consult Ms Marchese or her advisers as there was sufficient information in the public domain and from the screenplay writer’s research to recount the story without direct recourse to her. Channel TV considered there was no unfairness to Ms Marchese in not consulting her or her advisers about the content of the programme and no unfairness in not advising her of the programme’s transmission.

Channel TV acknowledged that some individuals who were portrayed in the programme were consulted during the research and production of the screenplay but argued that this did not result in unfairness to Ms Marchese. Channel TV said



that there is no regulatory requirement that broadcasters consult with the subjects of programmes, or that those portrayed should be provided with information in advance of transmission, unless it would be unfair not to do so and that this was not the case in this instance.

As regards the obligation in Practice 7.11 of the Code to provide the subject of a programme that alleges wrongdoing or incompetence an opportunity to respond, Channel TV said that, in this case, there was no requirement to seek a response from Ms Marchese, as the allegations in the programme were not new. They were historic allegations that had been tested in court and for which Ms Marchese had been convicted. It added that Ms Marchese's response to what she had been accused of was included in the film: in particular, that she maintained she had been raped by Dr Falkowski and that she was wholly innocent in relation to the stalking allegations.

- b) She was portrayed unfairly in the programme as broadcast in that it distorted her story and presented her in a way that "defamed" and "vilified" her.

In particular, Ms Marchese said that:

- i) The programme "omitted vital information which would have allowed viewers to draw their own conclusions" regarding both: her rape case against Dr Falkowski, notably "that other sexual activity took place in the same NHS office where [she] was drugged and raped"; and the incident when the gas was left on on Dr Falkowski's boat, in connection with which she was not charged by the CPS.

Channel TV stated that no "vital information" was omitted which caused unfairness to Ms Marchese in relation to either the rape case or the gas incident. Channel TV said that the screenplay writer had carefully researched the subject matter including transcripts of detailed evidence given at Ms Marchese's trial, the judge's remarks at the sentencing hearing and consulted with a number of individuals involved in the case, including the victims, members of the victims' families, the police, and the CPS. The screenplay itself was based closely on this material.

Channel TV argued that whether or not other sexual activity had ever taken place in Dr Falkowski's office had no bearing or relevance to Ms Marchese's claim that he raped her there. Channel TV stated that viewers would have understood that, after hearing detailed evidence, Ms Marchese was convicted of perverting the course of justice for falsely claiming that Dr Falkowski had raped her.

Channel TV also rejected the complaint of unfairness regarding the portrayal of the gas incident. The programme did not show Ms Marchese entering the boat, but merely showed the event as witnessed by Dr Falkowski and Ms Pemberton, as a part of a campaign by (at the time) an unknown stalker. The programme did not suggest that Ms Marchese was "charged" in relation to the gas incident, although it did form an important part of the case against Ms Marchese in relation to the harassment charge. Indeed, the judge made specific reference to this incident when sentencing Ms Marchese, as follows: "... although not charged with the burglary on the boat, there is overwhelming evidence you visited the boat. Had he not smelt gas, there could have been a terrible accident".

- ii) Despite the lack of evidence to support what Ms Marchese referred to as Dr Falkowski's "ludicrous theory", the programme showed that she had stolen a condom from a bin and used it to fabricate evidence that Dr Falkowski had raped her.

Channel TV considered that the programme did not "show" Ms Marchese stealing from Dr Falkowski's bin. Rather, the programme re-enacted Dr Falkowski's and the prosecution's position on this matter as presented at trial. Channel TV submitted that the programme did not present this theory as fact, but rather presented it as a supposition put forward by the prosecution. In addition, Ms Marchese's denial of having taken the condom, and her insistence that she was telling the truth about being raped was portrayed in the programme. Channel TV said that the jury accepted the prosecution's evidence at trial, which formed part of the basis of Ms Marchese's conviction for perverting the course of justice. Channel TV added that at the sentencing hearing the judge described her stalking as "... a sustained and terrifying campaign, threatening, abusive, frightening ... This was not just a false allegation of rape ... you had stolen that condom to make a false allegation if it became necessary at some stage ... You have no insight into your offence because you deny it. You continue to present a risk to others ...".

- iii) The programme showed her as someone who was a threat to Mr Damian Falkowski's children and who might have burned down the home of Ms Scudder while her cat was in it, when there was no basis for such characterisations.

Channel TV submitted that if the programme portrayed Ms Marchese as a threat to Mr Damian Falkowski's children, Ms Scudder or her cat, it was entirely justified and not unfair to her. Channel TV said that Ms Marchese is a criminal, convicted of very serious crimes, including making threats to kill. Channel TV noted that the court heard and accepted that Ms Marchese made numerous threats to kill, most notably against Ms Pemberton and Dr Falkowski. In addition, she harassed family members of Dr Falkowski, including his brother Damian and made threats against his children.

Channel TV argued that the dialogue in the programme was entirely justified and not unfair to Ms Marchese on the basis that it was derived from evidence given in court at Ms Marchese's trial.

Channel TV also argued that the dialogue delivered by the actress playing Ms Scudder relating to her fears about her house being burnt down was justified and caused no unfairness to Ms Marchese because it is a matter of record that Ms Scudder received angry and threatening calls and emails when the decision was taken not to prosecute Dr Falkowski for rape and because this dialogue is a verbatim quote of what Ms Scudder told the writer when she was interviewed during the research for the programme. It added that, given these calls, it was entirely fair for the programme to depict Ms Scudder's understandable concerns about her safety, including the line of dialogue about which Ms Marchese complained.

Having received a copy of Channel TV's response to her complaint, Ms Marchese provided Ofcom with copies of witness statements made in relation to her trial, including one made by Ms Scudder. Ms Marchese said that Ms Scudder's witness statement did not say that she had "received angry and threatening emails".

In response, Channel TV said that the dialogue attributed to Ms Scudder in the programme was based closely on what she told the writer during a research interview. It also said that while she may not have used the words “angry” or “threatening” in her witness statement, Ms Scudder described Ms Marchese to the writer in these terms. In addition, Channel TV argued that Ms Scudder’s witness statement strongly supported the portrayal of events in the programme.

- iv) The programme indicated that she behaved erratically on the witness stand.

Channel TV did not admit that Ms Marchese was portrayed as behaving “erratically” in the witness box, but contended that, even if she were so portrayed, such a portrayal was justified and caused no unfairness to her. Channel TV said that the dialogue included in the programme’s court scenes (attributed to witnesses, including Ms Marchese, barristers and the judge) was based very closely (sometimes verbatim) on what was said at trial.

- v) The programme did not show that when she visited the CPS she merely left two similar letters at the reception desk for the CPS Director and Ms Scudder.

Channel TV argued that the portrayal of Ms Marchese’s behaviour towards CPS staff was not unfair in that it was based on interviews that the writer of the script conducted as part of her research, and because Ms Scudder and her colleagues told the writer that they were genuinely terrified by the frequent harassment by Ms Marchese.

- vi) The programme depicted her flat as containing a large number of religious items.

Channel TV said that during a section of the programme, in which scenes showed the police interviewing Ms Marchese intercut with scenes showing the police searching her apartment, there were three very brief shots (no more than one or two seconds) of Christian artefacts: a Crucifix hanging on a wall; a picture of Jesus next to some religious figurines on a chest of drawers; and a Virgin Mary statue on a bathroom shelf. Channel TV acknowledged that it was possible that Ms Marchese did not possess such items. However, Channel TV said that none of the objects shown was out of the ordinary, no special significance was given to them within the drama, no comment was made about them and they were the sorts of objects that many people have in their homes. In light of this Channel TV argued that, irrespective of whether or not Ms Marchese possessed such items, this element of the drama was well within acceptable parameters of dramatic licence.

- vii) The programme showed Ms Pemberton receiving a note with the words “Jan Call Me Tonight Lover” when it was her flatmate who received the note.

Channel TV said that it is a matter of record that a note with the words “Jan Call Me Tonight Lover xxx” was pushed under the door of Ms Pemberton’s flat on or around 4 December 2002. In reality, Ms Pemberton’s flatmate first found the note, and then passed it to Ms Pemberton (clearly the intended recipient). Channel TV said that for purely practical story-telling reasons, a decision was taken to depict Ms Pemberton discovering the note first. Channel TV argued that this caused no unfairness to Ms Marchese and was perfectly acceptable dramatic licence.

- viii) The programme depicted her following Dr Falkowski in a market place.

Channel TV argued that this scene was not unfair to Ms Marchese and explained that it was based on a real incident, which Dr Falkowski described in his evidence. Channel TV said that in 2004 Dr Falkowski was asked about Ms Marchese bumping into him in the street "... somewhere near Bow Road/Alfred Street ... near a pedestrian crossing" and that in response he told the court "I walked past and she said: 'Don't you want to talk to me?' I ignored her and then rang the police immediately when I got to my office". Dr Falkowski gave the writer a more full account of this incident when she met him as part of her research. The dialogue used in the programme consists of the words that he related to the writer. He said how "unnerved" he had felt about this direct approach.

In a further submission Ms Marchese provided a witness statement of DC Grange, which she said discredited Channel TV's claim that this scene was based on a real incident. She also said that the incident took place outside a corner pub on Bow Road not in a market place on Alfred Street or near a pedestrian crossing as claimed by Channel TV. In response Channel TV added that in its view the fact the scene was 'placed' in a market, rather than on a street corner, was neither here nor there, and causes no unfairness.

- ix) The programme showed her leaving messages to Dr Falkowski and calling Ms Scudder during the trial.

Channel TV said the film did not portray Ms Marchese leaving messages to Dr Falkowski or calling Ms Scudder during her trial but rather that it depicted a telephone call to Dr Falkowski that interrupted his office Christmas drinks party. The broadcaster said that the depiction was based closely on what actually happened. Channel TV explained that the following was taken from the prosecution barrister's note of his opening speech to the jury: "On 23 December he [Dr Falkowski] received a call at a small office party which he organised annually. He recognised Maria Marchese's voice as she threatened him. He passed the phone to his secretary who also recognised Maria Marchese's voice. JF [Dr Falkowski] called the police immediately and in due course made a statement, understandably concerned that he might be about to be harassed again." In light of this Channel TV argued that there was no unfairness in portraying this call.

- x) The programme showed her being arrested on a beach while running away from a telephone box.

Channel TV denied that the programme showed Ms Marchese being arrested on a beach while "running away" from a telephone box. It said that the police were shown running after an indistinguishable figure, who was walking, not running, away from a telephone box by a beach.

Channel TV said that it understood that Ms Marchese was actually escorted by police off a ferry she had boarded, after which she was briefly questioned and then arrested, but this was all shortly after she had been observed by police making telephone calls at public phone boxes in Poole – and indeed Ms Marchese admitted to police and in her evidence at trial having made calls from phone boxes in Poole (although not to the victims of her crimes) earlier that day. Channel TV argued that this very slight change, which was for

purely practical reasons, was inconsequential and is not in any way unfair to Ms Marchese.

- xi) The programme indicated that she was charged with a bomb hoax and throwing paint at Dr Falkowski's car.

Channel TV said that the programme did not suggest that Ms Marchese was "charged" with the bomb hoax or for vandalising Dr Falkowski's car with paint. Rather, it said that the programme presented these events as part of the sustained campaign of harassment against Dr Falkowski and Ms Pemberton by an unknown person, which a jury later concluded was Ms Marchese.

Channel TV explained that the portrayal of the bomb hoax at the boating event was closely based on real events. Channel TV noted that it is a matter of record that on Saturday 16 August 2003 two text messages were received "10:26, Mr EXE R45 [the boat] been tamper get them out of water before it expod" (sic) and "10:29 Drew, Jan can't go out on race tak out of Harmsworth Trophy" (sic). These threats were reported to the Dorset police and Andrew Langdon, a boat racing partner of Dr Falkowski, also received similar text threats about the boat.

