

Ofcom broadcast bulletin

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Introduction

Ofcom's Broadcasting Code took effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). This Code is used to assess the compliance of all programmes broadcast on or after 25 July 2005. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

The Rules on the Amount and Distribution of Advertising (RADA) apply to advertising issues within Ofcom's remit from 25 July 2005. The Rules can be found at <http://www.ofcom.org.uk/tv/ifi/codes/advertising/#content>

The Communications Act 2003 allowed for the codes of the legacy regulators to remain in force until such time as Ofcom developed its own Code. While Ofcom has now published its Broadcasting Code, the following legacy Codes apply to content broadcast before 25 July 2005.

- Advertising and Sponsorship Code (Radio Authority)
- News & Current Affairs Code and Programme Code (Radio Authority)
- Code on Standards (Broadcasting Standards Commission)
- Code on Fairness and Privacy (Broadcasting Standards Commission)
- Programme Code (Independent Television Commission)
- Programme Sponsorship Code (Independent Television Commission)
- Rules on the Amount and Distribution of Advertising

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

Standards cases

In Breach

Fizz Music

Fizz, 6 August 2006, 22:00

Introduction

A viewer complained about the racist tone of texts submitted by viewers and displayed on screen, which included "All dirty pakis stink! **** off home." The viewer believed that such texts should not have been allowed on air.

Response

Fizz acknowledged that, having studied the chain of text messages, there was a potential issue in that these may have been viewed by someone who had come across the station unawares. The texts generally only appeared on screen line by line in quantities of three or four, a new text message replacing an older one, and the text messages complained of could have therefore been viewed in isolation from the general text "conversation". The broadcaster explained that the exchange of texts initially started with a comment in praise of Pakistan from a viewer requesting a song by Shakira, "Wen iz shakira? big up pakistan". The broadcaster pointed out that following the first "big up" expression there were several further messages supporting Pakistan and Pakistanis.

Fizz argued that the expression 'paki' did not cause major offence to typical viewers of the channel. Figures indicated that more than 60% of the Fizz audience were under the age of 30 and that this demographic became proportionally greater in the late evening. Fizz also pointed to research conducted by Ofcom which it believed pointed out that the meanings of certain words formerly considered racist or offensive had changed and become acceptable in some areas and groups. Fizz suggested the use of the word 'paki' and related text messages should be seen in this context, as part of a common social language used by and acceptable to the typical viewer to Fizz at the time of broadcast.

However, it acknowledged that perhaps the word "pakis" was not "justified by the context" in the sense of Rule 2.3 of the Broadcasting Code. A viewer could have come upon the channel unawares, and this person would not be within the typical social peer group of Fizz viewers. Mindful of this, Fizz apologised for any offence that may have been caused by showing the word, and informed Ofcom that it had revised its procedures for checking texts and would endeavour in future to edit, or fully delete, the word complained of within text messages as it occurs.

Decision

Ofcom considered the complaint in the context of Rule 2.3 of the Broadcasting Code ("the Code"): "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context." Context includes such matters as editorial content, the nature of the service, the time of broadcast, the degree of harm and offence likely to be caused and the expectations of the audience.

With regards to the acceptability of the term 'paki', participants in Ofcom research, *Language and Sexual Imagery in Broadcasting: A Contextual Investigation* (2005), suggested:

- this word was generally considered very offensive;
- young British Asians who participated in the research found a word such as 'paki' acceptable in the very limited circumstance that it was used by members of that community to address each other or talk about themselves in a friendly fashion ; and,
- otherwise, to respondents who were members of the Pakistani community, it was viewed as among the most offensive language.

There was no evidence cited by Ofcom's research to suggest that this word has lost its racist and offensive meaning to many people and become generally acceptable. Its use on air therefore needed appropriate justification by the context in which it was broadcast.

Ofcom noted that, in addition to racist texts, the text dialogue shown on air also contained a number of texts which challenged negative statements about Pakistan (e.g. "There aint noting rong wiv pakistan u racist pig.") But in reaching a decision Ofcom took account of the fact that, in addition to the specific message complained of, there were a number of offensive and racist texts shown as part of the dialogue (e.g. "**** pakistan", "Pakistan sucks sheep ****" and "england rulez"). Ofcom was concerned to note that the text moderators had taken care to edit or remove bad language contained in the text messages but failed to edit or remove racially motivated offensive language such as 'paki'.