Channel TV also said that Dr Falkowski referred in his evidence to the vandalism of his car as follows: "I came back to work on the Monday and found that white paint had been poured on the soft top of my car".<sup>1</sup>

Channel TV argued that these events were part of the campaign of harassment for which Ms Marchese was convicted and it was justified in portraying them in the way that it did and that they caused Ms Marchese no unfairness.

By way of background to her complaint of unfair portrayal, Ms Marchese said that the programme was prejudicial to her in that it was broadcast to coincide with her imminent parole and appeal, and that this was evident in the fact that the programme was referred to by the prison probation service in her parole report.

Channel TV argued that the programme was not capable of prejudicing any appeal Ms Marchese may have had against her criminal conviction. It added that in any case there was no appeal pending at the time of the broadcast. Ms Marchese's appeal against conviction was dismissed on 11 February 2008 and her appeal against sentence was refused. Channel TV argued that there was nothing within the programme which would have been capable of swaying relevant professionals in their determination of whether Ms Marchese ought to be considered for parole. Channel TV also said that in any case, the programme was about historic events, which had been proved in court, and which formed the basis of her conviction.

#### Unwarranted infringement of privacy

In summary, Ms Marchese complained that her privacy was unwarrantably infringed in the programme as broadcast in that:

- c) ITV broadcast the programme which included information about her without her consent.

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<sup>1</sup> Evidence of Dr Falkowski, 12 July 2006.

Channel TV said that Ms Marchese did not have a legitimate expectation of privacy in relation to the information included in the programme about her and that her Article 8 rights under the European Convention on Human Rights were not engaged. Ms Marchese's convictions were a matter of public record and the events which led to them had been recounted and examined in detail. Channel TV argued that an examination of the specific circumstances of this case (notably the nature of the criminal acts committed and her conviction, together with the widespread media attention) showed that she did not have a legitimate expectation of privacy in relation to the matters featured.

Channel TV also indicated that, if Ofcom considered that Ms Marchese had a legitimate expectation of privacy in relation to certain information, it was justified in revealing that information without her consent on the basis of the programme makers' and broadcaster's Article 10 rights to freedom of expression.

d) ITV failed to inform Ms Marchese that it would be broadcasting this Programme.

Channel TV argued that there could be no infringement of Ms Marchese's privacy purely in the failure to inform her of the programme's broadcast and that any infringement of her privacy could only be caused by the publication of information in regard to which she retained a reasonable expectation of privacy. It also said that, as it had set out in its response to head c) above, it did not consider that Ms Marchese had a reasonable expectation of privacy in regard to the information included in the programme, and that therefore her privacy was not infringed in this respect.

Channel TV said that it had been mindful of Practice 8.19 of the Code (see Ofcom's Decision below for details of this practice of the Code) and so had informed victims of Ms Marchese's crimes about the programme's transmission. It added that Ms Marchese was not herself "a victim" in this context as her rape allegation against Dr Falkowski had been proven in court to be false.

## **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.

In reaching this decision, Ofcom has 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 supporting material. Ofcom has considered Ms Marchese's complaint by reference to the version of the Broadcasting Code in force at the time the programme was broadcast. It should be noted, however, that the provisions of the Code relevant to this complaint are identical in the current version of the Code.

## Unjust or unfair treatment

Ofcom considered whether the broadcaster's actions were consistent with its obligation to avoid unjust or unfair treatment of individuals in Programmes as set out in Rule 7.1 of the Code. In particular, given the nature of the programme, Ofcom considered Practice 7.10, which states that for dramas and other factually-based dramas broadcasters should not "portray facts, events, individuals or organisations in a way which is unfair to an individual or organisation". It also considered Practice 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.

- a) Ofcom first considered Ms Marchese's complaint that she was treated unjustly or unfairly in that she was not informed that the programme would be broadcast; did not give her consent for it to be broadcast; was not given the opportunity to read the transcript or view the programme prior to broadcast; and her legal team was unable to check its contents were accurate.

By way of background, Ms Marchese said that other parties depicted in the programme were given an opportunity to contribute.

Ofcom observed that Ms Marchese was not consulted or informed about the planned broadcast, that Ms Marchese did not give her consent for the broadcast, and that Ms Marchese, or her legal team, was not given an opportunity to preview the programme. With regard to this aspect of the complaint, Ofcom recognised that Practice 7.3 of the Code (which requires certain steps, including notification, to be taken in relation to persons that have been invited to make a contribution to a programme) did not apply in this case as Ms Marchese was not invited to contribute to the programme.

For dramas and factually-based dramas there is no obligation on broadcasters in Practice 7.10 to ensure that people are offered an opportunity to contribute. As noted above, however, Practice 7.11 states that "if a Programme alleges wrongdoing or incompetence or makes other significant allegations", those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom has considered whether it was unfair not to consult Ms Marchese prior to the broadcast of the programme. Ofcom does not consider that the fact that certain people were informed about the programme is of specific relevance to the question of whether or not Ms Marchese herself was treated unfairly in this respect. To determine whether or not Ms Marchese should have been afforded a timely opportunity to respond to the allegations contained in the programme under 7.11 of the Code, Ofcom has considered the following:

- the way in which Ms Marchese was portrayed in the programme;
- whether the programme included any allegations of wrongdoing or incompetence against her;
- the basis of the portrayal of Ms Marchese; and
- if so included, the basis of any allegations of wrongdoing or incompetence against her.

Ofcom concluded that the dramatic portrayal of Ms Marchese's story in the programme included various allegations of serious wrongdoing. In particular, the

programme portrayed Ms Marchese harassing and threatening Dr Falkowski, Ms Pemberton and others over a long period of time and also making a false allegation of rape, supported by evidence which she fabricated, against Dr Falkowski.

Ofcom noted that the inclusion of such serious allegations of wrongdoing in a programme would normally result in it being incumbent upon the programme makers to offer the person concerned an opportunity to respond to the allegations. This would particularly be the case in a factual programme, such as a documentary, news report, or other investigative report exposing, for example, alleged malpractice. However, as a factually-based drama, Ofcom considered that the programme did not raise any new allegations of wrong-doing against Ms Marchese. Rather, the programme was closely based on information in the public domain about Ms Marchese's case, including material disclosed in court proceedings leading to her conviction for harassment, making threats to kill and perverting the course of justice. Other material was obtained following interviews conducted by the screenplay writer with the victims of Ms Marchese's crimes and others involved in the case.

Ofcom therefore found no unfairness to Ms Marchese in respect to the complaint that she: was not informed that the programme would be broadcast; did not give her consent for it to be broadcast; was not given the opportunity to read the transcript or view the programme prior to broadcast; and her legal team was unable to check its contents prior to broadcast.

- b) Ms Marchese complained that she was treated unjustly or unfairly in that she was portrayed unfairly in the programme as broadcast in that it distorted her story and presented her in a way that "defamed" and "vilified" her.

Ofcom has considered each element of the programme that Ms Marchese complains resulted in unfairness to her. Ofcom recognises that there is a dispute between the parties as to whether Ms Marchese was responsible for the various incidents depicted in the programme, or whether the incidents were accurately depicted in the programme. However, it is important to note that Ofcom's role is not to establish conclusively from the programme, or the submissions and supporting material, whether these incidents actually took place as depicted in the programme, or whether Ms Marchese was responsible for them; but rather to address the question of whether the programme portrayed facts, events, individuals or organisations in a way that was unfair to Ms Marchese.

- i) Ofcom considered the complaint that the programme "omitted vital information which would have allowed viewers to draw their own conclusions" regarding both: her rape case against Dr Falkowski (notably "that other sexual activity took place in the same NHS office where [she] was drugged and raped"); and, the incident when the gas was left on on Dr Falkowski's boat, in connection with which she was not charged by the CPS.

In Ofcom's opinion the omission of the depiction of or reference to any sexual activity in which Dr Falkowski might or might not have engaged in his office with a third party would not have had a material impact on viewers' opinions of Ms Marchese and her actions in a way that was unfair, even if it were true.

Ofcom recognised that there was a dispute between the parties about whether Ms Marchese was responsible for the gas incident. As explained above, it is not Ofcom's role to determine who was responsible for this



incident, rather to determine whether the programme portrayed facts, events, individuals or organisations in a way that was unfair to Ms Marchese. Ofcom notes Channel TV's submissions regarding the basis for the portrayal of the gas incident, including the transcripts of evidence given at Ms Marchese's trial, the judge's remarks quoted above and conversations the author had with a number of individuals involved in the case. In Ofcom's view this information amounted to a reasonable foundation for including the implication that Ms Marchese was responsible for the gas incident in the programme. On that basis, Ofcom considers that the programme did not portray this event in a way that was unfair to Ms Marchese.

- ii) Ofcom then turned to the complaint that, despite the lack of evidence to support what Ms Marchese referred to as Dr Falkowski's "ludicrous theory", the programme showed that she had stolen a condom from a bin and used it to fabricate evidence that Dr Falkowski had raped her.

Ofcom has considered the source of the programme's portrayal of Ms Marchese making a false allegation of rape against Dr Falkowski, and the implication that Ms Marchese had fabricated evidence using a stolen condom. Ofcom notes that the programme based this claim on information in the public domain, including evidence given at Ms Marchese's trial, the judge's remarks at the sentencing hearing (quoted above) and Ms Marchese's conviction for perverting the course of justice. Ofcom also notes Channel TV's submission that, in addition, extensive research had been conducted by the screenplay writer including interviews with a number of individuals involved in the case, notably the victims, members of the victims' families, the police, and the CPS. In Ofcom's view the evidence gathered by the programme makers together amounted to a reasonable foundation for portraying these events in the programme. Ofcom considers that the portrayal of these events, including Ms Marchese's role in these events, was not done in a way that was unfair to Ms Marchese.

- iii) Ofcom considered the complaint that the programme showed her as someone who was a threat to Mr Damian Falkowski's children and who might have burned down the home of Ms Scudder while her cat was in it, when there was no basis for such characterisations.

Ofcom observed that the programme included a scene in which Mr Damian Falkowski said to Dr Falkowski: *"I'm sorry, really sorry, but she's been ringing my chambers, emailing me, texts. Death threats against the children. We've had to warn the school not to let anyone pick them up but us"*. Ofcom considered that viewers would have understood this comment to have indicated that Ms Marchese had made death threats against Mr Damian Falkowski's children.

Ofcom has considered the source of the programme's claim that Ms Marchese threatened Mr Falkowski's children. Ofcom notes that the programme based this claim on information in the public domain, including evidence given at Ms Marchese's trial, and Ms Marchese's conviction for harassment and making threats to kill. Ofcom also notes Channel TV's submission that, in addition, extensive research had been conducted by the screenplay writer including interviews with a number of individuals involved in the case, notably the victims, members of the victims' families, the police, and the CPS. In Ofcom's view the evidence gathered by the programme makers together amounted to a reasonable foundation for the inclusion of this

dialogue in the programme, and therefore its inclusion did not result in unfairness to Ms Marchese and her portrayal as it related to this claim was not unfair.

With regard to the portrayal of Ms Scudder's concerns, Ofcom observed that the programme included a scene in which Ms Scudder received the following phone message from Ms Marchese: *"I insist on meeting with you. If you were any good at your job you would be working with the general medical council... why do you let rapists get away with it?"* As this message ended Ms Scudder was depicted looking across the atrium of her office and seeing Ms Marchese standing at the reception desk and hearing her say: *"I want immediately a meeting with Ms Scudder ... I am a victim of rape ... but she drops the case"* in an angry tone of voice. Ms Scudder was then seen hurrying away. Later, after Ms Marchese's arrest Ms Scudder was depicted talking to the prosecuting barrister, Mr Fenhalls. During this scene she said: *"Constant phone calls and messages on my voicemail. She's so angry, so threatening. Every night I walk home I expect to see that my house has burned down. We've got this poor old cat, Chips, I keep thinking you know..."*.

Ofcom considered that viewers would have understood these scenes to convey the fact that Ms Scudder was afraid of Ms Marchese and was worried that she might take some action against her, for example burning down her house. It also considered that viewers would have understood that these scenes were a dramatisation designed to convey Ms Scudder's feelings during this period, rather than an absolutely accurate portrayal of her interactions with Ms Marchese.

Ofcom has considered the source of the programme's portrayal of Ms Scudder's fear of Ms Marchese. Ofcom notes that the programme based this claim on information in the public domain, including evidence given at Ms Marchese's trial, and Ms Marchese's conviction for harassment and making threats to kill. Ofcom also notes Channel TV's submission that, in addition, extensive research had been conducted by the screenplay writer including interviews with a number of individuals involved in the case, notably the victims, members of the victims' families, the police, and the CPS. In Ofcom's view the evidence gathered by the programme makers together amounted to a reasonable foundation for portraying incidents conveying Ms Scudder's feelings at this period in the programme. Ofcom considers that the portrayal of these incidents, including Ms Marchese's role in them, was not done in a way that was unfair to Ms Marchese.

- iv) Ofcom considered Ms Marchese's complaint that the programme indicated that she behaved erratically on the witness stand.

Ofcom has considered the source of the programme's portrayal of Ms Marchese's demeanour, words and actions in court. Ofcom notes that the programme based this portrayal on information in the public domain, including transcripts of evidence given at Ms Marchese's trial and interviews with people who were present at the trial. Ofcom considered that it would have been clear to viewers that the programme had presented a dramatisation of Ms Marchese's actions and words during her trial and did not purport to show an exact facsimile of her behaviour when on the witness stand.

Taking into account the factors referred to above, Ofcom considered that the presentation of Ms Marchese at her trial was unlikely to have materially

affected viewers' understanding of Ms Marchese in a way that was unfair to her and that the programme did not portray these events in a way that resulted in unfairness to her.

- v) Ofcom considered Ms Marchese's complaint that the programme did not show that when she visited the CPS she merely left two similar letters at the reception desk for the CPS Director and Ms Scudder.

As noted above, in Ofcom's opinion viewers would have understood that the scenes featuring Ms Scudder's reaction to Ms Marchese were a dramatisation designed to convey Ms Scudder's feelings during this period rather than an absolutely accurate portrayal of her interactions with Ms Marchese. Ofcom considers that this portrayal was unlikely to have materially affected viewers' understanding of Ms Marchese in a way that was unfair to her.

- vi) Ofcom considered Ms Marchese's complaint that the programme depicted her flat as containing a large number of religious items.

Ofcom observed that a short section of the programme included brief images of religious objects in Ms Marchese's flat: a crucifix; a picture of Jesus; and a Virgin Mary statue. Ofcom considered that it would have been clear to viewers that the programme had presented this scene as dramatisation of the search of Ms Marchese's flat after she was arrested and that it did not purport to show an exact reproduction of her flat and all the items within it. In addition, Ofcom noted that these images were shown very briefly, that they were shown alongside other household items such as books, furniture, cushions and toiletries, and that, as Channel TV indicated within its submission, these religious objects are items which are commonly found in homes and no comment or reference was made to them within the programme.

Taking into account all the factors referred to above, Ofcom considered that the inclusion of several religious objects within the portrayal of Ms Marchese's flat, was unlikely to have materially affected viewers' understanding of Ms Marchese in a way that was unfair to her.

- vii) Ofcom next considered Ms Marchese's complaint that the programme showed Ms Pemberton receiving a note with the words "Jan call me tonight lover" when it was her flatmate who received the note.

Ofcom observed that the programme portrayed Ms Pemberton watching a note being pushed under her front door, picking it up and reading it. The note read "Jan call me tonight lover xxx". Ofcom observed that both parties to the complaint agreed that in reality this note was pushed under Ms Pemberton's front door and discovered by her flatmate. It also observed that within her complaint Ms Marchese had not disputed that the note was subsequently passed to Ms Pemberton or the implication in the programme that she (Ms Marchese) had written the note. Given the nature of the programme, Ofcom considered that viewers would have been aware that this scene was a dramatic depiction of this event and did not purport to be an absolutely accurate re-enactment.

In light of these factors, Ofcom concluded that the depiction of Ms Pemberton finding this note first, rather than being shown having it passed to her by her flatmate, was unlikely to have materially affected viewers' understanding of

Ms Marchese in a way that was unfair to her and that the programme did not portray this incident in a way that resulted in unfairness to her.

- viii) Ofcom considered the complaint that the programme depicted Ms Marchese following Dr Falkowski in a market place.

Ofcom observed that the programme included a depiction of Ms Marchese approaching Dr Falkowski as he walked through a street market. The scene included the following exchange between Ms Marchese and Dr Falkowski:

Ms Marchese: *“Why won’t you talk to me?”*

Dr Falkowski: *“Oh God.”*

Ms Marchese: *“Just talk to me.”*

Dr Falkowski: *“No, you leave me alone Ok. There’s nothing more you can do to me...”*

Ms Marchese: *“Jan! Jan...Jan...Jan.”*

Ofcom recognised that there was a dispute between the parties about where this incident took place. As explained above, it is not Ofcom’s role to determine where this incident took place, but rather to determine whether the programme portrayed facts, events, individuals or organisations in a way that was unfair to Ms Marchese. Ofcom considered that it would have been clear to viewers that this was a dramatisation of the incident rather than an attempt to create a precise re-enactment. It also noted that all parties agreed that an incident involving Ms Marchese meeting Dr Falkowski occurred on a public street in London. In any case, in Ofcom’s opinion the precise location in which this incident was depicted would have had no material effect upon viewers’ opinions of Ms Marchese.

Taking these factors into account, Ofcom considers that the portrayal of this incident, including Ms Marchese’s role in it, was not done in a way that was unfair to Ms Marchese.

- ix) Ofcom then turned to the complaint that the programme showed Ms Marchese leaving messages to Dr Falkowski and calling Ms Scudder during the trial.

The programme depicted Dr Falkowski picking up several answer-phone messages on his office telephone with nothing but the sound of breathing, whispering or crying on each message. Ofcom considered that the context in which this incident was shown would have made it clear to viewers that these messages were part of a campaign of harassment of Dr Falkowski by an as yet unknown person. It was subsequently made clear in the programme that Dr Falkowski was being harassed by Ms Marchese and therefore that the programme was portraying Ms Marchese as responsible for this incident. However, given that Ms Marchese was convicted on the charge of harassing Dr Falkowski and that viewers would have understood that the programme was a dramatisation of the events which led up to this conviction, Ofcom does not consider that the portrayal of this incident resulted in unfairness to Ms Marchese. In addition, Ofcom noted that the programme did not depict Ms

Marchese leaving messages for either Dr Falkowski or Ms Scudder during the trial.

In light of these factors Ofcom concluded that Ms Marchese was not treated unfairly in this respect.

- x) Ofcom considered Ms Marchese's complaint that the programme showed her being arrested on a beach while running away from a telephone box.

Ofcom's considered that the scenes in question portrayed Ms Marchese as having been arrested after making a call from a telephone box on a beach in or near Poole. Ofcom recognised that Ms Marchese complained that she was not arrested in this manner. However, Ofcom also observed that Ms Marchese did not dispute that she was arrested in Poole nor that she had admitted making calls from phone boxes in Poole earlier that day (albeit not to Dr Falkowski or Ms Pemberton). In addition, Ofcom considers that viewers would have understood that this was a dramatisation rather than a precise re-enactment of the event.

In light of these factors, Ofcom considers that the indication that Ms Marchese was arrested after making a call from a telephone box on a beach in or near Poole was unlikely to have materially affected viewers' understanding of Ms Marchese in a way that was unfair to her and that the portrayal of this incident, including Ms Marchese's role in it, was not done in a way that was unfair to Ms Marchese.

- xi) Ofcom then considered Ms Marchese's complaint that the programme indicated that she was charged with a bomb hoax and throwing paint at Dr Falkowski's car.

With regard to the bomb hoax, Ofcom observed that the programme included a scene showing people involved in a boat race (including Dr Falkowski and Ms Pemberton) being evacuated from the area by police and that during this scene one of Dr Falkowski's friends said to him: *"That woman... there's been a text...:Jan's boat has been tampered with. Get them out of water before it explodes."* Dr Falkowski responded: *"Bloody woman... when's it going to stop... eh?"* With regard to Dr Falkowski's car, Ofcom noted that the programme included a scene showing Dr Falkowski walking up to his parked car and seeing that it was covered in dripping white paint.

Ofcom considered that in the wider context of the programme viewers would have understood these scenes to have indicated that Ms Marchese was responsible for the bomb hoax at the boat race and for pouring paint on Dr Falkowski's car. Ofcom considered that the programme did not indicate that Ms Marchese was charged specifically in relation to these incidents. Rather, in its opinion viewers would have understood that they were portrayed as part of series of incidents in which Ms Marchese threatened and harassed Dr Falkowski and Ms Pemberton and that Ms Marchese was subsequently convicted and imprisoned for her actions.

Ofcom has considered the source of the programme's portrayal of these incidents. Ofcom notes that the programme based its portrayal of these incidents on information in the public domain, including evidence given at Ms Marchese's trial and Ms Marchese's conviction for harassment and making threats to kill. Ofcom also notes Channel TV's submission that, in addition,

extensive research had been conducted by the screenplay writer including interviews with a number of individuals involved in the case, notably the victims, members of the victims' families, the police, and the CPS. In Ofcom's view the evidence gathered by the programme makers together amounted to a reasonable foundation for portraying these incidents in the programme. Ofcom considers that the portrayal of these incidents, including Ms Marchese's role in them, was not done in a way that was unfair to Ms Marchese.

Given its conclusions in relation to each of the aspects of the programme about which Ms Marchese complained, Ofcom found that the facts and events portrayed in the programme did not result in unfairness to Ms Marchese.

- Timing of the broadcast.

Ms Marchese also complained that the programme was prejudicial to her in that it was broadcast to coincide with her imminent parole and appeal, and that this was evident in the fact that the programme was referred to by the prison probation service in her parole report.

Ofcom considers that this element of the complaint did not raise issues of unfair treatment in the programme. Ofcom observes that on the information available to it, Ms Marchese did not have an appeal pending at the time the programme was broadcast. In addition, Ofcom does not consider that a programme about Ms Marchese's past behaviour and conviction could have affected her parole.

#### Unwarranted infringement of privacy

Ofcom considered Ms Marchese's complaints that her privacy was unwarrantably infringed in the broadcast of the programme. In Ofcom's view, an individual's right to privacy has to be balanced against the competing right of the broadcaster to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies 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."

- c) Ofcom first looked at Ms Marchese's complaint that her privacy was unwarrantably infringed in the programme as broadcast in that the programme included information about her without her consent.

In considering this head of complaint, Ofcom had regard to the following:

- Rule 8.1, which provides that: "Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted"; and
- Practice 8.6 of the Code which states that: "If the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted."

In order to establish whether or not Ms Marchese's privacy was unwarrantably infringed in the programme, Ofcom first assessed the extent to which she had a legitimate expectation of privacy in respect of the material that was broadcast. Ofcom observed that the programme was a dramatisation of part of Ms Marchese's life story and that it included various depictions of her actions leading to her conviction for harassment, making threats to kill and perverting the course of justice, as described in more detail above. Ofcom acknowledged that some of this material might be considered to be of a personal nature to Ms Marchese and that such material may give rise to a legitimate expectation of privacy.

However, Ofcom noted that: the details of Ms Marchese's actions in relation to Dr Falkowski and Ms Pemberton, including her accusation of rape, were a matter of public record having been examined in open court in 2006; Ms Marchese had been sentenced to nine years imprisonment as a result of these actions, and that they were widely reported in the press at the time of the trial and Ms Marchese's conviction. Ofcom also observed that much of the reporting on Ms Marchese's trial and conviction was available on the internet, albeit dating back five years.

Ofcom in addition considered the way in which the relevant information was presented in the programme. It noted Channel TV's submission that much of the dialogue used to disclose the information about Ms Marchese was based closely on first-hand accounts by the police and others involved in the case and that on some occasions the programme included a verbatim representation of comments made by witnesses, lawyers or the judge at Ms Marchese's trial.

Taking into account the fact that the information disclosed in the programme had been in the public domain for some time before the broadcast (and notably that it had been examined in open court) and that the source material on which it was based (much of which was also in the public domain) received little embellishment despite the dramatic nature of the programme, Ofcom found that Ms Marchese's did not have a legitimate expectation of privacy under Rule 8.1 of the Code. Consequently Ms Marchese's privacy was not unwarrantably infringed in the programme as broadcast by the inclusion of this material and it was not incumbent on Channel TV to obtain Ms Marchese's consent prior to broadcast.

- d) Ofcom then considered Ms Marchese's complaint that her privacy was unwarrantably infringed in the programme as broadcast in that ITV failed to inform her that it would be broadcasting this programme.

There is no general provision under Rule 8.1, or the associated Practices, that requires broadcasters to inform all those portrayed in a factually-based drama that a programme is being broadcast, unless that broadcast would infringe that person's privacy in a way that would be unwarranted. Practice 8.19 of the Code states that "broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual programmes". The Practice then goes on to provide what steps are contemplated, as follows: "In particular, so far as is reasonably practicable, surviving victims and/or the immediate families of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past."

The programme was a dramatisation of the story of Ms Marchese's trial and conviction. However, she has been convicted of the crimes depicted in this programme and is not the victim of those crimes, nor the relation of a victim. Therefore, it was not incumbent upon the broadcaster to have sought to reduce potential distress to her by informing her of its plan to broadcast the programme.

As we found above that Ms Marchese did not have a legitimate expectation of privacy in the programme as broadcast, Ofcom has found that Ms Marchese's privacy was not unwarrantably infringed in the programme as broadcast in that ITV did not inform her that it planned to broadcast the programme.

**Accordingly, Ofcom has not upheld Ms Marchese's complaint of unfair treatment and unwarranted infringement of privacy in the broadcast of the programme.**



## Not Upheld

### Complaint by the Islam Channel

*The Big Questions, BBC1, 15 May 2011*

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**Summary:** Ofcom has not upheld this complaint of unjust or unfair treatment made by The Islam Channel.

This edition of the programme featured a debate on the following question: *“Does Britain Have a Problem with Muslims?”* During the debate two of the four panellists who were included in the programme made comments about the Islam Channel.

The Islam Channel complained to Ofcom that it was treated unfairly in the programme as broadcast.

Ofcom found that given the nature of the specific comments about which the Islam Channel complained and that these comments were made in the context of a debate (in which it was clear that all the contributions reflected the opinions of those who had made them) no allegations of wrongdoing or incompetence were made about The Islam Channel in the programme and therefore it was not incumbent upon the programme makers to have offered The Islam Channel an opportunity to respond.

#### Introduction

On 15 May 2011, BBC1 broadcast an edition of *The Big Questions*. The programme, presented by Nicky Campbell, features a panel of four people who discuss topical issues of moral, ethical or religious significance with interjections or comment from the presenter and members of the studio audience. In this edition of the programme, the debate question was *“Does Britain Have a Problem with Muslims?”* and the panel members were: Mr Maajid Nawaz, (Executive Director of the Quilliam Foundation, a counter-terrorism think tank), Dame Anne Leslie (who was described in the programme as a veteran foreign correspondent), Councillor Salma Yaqoob (Leader of the Respect Party and a presenter on the Islam Channel) and Dr Taj Hargey (Imam at the Muslim Educational Centre of Oxford).

During the debate Dame Anne Leslie spoke about the source of the Islam Channel's funding. She also described a programme she had seen in which a young girl was advised that she could not touch the Qur'an without wearing gloves while she was menstruating. In addition, Mr Nawaz indicated that some programmes broadcast by the Islam Channel included *“so called Imams... saying that you can beat your wives”*. He then said: *“And I think that type of rubbish that's coming out of these sorts of channels, it must be challenged”*.

Following the broadcast of the programme, the Islam Channel<sup>1</sup>, complained to Ofcom that it was treated unjustly or unfairly in the programme as broadcast.

On 17 August 2011, the BBC submitted a response to the complaint.

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<sup>1</sup> The Islam Channel is licensed by Ofcom and provides news, current affairs and entertainment programming from an Islamic perspective.

## Summary of the Complaint and the BBC's Response

- a) The Islam Channel complained that it was treated unjustly or unfairly in the programme as broadcast in that one of the panellists (Dame Anne Leslie) incorrectly suggested that the Islam Channel was funded by Saudi Arabia and that the programme gave the channel no opportunity to respond to this allegation.

The BBC said that it questioned the premise that the suggestion in the programme that the Islam Channel was funded by Saudi Arabia was an allegation of the kind which required an opportunity to respond. The BBC said that the Islam Channel had given no reason why the suggestion, even if erroneous, should be viewed as a “*significant allegation*” or an allegation of “*wrongdoing or incompetence*”.

The BBC said that as the complainant had not indicated what unfairness may be supposed to arise from the suggestion, Ofcom may feel that there was no occasion to determine the question of its accuracy. However, the BBC added that it was an established fact (and on the public record) that the Islam Channel was funded from Saudi Arabian sources. The BBC said that the share capital of the Islam Channel Limited [the company that holds the broadcasting licence for the Islam Channel] consisted of 245,090 Ordinary Shares of £1 each and 3,000,000 Preference Shares, also of £1 each. It also said that the last annual return of the Islam Channel Limited (a copy of which was provided to Ofcom) recorded that all the Preference Shares were held by Sulaiman Al-Shaddi, who was listed in the documents as a national and resident of Saudi Arabia. Thus, a Saudi Arabian source accounts for by far the greater part of the Islam Channel's capitalisation.

- b) The Islam Channel complained that Dame Anne Leslie referred to a programme on the Islam Channel which she portrayed in a negative light<sup>2</sup> and the programme gave the channel no opportunity to respond to this portrayal of its programme.

The BBC said that Dame Anne Leslie did not claim that the programme she described had appeared on the Islam Channel. She said:

*“...But, I go on to the Islam Channel for the questions and answers - and other channel, these are all financed by Saudi by various means - and you listen to the question and answer things. Two young people ringing in who are confused, don't know what, and one young girl says:...”*

The BBC said that it was clear from the transcript of the programme that Dame Anne Leslie was referring to a number of channels of which the Islam Channel was but one. It said that her remarks could not be taken to mean that the programme she went on to describe necessarily appeared on the Islam Channel, and added that Dame Anne Leslie had subsequently confirmed to the programme makers that this was not her intended meaning, though she could not remember on which channel the programme she went on to cite appeared.

However, the BBC also said that insofar as it might be taken from Dame Anne Leslie's remarks that this type of programme was broadcast by the Islam Channel, it pointed out that Councillor Salma Yaqoob (who was at the time a prominent figure on the Islam Channel and was the presenter of its weekly

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<sup>2</sup> Ofcom understands this to be a reference to Dame Anne Leslie's description of a question and answer programme she indicated she saw on the Islam Channel during which a young female Muslim called in for advice from an Imam.

“*Politics and Media Show*”) was perfectly well-placed and qualified to respond on behalf of the Islam Channel to such general comments as Dame Anne Leslie made. To that extent, the BBC said that an opportunity to exercise a right of reply was available to someone who could respond on the Islam Channel’s behalf but Ms Yaqoob did not respond to this particular point.

- c) The Islam Channel complained that another panellist (Mr Nawaz) made allegations about the programmes on the Islam Channel and said there was rubbish coming out of those channels. The Islam Channel said that the programme gave the channel no opportunity to respond to this allegation of incompetence.

The BBC said that the Islam Channel’s claim that it should have been afforded a right of reply in response to the comment made by Mr Nawaz was predicated on the view set out in its complaint that by using the word “*rubbish*” Mr Nawaz was making an allegation of incompetence against the channel. The BBC said that Mr Nawaz’s remarks were not an allegation of incompetence in that they did not refer to the quality of the Islam Channel’s output, but were, instead, aimed at the opinions and religious views expressed on the programmes he had in mind. The BBC said that given this, Mr Nawaz’s remarks did not require a right of reply and that they were a legitimate expression of opinion in the context of an animated discussion of ideas and religious beliefs. The BBC said that Mr Nawaz’s comments were not a reflection on the competence of the Islam Channel.

The BBC said, again, that if there had been any requirement for the Islam Channel’s view to be represented, Councillor Yaqoob was well placed and qualified to do so.

## **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.

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 a transcript and both parties’ written submissions.

Ofcom considered whether the broadcaster’s actions were consistent with its obligation to avoid unjust or unfair treatment of individuals in programmes as set out in Rule 7.1 of the Ofcom Broadcasting Code (“the Code”). Ofcom had regard to this Rule when reaching its decisions on the individual heads of complaint detailed below.

In particular Ofcom considered Practice 7.9, which states that 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 and that anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute; and Practice 7.11, which

states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

- a) Ofcom first considered the complaint that Dame Anne Leslie incorrectly suggested that the Islam Channel was funded by Saudi Arabia and that the programme gave the channel no opportunity to respond to this allegation.

Ofcom noted that the programme featured a debate entitled: “Does Britain Have a Problem with Muslims?” and that during the debate Dame Anne Leslie said:

*“There are always rows about who finances what organisation... ..but then, of course, what I really object to is the heavy amount of financing of Wahabi doctrine, which is the extreme form, from Saudi Arabia. Saudi spends its petrodollars on trying to spread Wahabism, which was always a very small minority sect – born in the desert, the Arabian Desert, in the eighteenth century – and, to try to spread it around now. I in fact have been on Salma’s<sup>3</sup>, on her, programme on the Islam Channel and it was a delightful and interesting and fine programme. But, I go on to the Islam Channel for the questions and answers (and other channels) – these are all financed by Saudi by various means. And you listen to the question and answer things – two young people ringing in who are confused, don’t know what, and one young girl says: “I’ve just started (to the Mulla or Imam or whatever you call them), I have just started menstruating” – she was nervous about uttering this terrible word – “I’m told I can’t touch the Qur’an” and he said “no you can’t”. I mean he spoke for ages but anyway he said basically you can’t touch the Qur’an when you’re menstruating unless you wear gloves”.*

In Ofcom’s opinion the first part of Dame Anne Leslie’s comments in this section of the programme would have indicated to viewers that she objected to large scale financing of people and organisations that promoted Wahabi<sup>4</sup> doctrine and that she believed that much of this financing came from Saudi Arabia. Ofcom also considered that from these comments viewers would have understood Dame Anne Leslie to have made a separate observation that that she believed that several television channels (including the Islam Channel) were funded by Saudi Arabian sources.

Ofcom considered that it would have been clear to viewers that the claim that the Islam Channel (amongst others) was funded by Saudi Arabian sources was Dame Anne Leslie’s opinion rather than the position of the programme as a whole. It also considered that this claim did not amount to an allegation of wrongdoing on the part of the Islam Channel.

In addition, Ofcom observed that the documentation provided to it by the BBC showed that the majority of the shares in the Islam Channel Limited were, at the time of the company’s last annual return – i.e. 22 December 2010, owned by a Saudi Arabian national.

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<sup>3</sup> At the time of the broadcast Councillor Salma Yaqoob presented a weekly programme called *The Politics and Media Show* on The Islam Channel.

<sup>4</sup> A Wahabist is a person who follows the belief system of the Muslim sect founded by Abdul Wahhab (1703-1792). Wahabism is known for its strict observance of the Koran and has flourished mainly in Arabia.

In light of the factors noted above, Ofcom concluded that the programme makers took reasonable care to satisfy themselves that the programme did not present, disregard or omit material facts and that it was not incumbent upon the programme makers to have offered the Islam Channel an opportunity to respond to the claim that the Islam Channel (amongst others) was funded by a Saudi Arabian source.

Ofcom therefore found no unfairness to the complainant in this respect.

- b) Ofcom considered the complaint that Dame Anne Leslie referred to a programme on the Islam Channel which she portrayed in a negative light and the programme gave the channel no opportunity to respond to this portrayal of its programme.

In Ofcom's opinion, the second part of Dame Anne Leslie's comments (as set out in the decision at head a) above) would have indicated to viewers that she saw a programme on a channel, (which might or might not have been the Islam Channel) in which a young girl, who had recently started menstruating, contacted an Imam, appearing in the programme, to ask for advice, that the girl was frightened to talk about menstruating to the Imam and when she did she was told that she could not touch the Qur'an while she was menstruating unless she wore gloves. Ofcom also considered that in the context of other comments made by Dame Anne Leslie in the programme, viewers were likely to have understood her to have been critical of whichever channel broadcast this programme.

However, in Ofcom's opinion these comments did not amount to an allegation of wrongdoing on the part of whichever channel broadcast the programme described. Rather, it considered that it would have been clear from the programme in its entirety that all of Dame Anne Leslie's comments (including this one) were made as part of a debate in which differing views on the position of Muslims in Britain were expressed and that having understood this viewers would have been able to draw their own conclusion on each of the points made.

In addition, Ofcom observed that one of the contributors to the debate was Councillor Salma Yaqoob who at the time of the broadcast was both Leader of the Respect Party and a presenter on the Islam Channel. Given her position, Ofcom considered that while Ms Yaqoob did not do so, she could, had she wished to, have offered a counterpoint in the debate to Dame Anne Leslie's description and implied criticism of a programme which was broadcast on a channel providing programming from an Islamic perspective.

In light of all the factors noted above, Ofcom concluded it was not incumbent on the programme makers to have offered the Islam Channel an opportunity to respond to Dame Anne Leslie's comments that a channel, which might or might not have been the Islam Channel, broadcast a programme of which she felt critical.

Ofcom therefore found no unfairness to the complainant in this respect.

- c) Ofcom then considered the complaint that Mr Nawaz made allegations about the programmes on the Islam Channel and said there is rubbish coming out of those channels and the programme gave the channel no opportunity to respond to this allegation of incompetence.

Ofcom noted that at one point in the debate, the presenter said:

*“The Islam Channel has got into some heat recently because of Imams on it saying the sorts of things that Anne Leslie was talking about, and these things, you can go on You Tube and see any of these preachers and Imams, who have a lot of influence on young people, saying things that are to our ears, and to civilised people’s ears, horrific”.*

Mr Nawaz (the Executive Director of the Quilliam Foundation) then said:

*“It was the Quilliam [Foundation] that did that survey on The Islam Channel. We then reported them to Ofcom and Ofcom found against them [...] We monitored them for about four months, we recorded all the shows, put them up on to YouTube and then with the electronic report put the links to the YouTube videos to prove that wasn’t ‘taken out of context’ which is the usual response that you get. What the Islam Channel did was, they complained to YouTube and said take these videos down because they’ve been loaded up without our permission and it’s a violation of copyright. But, the fact is they did say those things on the most popular channel for British Muslims which is broadcast across the world there were so called Imams on there saying that you can beat your wives. And they were saying that you can use this thing called a miswak, which is a small stick<sup>5</sup>, to beat your wives with ‘lightly’. And I think that type of rubbish that’s coming out of these sorts of channels, it must be challenged. Now, to put it all into context...”*

At this point, Mr Campbell interjected with: *“...and it gives Muslims a bad name”*, to which Mr Nawaz said *“It does give Muslims a bad name, now not every Muslim says these things but the tiny minority that are saying these things we must challenge...”*.

In Ofcom’s opinion, from this section of the programme viewers would have understood Mr Nawaz to have criticised the Islam Channel for broadcasting some programmes in which Imams gave advice indicating that it was acceptable to beat one’s wife and that in his opinion this type of advice, which was shown on a number of different channels (including the Islam Channel), was *“rubbish”*, reflected the views of a *“tiny minority”* of Muslims and needed to be *“challenged”*.

While these comments were clearly critical of the Islam Channel, Ofcom considered that they did not amount to an allegation of wrongdoing or incompetence on the part of the Channel. Rather, Ofcom considered that viewers would have been aware that all the comments made in the programme (including this one) were made as part of a debate in which differing views on the position of Muslims in Britain were expressed and that having understood this viewers would have been able draw their own conclusion on each of the points made.

In addition, given her position as a presenter on The Islam Channel, Ofcom considered that Councillor Yaqoob, could, had she wished to, have offered a counterpoint in the debate to Ms Nawaz’s criticism of some of the programming broadcast on the Islam Channel.

In light of all the factors noted above, Ofcom concluded it was not incumbent upon the programme makers to have offered the Islam Channel an opportunity to respond to Mr Nawaz’s position that the Islam Channel had broadcast some programming of which felt critical.

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<sup>5</sup> A miswak is a teeth cleaning stick the use of which is considered to be an important aspect of Islamic hygiene law.

Ofcom therefore found no unfairness to the complainant in this respect.

**Accordingly, Ofcom has not upheld the Islam Channel's complaint of unjust or unfair treatment in the broadcast of the programme.**

## Not Upheld

### Complaint by Mr Trefor Owen

*Pethe, S4C, 10 and 22 May 2011*

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**Summary:** Ofcom has not upheld Mr Owen's complaint of unjust or unfair treatment in the programmes as broadcast.

Both programmes featured a story about the relocation and reopening of a traditional clog-maker's workshop in the St Fagans National History Museum in Cardiff. The broadcast in Welsh on 10 May 2011 included a promotional item for a forthcoming special edition of the *Pethe* programme, which summarised the story behind the relocation of the workshop. It included interview footage of Mr Geraint Parfitt, the resident clog-maker at the museum who would be operating from the workshop. (S4C provided Ofcom with a translation and transcript of both programmes into English. All references to the content of the broadcasts cited in this preliminary view are from those transcripts.) During the programme, Mr Parfitt said:

*"I'm the only one who does it [i.e. clog-making] all 100 percent by hand. There's another guy up in North Wales, but he tends to use a sewing machine. This is all hand stitched. I don't use any machines at all".*

In the special edition of the programme broadcast on 22 May 2011, which was devoted entirely to the story behind the history and the relocation of the workshop, interview footage of Mr Parfitt was again included, in which he said:

*"I'm the only one who does it all 100 percent by hand. This is all hand stitched, I don't use any machines [at all]".*

Following the broadcast of the programme, Mr Trefor Owen, a clog-maker from North Wales, complained to Ofcom that he was treated unjustly or unfairly in the programmes as broadcast.

Ofcom found that in relation to both programmes the presentation of Mr Parfitt and the nature and content of his comments were unlikely to have materially and adversely affected viewers' understanding of Mr Owen or his clog-making craftsmanship in a way that was unfair. It also considered that the broadcaster had taken reasonable care to satisfy itself that the programmes as broadcast did not present, disregard or omit material facts in a way that resulted in unfairness to Mr Owen.

#### Introduction

On 10 May 2011, S4C broadcast in Welsh an edition of its arts and cultural affairs programme *Pethe*. Towards the end of this programme, a promotional item for a forthcoming special edition of *Pethe* was included. This item featured the St Fagans National History Museum ("St Fagans") in Cardiff and the relocation and renovation of a traditional clog-maker's workshop there. The programme summarised the story behind the workshop and explained that Mr Geraint Parfitt, the resident clog-maker at St Fagans, had been offered the opportunity to operate from the workshop and to make clogs "100 percent by hand". Interview footage of Mr Parfitt was included at this point in the programme, in which he said:



*“I’m the only one who does it all 100 percent by hand. There’s another guy up in North Wales, but he tends to use a sewing machine. This is all hand stitched. I don’t use any machines at all”.*

On 22 May 2011, the special edition of *Pethe*, entitled *Gweithdy'r Clocsiwr (The Clog-Maker's Workshop)*, was broadcast in Welsh<sup>1</sup>. The programme explored in more depth the background to the project to move an early twentieth century clog-maker's workshop from its original site in Pembrokeshire to St Fagans. The programme charted the dismantling of the workshop and its subsequent reconstruction and renovation at St Fagans. During the programme, extended interview footage with Mr Parfitt was included. Mr Parfitt spoke of his enthusiasm at being able to operate from the workshop and said:

*“I’m the only one who does it all 100 percent by hand. This is all hand stitched, I don’t use any machines [at all]”.*

Following the broadcast of the programmes, Mr Trefor Owen, a clog-maker from North Wales, complained to Ofcom that he was treated unjustly or unfairly in the programmes as broadcast.

### **Summary of the complaint and broadcaster’s response**

Mr Owen complained that he was treated unjustly or unfairly in the programmes as broadcast in that Mr Parfitt claimed in the interview footage that he was the only clog-maker [in Wales] to make and sew his clogs “100 percent by hand” and that “[T]here’s another guy up in North Wales, but he tends to use a sewing machine”. Mr Owen said that since he and Mr Parfitt were the only clog-makers in Wales to claim to make hand-made clogs, Mr Parfitt’s comments portrayed Mr Owen unfairly in the programmes.

In response, S4C said that while Mr Parfitt did not refer to Mr Owen by name in either programme, it accepted that his comment about the “guy up in North Wales” did, in fact, refer to Mr Owen.

S4C said that the programmes were not intended to be about the clog-making industry in Wales or to an attempt to compare the craftsmanship of Mr Parfitt and Mr Owen. Nor was it about whether clogs crafted 100 percent by hand were better than clogs with machine stitching. S4C said that Mr Parfitt, as the resident clog-maker at St Fagans, was aware of how fortunate he was to be able to work in the original workshop and not to have any commercial demands on his time, which allowed him to make the clogs 100 percent by hand. S4C said that the programmes reflected this position and that neither Mr Parfitt, nor the programmes, judged the standards of other clog-makers or whether hand stitched, as opposed to machine or partly machine stitched, clogs were of a better quality. S4C said that it was not Mr Parfitt’s, the programme makers’ or S4C’s intention to cause any offence to Mr Owen or to treat him unfairly.

S4C said that the programme makers were satisfied with Mr Parfitt’s integrity and that he and St Fagans were satisfied, having conducted research, that Mr Parfitt was the only clog-maker in Wales who did 100 percent of the work by hand. Mr Parfitt had told the programme makers that he had seen examples of Mr Owen’s clogs with machine stitching on them, which was not unusual in traditional clogs. S4C said that

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<sup>1</sup> English translated transcripts of both programmes were provided to Ofcom and the complainant by S4C. The translations were verified as accurate by Ofcom Wales.

both Mr Parfitt and St Fagans had confirmed that they had seen and heard other evidence that Mr Owen used a sewing machine and a cutting press in the production of clogs. It was on this basis that Mr Parfitt and St Fagans told visitors to the museum that Mr Parfitt was the only remaining clog-maker in Wales who made clogs 100 percent by hand. S4C said that an example of the evidence provided to the programme makers was an entry from Mr Owen's own website from 2002 when he practised as 'The Clog Shop' in which it stated that his clogs were "...hand and machine stitched...". Another example was an article from a 2007 edition of "The Morris Federation"<sup>2</sup> newsletter in which Mr Owen described his own clogs as having "...uppers (both hand and machine stitched)...". S4C also said that Mr Owen had, in a BBC radio interview in September 2010, referred to using a sewing machine and that while undertaking its own research, S4C had discovered video footage on the internet of Mr Owen using a sewing machine while working.

S4C said that Mr Parfitt genuinely believed that he is the only clog-maker in Wales who makes clogs 100 percent by hand. The programme makers had no reason not to believe him and had conducted their own research to confirm what he said. S4C said that Mr Parfitt admired Mr Owen's craftsmanship, the quality of his work and his dedication to preserving rural crafts.

S4C said that the programme makers took an editorial decision to edit Mr Parfitt's contribution before the broadcast of the programme on 22 May 2011 after Mr Owen had advised them that he was offended by the content of the programme broadcast on 10 May 2011. S4C said that the programme had been edited because the programme makers had no wish to exacerbate Mr Owen's distress if he felt that the content was derogatory towards him or questioned the authenticity of his clog-making. However, S4C said that the decision to remove the sentence referring to "*another guy in North Wales*" from the later programme was not undertaken on the grounds of it being unfair or factually incorrect.

In response to the S4C's reference to the website page from 2002 and the article from the Morris Federation Newsletter as evidence that Mr Owen had used a sewing machine, Mr Owen said that the information contained in these sources was defunct. Mr Owen explained that while they may have been correct at the time, i.e. 2002 and 2007, neither of them refer to his business now in Wales, where, he said, he hand stitched the leather uppers to his clogs. Mr Owen said that S4C and St Fagans made no attempt to contact him to verify how he made his clogs, but instead relied on "old flaky websites as 'Fact'". This, he said, allowed them to come to a false conclusion and showed a degree of disrespect and unfair treatment towards him.

S4C said in response to Mr Owen's comments that no comprehensive research was carried out on his business or into its history as the programme was not about the clog making business or a documentary about the craft. It said that the programme makers had not relied on information that appeared on "old websites", but had relied on information they believed reliable and provided by St Fagans, namely that Mr Owen did some work using machines.

## **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 unjust or unfair treatment and unwarranted infringement of

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<sup>2</sup> The Morris Federation is a self-governing association of Morris (Dancing) Clubs.

privacy in, or in connection with the obtaining of material included in, programmes 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.

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included recordings of both programmes as broadcast and translated transcripts in English, and both parties' written submissions. Ofcom also took into account representations made by the parties in response to its preliminary view on the complaint.

When considering complaints of unjust and unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programmes as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its preliminary view on Mr Owen's complaint.

Ofcom considered Mr Owen's complaint that the comments made by Mr Parfitt in the programmes portrayed him unfairly.

When considering this complaint, Ofcom had regard to whether reasonable care was taken by the broadcaster to satisfy itself that material facts had not been presented, disregarded or omitted in a way which was unfair to Mr Owen (as outlined in Practice 7.9 of the Code).

Ofcom recognised too that selecting and including material from the contributions of those participating in programmes was an editorial decision for the programme makers and the broadcaster to make. However, in selecting material for inclusion, programme makers and broadcasters should ensure that material fact and contributions are presented fairly.

Ofcom first noted the following commentary and contribution by the St Fagans' buildings curator and Mr Parfitt included in the programme broadcast on 10 May 2011:

Curator: *"It [the workshop] also filled an important gap for us in our collection because we have a clog-maker's workshop, and especially as we have a clog-maker on our staff who didn't have a workshop. Well, it answered our needs to tell the truth.*

Commentary: *And that craftsman is Geraint Parfitt from the Rhondda. He's been producing clogs in the traditional way at the museum for five years.*

Mr Parfitt: *I'm the only one who does it all 100 percent by hand. There's another guy up in North Wales, but he tends to use a sewing machine. This is all hand-stitched. I don't use any machines at all. Even when I'm cutting down a tree, I don't even use a chainsaw or anything.*

Commentary: *While Geraint finishes making clogs in St Fagans, the builders have been busy ... pulling the workshop down in order to bring it the 100 miles to its new home near Cardiff*".

Ofcom also noted Mr Parfitt's contribution in the programme broadcast on 22 May 2011:

Mr Parfitt: *"The tendency is that the clogs are mainly bought by people who visit the museum here. They see me working and see what an interesting craft it is and decided they want a pair then! They come back and tell me how comfortable they are. Some customers buy an extra pair, a second and third pair sometimes, which is good!*

*I'm the only one who does it all 100 percent by hand. It's all hand stitched. I don't use any machines [at all]. I don't even use a chainsaw [or anything].*

*Here I have a finished pair. I have to admit I'm looking forward to making a couple of more pairs of clogs in the new workshop! I'll see more of the public there so it'll be more interesting for me to meet more people, you know? And it's also a historical building*".

At this point, the programme went on to look at the renovation work that had begun on the workshop at St Fagans.

It is important to note that Ofcom's role is not to establish whether the substance of Mr Parfitt's contribution to the programme was correct or not, but to determine whether, in broadcasting his comments, the broadcaster took reasonable care not to present, disregard or omit material facts in a way that was unfair to Mr Owen. In doing so, Ofcom considered the contextual basis for Mr Parfitt's opinion as expressed in the programmes and whether the programmes' presentation of his comments resulted in unfairness.

In relation to the programme broadcast on 10 May 2011, Ofcom noted that Mr Parfitt's comments immediately followed the programme's narrative about the relocation of the traditional clog-making workshop to St Fagans. Mr Parfitt was introduced in the programme by the St Fagans' buildings curator as a clog-maker who was also a member of staff at St Fagans and then by the programme's commentary as *"that craftsman is Geraint Parfitt...He's been producing clogs in the traditional way at the museum for five years"*.

In the programme broadcast on 22 May 2011, Ofcom noted that Mr Parfitt was introduced as *"over in the furthest corner of the museum...is the craftsman who will fill Thomas James' [previous owner of the workshop]...shoes, Geraint Parfitt from the Rhondda. He will bring the workshop...back to life"*. An extended contribution from Mr Parfitt was then included in the programme in which he set out his working career at St Fagans and how he learned the craft of clog-making. Ofcom noted too that Mr Parfitt explained how he made his clogs and how he felt about working at the museum. Ofcom took the view that Mr Parfitt was presented in both programmes not only as a member of the St Fagans staff, but also as a skilled craftsman. It considered, therefore, that viewers would have understood that the purpose of his contribution to the programmes was to express his views as an experienced clog-maker about his craft and what working out of the workshop at the museum would mean to him. Based upon Mr Parfitt's experience and craftsmanship, which was signposted to viewers by the programmes' introduction of him, Ofcom considered

that it was legitimate for the programmes to include Mr Parfitt's opinion on clog-making.

Ofcom went on to consider the context in which Mr Parfitt's comments were included in the programmes as broadcast. Ofcom noted that the purpose of the content of both programmes was to tell the story of the relocation of a traditional clog-making workshop from one part of Wales to St Fagans so that it could be preserved and used by the museum's resident clog-maker. Ofcom noted that the programmes focussed on the process of relocating the workshop and the work of the museum in preserving Welsh heritage and promoting Welsh cultural history. Ofcom considered that this purpose was clear in the programme and that viewers would have been unlikely to form the view that the programmes were about clog-making or had intended to pitch the different types of clog-making against each other.

In these circumstances, Ofcom considered whether or not the presentation of Mr Parfitt's comments in the programmes about him being the only clog-maker to make his clogs 100 percent by hand resulted in unfairness to Mr Owen. Ofcom again noted the manner in which Mr Parfitt was introduced by the programmes (as set out above) and that he was shown expressing his personal opinion on his craft. Ofcom noted from the programmes that Mr Parfitt's comments were largely centred upon his own craftsmanship and clog-making at the museum and it considered that viewers would have been left in little doubt that his comments constituted his opinion only and were not specifically directed as a critique of anyone else's craftsmanship.

Ofcom noted that in the programme broadcast on 10 May 2011 Mr Parfitt had referred to *"another guy in North Wales, but he tends to use a sewing machine"*. However, this reference was edited from the programme broadcast on 22 May 2011 and Ofcom noted the broadcaster's reasons for doing so. It also noted that in both programmes, Mr Parfitt had mentioned that he was the only clog-maker *"who does it all 100 percent by hand"*. Ofcom considered that Mr Parfitt's comments could reasonably be inferred by viewers to mean that no one else, including the *"guy in North Wales"* (which Ofcom accepted was a reference to Mr Owen), made their clogs by 100 percent by hand. Ofcom recognised that the inclusion in a programme of comments made by a contributor that questioned the quality or authenticity of particular goods or services had the potential to create unfairness to those whose goods or services were being questioned.

In these particular circumstances, Ofcom had regard to the material provided to it by the broadcaster in its response to the complaint. In particular, Ofcom noted:

- An article from a 2007 newsletter of The Morris Federation written by Mr Owen in which he claimed that "Well, I make all my own soles, uppers (both hand and machine stitched) and rubbers (two grades of durability)...".
- A web page from 2002 for Mr Owen's website 'The Clog Shop' which stated that "Our clogs have hand-cut uppers, hand and machine stitched assembly, from hand dyed or ready coloured leather".
- A 'YouTube' clip available on the internet of Mr Owen shown sitting at a sewing machine and stitching leather uppers to a clog sole.
- A BBC Radio Wales interview with Mr Owen from September 2010 in which Mr Owen demonstrated the clog-making process. Mr Owen said:

*“[The] leather goes in, the needle goes down ... [noise of sewing machine] ... and start stitching. Wonderful design of machine unlike a domestic machine and you can turn the travelling foot around so you can stitch in any direction you want”.*

Ofcom also noted that the broadcaster said that the programme makers had been assured by both Mr Parfitt and St Fagans that they believed that Mr Owen used a sewing machine and a leather cutting press the making of his clogs and that they had no reasons to question the veracity or otherwise of their belief.

Having considered all the material provided to it by the broadcaster and referred to in the paragraphs above, Ofcom considered that it was clear that Mr Owen did, in fact, use a sewing machine and a cutting press in the preparation of at least some of his clogs. While Ofcom appreciated that Mr Owen may make some of his clogs entirely by hand, it was not misleading or unfair for the programmes to include Mr Parfitt's comments. In fact, Ofcom noted that Mr Parfitt had used the word “*tends*” in the programme broadcast on 10 May 2011 in describing Mr Owen's use a sewing machine which, in Ofcom's view, implied that Mr Owen also made hand stitched clogs. In any event, Ofcom was satisfied in these circumstances that the programme makers had taken reasonable steps to verify the claims made by Mr Parfitt in relation to the hand stitching of clogs and that it was not unfair to have included the comments in the programmes.

Taking all the factors referred to above into account, Ofcom considered that the programmes' presentation of Mr Parfitt and the nature and content of his comments in the programmes were unlikely to have materially and adversely affected viewers understanding of Mr Owen or his clog-making craftsmanship in a way that was unfair. It also considered that the broadcaster had taken reasonable care to satisfy itself that the programmes did not present, disregard or omit material facts in a way that portrayed Mr Owen unfairly in the programmes as broadcast.

**Accordingly, Ofcom has not upheld Mr Owen's complaint of unjust and unfair treatment in the programmes as broadcast.**

## Other Programmes Not in Breach

Up to 13 February 2012

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
The X Factor	ITV1	22/10/2011	Drugs, smoking, solvents or alcohol

## Complaints Assessed, Not Investigated

### Between 31 January and 13 February 2012

This is a list of complaints that, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
10 O'Clock Live	Channel 4	08/02/2012	Generally accepted standards	3
4thought.tv	Channel 4	06/02/2012	Sexual orientation discrimination/offence	3
4thought.tv	Channel 4	08/02/2012	Disability discrimination/offence	1
4thought.tv	Channel 4	08/02/2012	Sexual orientation discrimination/offence	3
5 News	Channel 5	08/02/2012	Generally accepted standards	1
A New Way Forward	Sikh Channel	28/01/2012	Religious/Beliefs discrimination/offence	1
Aaj Ki Batt	DM Digital	09/12/2011	Generally accepted standards	1
Adventure Time	Cartoon Network	01/02/2012	Generally accepted standards	1
Advertisements	Various	n/a	Advertising scheduling	2
Alan Carr: Chatty Man	Channel 4	25/12/2011	Generally accepted standards	1
All New You've Been Framed!	ITV1	28/01/2012	Religious/Beliefs discrimination/offence	4
American Hoggers	Bio	13/01/2012	Animal welfare	1
Ancient Aliens	History Channel	29/01/2012	Materially misleading	1
Antiques Roadshow	BBC 1	n/a	Advertising/editorial distinction	1
BBC News	BBC 2	08/02/2012	Generally accepted standards	1
BBC News	BBC News Channel	04/02/2012	Outside of remit / other	1
BBC News 24	BBC News 24	08/02/2012	Generally accepted standards	1
BBC News 24	BBC News 24	10/02/2012	Offensive language	1
BBC News at Six	BBC 1	06/02/2012	Outside of remit / other	1
BBC News at Ten	BBC 1	01/02/2012	Race discrimination/offence	1
BBC News at Ten	BBC 1	09/02/2012	Violence and dangerous behaviour	2
BBC Scotland Local News	BBC 1 Scotland	10/02/2012	Outside of remit / other	1
Beyond Belief	BBC Radio 4	23/01/2012	Sexual orientation discrimination/offence	1
Blue Bird.TV	Essex Babes	11/01/2012	Nudity	1
Blue Peter	CBBC	02/02/2012	Sexual material	1
Bouncers	Channel 4	01/02/2012	Disability discrimination/offence	1
Bouncers	Channel 4	01/02/2012	Generally accepted standards	10



Bouncers	Channel 4	07/02/2012	Generally accepted standards	1
Bouncers (trailer)	Channel 4	01/02/2012	Scheduling	1
Breakfast Show	Jack FM	06/02/2012	Generally accepted standards	1
Britain in Bed	BBC 3	18/01/2012	Generally accepted standards	1
Britain's Gay Footballers	BBC 3	30/01/2012	Sexual orientation discrimination/offence	1
Casualty	BBC 1	28/01/2012	Race discrimination/offence	5
Celebrity Big Brother	Channel 5	25/01/2012	Voting	13
Celebrity Big Brother	Channel 5	27/01/2012	Generally accepted standards	1
Celebrity Big Brother	Channel 5	27/01/2012	Voting	1
Celebrity Big Brother	Channel 5	n/a	Generally accepted standards	1
Celebrity Big Brother's Bit on the Side	5*	21/01/2012	Generally accepted standards	1
Celebrity Big Brother's Bit on the Side	Channel 5	25/01/2012	Generally accepted standards	1
Celebrity Big Brother's Bit on the Side	Channel 5	27/01/2012	Race discrimination/offence	1
Celebrity Juice (trailer)	ITV1	03/02/2012	Sexual material	1
Channel 4 News	Channel 4	18/01/2012	Due impartiality/bias	1
Channel 4 News	Channel 4	12/02/2012	Animal welfare	1
Channel interference	Food Network	03/02/2012	Outside of remit / other	1
Channel Promotion	Comedy Central	01/02/2012	Hypnotic and other techniques	1
Charley Boorman's Extreme Frontiers	Channel 5	05/01/2012	Offensive language	1
Charley Boorman's Extreme Frontiers	Channel 5	05/01/2012	Offensive language	1
Chris Moyles' Quiz Night	Channel 4	27/01/2012	Disability discrimination/offence	4
Coach Trip	Channel 4	31/01/2012	Race discrimination/offence	1
Coach Trip	Channel 4	10/02/2012	Sexual orientation discrimination/offence	2
Competition	Absolute Radio	n/a	Competitions	1
Competitions	ITV	n/a	Competitions	1
Confessions From the Underground	Channel 4	02/02/2012	Due impartiality/bias	1
Confessions From the Underground	Channel 4	02/02/2012	Race discrimination/offence	1
Confessions of a Nurse	More4	24/01/2012	Disability discrimination/offence	1
Confessions of a Nurse	More4	31/01/2012	Age discrimination/offence	1
Coppers	Channel 4	23/01/2012	Generally accepted standards	2
Coppers	Channel 4	30/01/2012	Sexual material	1
Coronation Street	ITV1	30/01/2012	Generally accepted standards	2
Coronation Street	ITV1	03/02/2012	Generally accepted standards	54

Country House Rescue	Channel 4	31/01/2012	Generally accepted standards	1
Criminal Minds	Sky Living	15/01/2012	Scheduling	1
CSI: Crime Scene Investigation	5 USA	31/01/2012	Offensive language	1
Cycling: Tour of Qatar	Eurosport 2	07/02/2012	Outside of remit / other	1
Dancing on Ice	ITV1	05/02/2012	Voting	1
Dancing on Ice	ITV1	05/02/2012	Advertising/editorial distinction	1
Dancing on Ice	ITV1	05/02/2012	Nudity	2
Daybreak	ITV1	13/01/2012	Generally accepted standards	1
Daybreak	ITV1	25/01/2012	Gender discrimination/offence	1
Don't Tell the Bride	BBC 3	31/01/2012	Race discrimination/offence	1
EastEnders	BBC 1	31/01/2012	Race discrimination/offence	6
EastEnders	BBC 1	31/01/2012	Religious/Beliefs discrimination/offence	5
EastEnders	BBC 1	02/02/2012	Violence and dangerous behaviour	5
Edinburgh Comedy Festival Live	BBC 3	28/01/2012	Race discrimination/offence	1
Elite Days	Elite TV 4	04/02/2012	Participation TV - Protection of under 18s	1
Emergency with Angela Griffin	Pick TV	27/01/2012	Disability discrimination/offence	1
Emmerdale	ITV1	23/01/2012	Violence and dangerous behaviour	1
Emmerdale	ITV1	09/02/2012	Scheduling	5
Estings promotion	E4	02/02/2012	Sexual material	1
Eternal Law	ITV1	02/02/2012	Religious/Beliefs discrimination/offence	1
Eternal Law	ITV1	26/01/2012	Suicide and self harm	1
FA Cup Fourth Round Live	ITV1	28/01/2012	Race discrimination/offence	11
Family Guy	BBC 3	05/02/2012	Generally accepted standards	1
Formula 1 coverage	Sky	n/a	Listed Events	1
Foxy Bingo's sponsorship of The Jeremy Kyle Show	ITV1	23/01/2012	Gambling	1
Fresh hits	Brit Asia tv	03/02/2012	Offensive language	1
General Programming	Various	n/a	Outside of remit / other	2
Geoff Lloyd's Hometown Show	Absolute Radio	11/01/2012	Generally accepted standards	1
Geordie Shore	MTV	31/01/2012	Generally accepted standards	1
George Galloway	Talksport	20/01/2012	Generally accepted standards	1
Get In	Attheraces	27/01/2012	Gender discrimination/offence	1
Gillette Soccer Saturday	Sky Sports News	04/02/2012	Race discrimination/offence	1

Gok's Teens: The Naked Truth	Channel 4	07/02/2012	Religious/Beliefs discrimination/offence	1
Good Morning Sports Fans	Sky Sports News	12/02/2012	Due impartiality/bias	1
Great Expectations	BBC 1	28/12/2011	Drugs, smoking, solvents or alcohol	1
Grey's Anatomy	Channel 5	12/02/2012	Offensive language	1
Grimm (trailer)	Dave	04/02/2012	Scheduling	1
Grimm (trailer)	Yesterday	07/02/2012	Scheduling	1
Harry And The Hendersons	Gold	07/01/2012	Offensive language	1
Harry Hill's TV Burp	Cartoon Network	19/01/2012	Scheduling	1
Harveys' sponsorship of Coronation Street	ITV1	27/01/2012	Generally accepted standards	1
Harveys' sponsorship of Coronation Street	ITV1	06/02/2012	Sexual material	1
Harveys' sponsorship of Coronation Street	ITV1	n/a	Disability discrimination/offence	1
Harveys' sponsorship of Coronation Street	ITV1	n/a	Generally accepted standards	3
Harveys' sponsorship of Coronation Street	ITV1	n/a	Generally accepted standards	1
Harveys' sponsorship of Coronation Street	ITV1	n/a	Generally accepted standards	1
Heart Breakfast	Heart Somerset	17/01/2012	Sexual material	1
Holby City	BBC 1	07/02/2012	Offensive language	1
Hollyoaks	Channel 4	02/02/2012	Scheduling	1
HR - Disabled	BBC Radio 4	08/02/2012	Disability discrimination/offence	1
In Our Time	BBC Radio 4	02/02/2012	Scheduling	1
ITV News	ITV1	11/02/2012	Due impartiality/bias	1
ITV News (trailer)	ITV1	30/01/2012	Due accuracy	1
ITV News and Weather	ITV1	09/02/2012	Violence and dangerous behaviour	1
ITV News at Ten and Weather	ITV1	20/01/2012	Generally accepted standards	1
ITV News at Ten and Weather	ITV1	07/02/2012	Generally accepted standards	1
ITV Sport promotion	ITV1	20/01/2012	Gender discrimination/offence	1
Jerry's Jukebox	U105 FM	13/01/2012	Generally accepted standards	1
John Humphries	BBC Radio 4	08/02/2012	Outside of remit / other	1
Junior Doctors: Your Life in Their Hands	BBC 3	09/02/2012	Offensive language	1
Ken Livingstone	LBC 97.3FM	21/01/2012	Elections/Referendums	1
Khalid Show / Hazrat Shah Show	Hajj Radio 102.1 FM	n/a	Commercial communications on radio	1
Law and Order: UK	ITV1	27/01/2012	Disability discrimination/offence	1
Live Scottish Cup Football	Sky Sports Cup 3	04/02/2012	Generally accepted standards	1
London Tonight	ITV1	30/01/2012	Drugs, smoking, solvents or alcohol	1

London Tonight	ITV1	02/02/2012	Due impartiality/bias	1
Looking Back at the Riots	BBC2	31/01/2012	Outside of remit / other	1
Lorraine	ITV1	07/02/2012	Materially misleading	1
Lorraine	ITV1	08/02/2012	Animal welfare	1
Love in the Wild (trailer)	ITV2	30/01/2012	Offensive language	1
Made of Honor	5*	30/01/2012	Scheduling	1
Midsomer Murders	ITV1	01/02/2012	Generally accepted standards	1
Mock the Week	BBC 2	06/10/2011	Generally accepted standards	1
Monday Night Football	Sky Sports 1	06/02/2011	Offensive language	1
Munakashat Hurra	Al Mustakillah Television	29/12/2011	Generally accepted standards	1
New Girl	Channel 4	27/01/2012	Sexual material	1
New Girl	Channel 4	28/01/2012	Scheduling	1
New You've Been Framed!	ITV1	14/01/2012	Sexual material	1
News	BBC1 / Ceefax	25/01/2012	Outside of remit / other	1
Newsbeat	BBC Radio 1	07/02/2012	Scheduling	1
Newsbeat website	BBC Radio 1	15/01/2012	Outside of remit / other	1
Nick Ferrari	LBC 97.3FM	23/01/2012	Generally accepted standards	1
Not Another Teen Movie	Channel 5	15/01/2012	Disability discrimination/offence	1
One Born Every Minute	Channel 4	01/02/2012	Generally accepted standards	1
One Born Every Minute	Channel 4	08/02/2012	Generally accepted standards	3
Party Paramedics	Channel 4	23/01/2012	Materially misleading	7
Party Paramedics	Channel 4	27/01/2012	Materially misleading	1
Party Paramedics	Channel 4	30/01/2012	Gender discrimination/offence	1
Party Paramedics	Channel 4	30/01/2012	Materially misleading	5
Party Paramedics	Channel 4	30/01/2012	Nudity	1
Playboy TV Chat	Playboy TV Chat	04/02/2012	Participation TV - Protection of under 18s	1
Playing it Straight	Channel 4	28/01/2012	Scheduling	3
Playing it Straight	Channel 4	04/02/2012	Sexual orientation discrimination/offence	1
Playing it Straight	E4	09/01/2012	Generally accepted standards	1
Playing it Straight	E4	16/01/2012	Generally accepted standards	1
POAF Conference	DM Digital	25/11/2011	Religious/Beliefs discrimination/offence	5
POAF Conference	DM Digital	04/12/2011	Due impartiality/bias	1
Poirot	ITV3	05/02/2012	Sexual material	1
Pramface (Trailer)	BBC1	11/02/2012	Scheduling	1
Premier League Football	Sky Sports 1	22/01/2012	Offensive language	1
Premier League	Sky Sports 2	31/01/2012	Offensive language	1

Football				
Press TV	Press TV	11/11/2011	Religious programmes	1
Profile	BBC Radio 4	08/01/2012	Outside of remit / other	1
Protecting Our Children	BBC 2	30/01/2012	Generally accepted standards	1
Real Radio Sales Recruitment promotion	Real Radio	01/02/2012	Offensive language	1
Red Light Lounge	Red Light 1	04/02/2012	Participation TV - Protection of under 18s	1
Regional News and Weather	BBC 1	02/02/2012	Outside of remit / other	3
Rescue Mediums	CBS Reality	n/a	Exorcism, the occult and the paranormal	1
Rich Clarke	Capital Radio	16/01/2012	Offensive language	1
MTV	MTV	n/a	Offensive language	1
Room 101	BBC 1	27/01/2012	Age discrimination/offence	1
Room 101	BBC 1	10/02/2012	Scheduling	1
Secrets of the Shoplifters	Channel 4	16/01/2012	Crime	3
Shameless	Channel 4	24/01/2012	Generally accepted standards	1
Shameless	Channel 4	30/01/2012	Generally accepted standards	1
Shameless	Channel 4	31/01/2012	Generally accepted standards	1
Shipwrecked: The Island	Channel 4	05/02/2012	Animal welfare	1
Sikh Awareness	Sangat TV	21/10/2011	Religious/Beliefs discrimination/offence	1
Six Nations Rugby Union	BBC 1	05/02/2012	Offensive language	1
Six Nations Rugby Union	BBC 1	05/02/2012	Outside of remit / other	1
Skillicious	CITV	11/02/2012	Product placement	1
Sky News	Sky News	24/01/2012	Violence and dangerous behaviour	1
Sky News with Samantha Simmonds	Sky News	27/12/2011	Due accuracy	1
Sky Sports News	Sky Sports News	31/01/2012	Race discrimination/offence	3
Sky Sports News	Sky Sports News	12/02/2012	Generally accepted standards	1
Sky Sports promotion	Sky Sports	n/a	Materially misleading	1
Snog, Marry, Avoid?	BBC 3	18/01/2012	Generally accepted standards	1
Sport Tonight	Sky Sports News	11/02/2012	Generally accepted standards	1
Sports coverage	various	n/a	Flashing images/risk to viewers who have PSE	1
Steve Wright in the Afternoon	BBC Radio 2	30/01/2012	Exorcism, the occult and the paranormal	1
STV trailer	STV	29/01/2012	Harm	1
Suits	Dave	21/01/2012	Scheduling	1
Supernanny US	E4+1	12/02/2012	Offensive language	1

Superscrimbers: Waste Not, Want Not	Channel 4	23/01/2012	Animal welfare	1
Superscrimbers: Waste Not, Want Not	Channel 4	30/01/2012	Materially misleading	2
T4	Channel 4	28/01/2012	Sexual material	1
Talk Sport	Talk Sport	10/02/2012	Advertising minutage	1
Terror at Sea: The Sinking of the Concordia	Channel 4	31/01/2012	Generally accepted standards	1
The Big Debate - Choosing Scotland's Future	BBC 1 Scotland	25/01/2012	Outside of remit / other	1
The Biggest Loser	ITV1	07/02/2012	Generally accepted standards	3
The Bops	Nick Jr	27/01/2012	Scheduling	1
The Chase	ITV1 Anglia	01/02/2012	Competitions	1
The Christian O'Connell Breakfast Show	Absolute 80s	n/a	Generally accepted standards	1
The Departed	Film4	02/02/2012	Generally accepted standards	1
The Estate	BBC 1 Northern Ireland	30/01/2012	Under 18s in programmes	1
The Estate	BBC 2 Northern Ireland	02/02/2012	Under 18s in programmes	1
The Full Scottish Breakfast	Original 106FM (Aberdeen)	30/01/2012	Generally accepted standards	1
The Gerry Anderson Show	BBC Radio Ulster	19/01/2012	Offensive language	1
The Ghost	Channel 4	29/01/2012	Offensive language	1
The Graham Norton Show	BBC 1	06/02/2012	Race discrimination/offence	1
The Jeremy Kyle Show	ITV1	18/01/2012	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	25/01/2012	Materially misleading	1
The Jeremy Kyle Show	ITV1	27/01/2012	Under 18s in programmes	1
The Jeremy Kyle Show	ITV1	03/02/2012	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	06/02/2012	Generally accepted standards	1
The Jonathan Ross Show	ITV1	21/01/2012	Transgender discrimination/offence	16
The Jonathan Ross Show	ITV1	04/02/2012	Nudity	1
The Joy of Teen Sex	Channel 4	27/10/2011	Generally accepted standards	2
The Joy of Teen Sex	Channel 4	07/02/2012	Gender discrimination/offence	1
The Lincs FM Breakfast Show	Lincs FM	26/01/2012	Race discrimination/offence	1
The Magicians	BBC 1	28/01/2012	Animal welfare	1
The Magicians	BBC 1	28/01/2012	Animal welfare	1
The Magicians	BBC 1	28/01/2012	Animal welfare	1
The Million Pound	Channel 4	10/02/2012	Offensive language	1

Drop Live				
The Million Pound Drop Live	Channel 4	11/02/2012	Offensive language	3
The Million Pound Drop Live	Channel 4	11/02/2012	Sexual orientation discrimination/offence	1
The National Television Awards 2012	ITV1	25/01/2012	Advertising/editorial distinction	1
The Official UK Urban Chart	MTV Base	01/02/2012	Offensive language	1
The One Show	BBC 1	16/01/2012	Hypnotic and other techniques	1
The One Show	BBC 1	02/02/2012	Outside of remit / other	1
The One Show	BBC 1	03/02/2012	Offensive language	1
The One Show	BBC 1	08/02/2012	Scheduling	1
The Only Way is Essex	ITV2	29/01/2012	Animal welfare	1
The Only Way is Essex	ITV2	01/02/2012	Animal welfare	1
The Only Way is Essex	ITV2	02/02/2012	Animal welfare	1
The Only Way Is Essex	ITV4	12/02/2012	Offensive language	1
The Only Way Is Essex (trailer)	ITV2	31/01/2012	Generally accepted standards	1
The Simpsons	Channel 4	30/01/2012	Scheduling	1
The Simpsons	Sky1	29/12/2011	Drugs, smoking, solvents or alcohol	1
The Unbelievable Truth	BBC Radio 4	30/01/2012	Generally accepted standards	1
The Wright Stuff	Channel 5	03/02/2012	Generally accepted standards	1
This Morning	ITV1	17/01/2012	Materially misleading	1
This Morning	ITV1	30/01/2012	Gender discrimination/offence	1
Thought for the Day	BBC Radio 4	03/02/2012	Religious/Beliefs discrimination/offence	1
Tombola.co.uk's sponsorship of Emmerdale	ITV1	n/a	Generally accepted standards	1
Top 10	Channel 4	28/01/2012	Sexual material	1
Top Boy	Channel 4	02/11/2011	Animal welfare	1
Top Gear	Dave	04/12/2011	Offensive language	1
Top Gear	BBC 2	28/12/2011	GAS - Race discrimination/offence	1
Top Gear	BBC 2	28/12/2011	GAS - Religious/Beliefs discrimination/offence	1
Top Gear	BBC 2	28/12/2011	Generally accepted standards - other	23
Top Gear	BBC 2	28/12/2011	Harm	1
Top Gear	BBC 2	28/12/2011	Offensive language	2
Top Gear	BBC 2	05/01/2012	Generally accepted standards - other	1
Top Gear	BBC 3	07/01/2012	GAS - Race discrimination/offence	1

Top Gear	BBC 2	08/01/2012	Outside of remit / other	1
Top Gear	BBC 3	21/01/2012	Offensive language	1
Top Gear	BBC 2	29/01/2012	Offensive language	1
Top Gear	BBC 2	29/01/2012	Sexual material	1
Top Gear	BBC 2	05/02/2012	Sexual material	1
Top Gear	BBC 2	12/02/2012	Harm	1
Top Gear	BBC 2	12/02/2012	Offensive language	4
Top Gear	Dave	15/02/2012	Animal welfare	1
Top Gear	BBC 2	19/02/2012	GAS - Religious/Beliefs discrimination/offence	1
Top Model	TV3	31/01/2012	Generally accepted standards	1
Top of the Pops	BBC 4	09/02/2012	Generally accepted standards	1
Top of the Pops	BBC 4	09/02/2012	Outside of remit / other	1
Toughest Place to be a...	BBC 2	29/01/2012	Offensive language	1
Tracy Beaker Returns	CBBC	20/01/2012	Offensive language	3
Vera	ITV1	29/01/2012	Scheduling	1
Wallis and Edward	ITV3	22/01/2012	Sexual material	1
Winter Wipeout	BBC 1	11/02/2012	Disability discrimination/offence	1
Wonga.com's sponsorship of Channel 5 drama	5 USA	01/02/2012	Generally accepted standards	1
Wonga.com's sponsorship of Channel 5 drama	Channel 5	28/01/2012	Generally accepted standards	1
World's Greatest Daredevils	Channel 5	26/01/2012	Outside of remit / other	1



## Investigations List

If Ofcom considers that a broadcast may have breached its codes, it will start an investigation.

Here is an alphabetical list of new investigations launched between 16 and 29 February 2012.

Programme	Broadcaster	Transmission Date
Advertisement	ATN Bangla	n/a
Advertisement	Bangla TV	n/a
Advertisement	Channel i	n/a
Advertisement	Channel S	n/a
Advertisement	NTV	n/a
Advertising minutage	ITV4	26 January 2012
Advertising minutage	Star Plus	15 January 2012
Babestation	Get Lucky TV	15 February 2012
Funky Sensation with Mike Vitti	Jazz FM	18 February 2012
Hanging Up	Sony Entertainment Television	29 January 2012
Inside Men	BBC 1	02 February 2012
ITV News and Weather	ITV1	22 February 2012
Lib Dem Fundraising Event	Cuillin FM	28 January 2012
New Girl	Channel 4	24 February 2012
News	IBC Tamil	05 January 2012
Nitro Circus	Extreme	08 February 2012
Psychic World TV	Psychic Line	20 January 2012
Swahili Diaries	BEN TV	10 January 2012
The Food Hospital	Channel 4	20 December 2011
The House Bunny	Channel 5	26 February 2012
To The Point	Prime TV	29 December 2011

**It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster has done anything wrong. Not all investigations result in breaches of the Codes being recorded.**

For more information about how Ofcom assesses complaints and conducts investigations go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

For fairness and privacy complaints go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.