Ofcom welcomed the broadcaster's revised procedures to check text messages before broadcast and intention to edit out racist language from future text messages. However, given the strong racist tone and number of racist messages shown Ofcom did not believe that the inclusion of these messages was justified by the context. There was no editorial justification for transmitting such racist language and it was not acceptable.

Ofcom therefore considered that the programme was in breach of Rule 2.3 of the Code.

Breach of Rule 2.3

Anna Raeburn

LBC 97.3 FM (Greater London), 7 August 2006, 13:00

Introduction

The presenter Anna Raeburn, in her phone-in programme, covered a variety of issues, discussing them with callers, referring to listeners' comments and airing her own views. During this programme, she also read out live an advertisement for *OzKleen's Bath Power*. A listener believed the advertisement was not clearly separated from the programme and was therefore confusing to listeners.

Rule 10.2 of the Broadcasting Code ("the Code") states:

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

The *OzKleen's Bath Power* advertisement occurred after a travel bulletin, featured within the programme. The *OzKleen's Bath Power* advertisement was then followed by content promoting DAB digital radio (that was clearly LBC-branded) and other advertisements.

Response

LBC believed the advertisement was clearly separated from programming. It compared the matter to a previous complaint concerning the separation of programming and advertising, which had not been found in breach of the Code. However, the broadcaster acknowledged that the previous case had concerned an advertisement that had not followed a travel bulletin, but a programme trail for *Nick Ferrari at Breakfast*, which had ended with a station drop-in (a brief pre-recorded reference to a station that is dropped into other material but was not a full station 'ident').

LBC confirmed that it was station policy to play a full station 'ident' as it returned to programming at the end of an advertising break but not when leaving editorial and entering a break.

The station also confirmed that, in the current case, the promotion of DAB, featured after the live presenter-read advertisement, was also an advertisement, not editorial.

The broadcaster also believed that there was a "substantive difference in style" used by the presenter on the one hand in the programme and on the other hand in the advertisement. LBC claimed that in her programme the presenter drew from real life and talked about herself, while, "in this advertising material she did not endorse the product...". It added that the advertisement was "portrayed in isolation, not in response to a question on an 'agony' style show."

Decision

Broadcast output is defined either as editorial (programming) or advertising. It is a requirement of the Code, for the purposes of transparency, that these must be clearly separated.

Ofcom noted that the presenter's show featured a travel bulletin followed by a very short three-note 'sting', before the full commercial break. However, in Ofcom's opinion this 'sting' would have simply indicated to listeners that the travel bulletin had finished.

Before the presenter introduced the travel bulletin, she stopped talking to callers and expressed her own opinion, citing a listener's written contribution that supported it. When she read the advertisement immediately after the travel bulletin, her conversational style appeared to be very similar to the end of the preceding programming. Although travel bulletins are commonly featured in radio programmes, they are not always followed by advertising breaks.

The presenter-read advertisement was then followed by content promoting DAB digital radio. Again, it is not uncommon for DAB to be promoted in programming. Ofcom noted that this particular promotion was, in fact, an advertisement, not editorial. However, it promoted digital radio sets generically, without reference to any specific products and it also ended by referring listeners to the LBC website, "for more on DAB" – it was therefore possible that listeners may have understood this to have been editorial.

Ofcom did not therefore believe listeners could be certain that editorial had ceased until after the DAB content had finished and the subsequent advertisements began.

Ofcom acknowledged that it was LBC's policy not to use a station 'ident' before an advertising break. However, in the previous case (which was found not to be in breach of the Code), the drop-in used at the end of the programme trail provided sufficient separation from a presenter-read advertisement, as the presenter's style was markedly different to that used in his programme and programme trails are also commonly placed next to advertising breaks. Ofcom would normally advise that presenter-read advertisements be placed in the middle of clear commercial breaks, to ensure their adequate separation from programming. However, the circumstances in the previous case had achieved such separation by other means.

Given that the programming ran seamlessly from the travel bulletin to the presenter-read advertisement, in the style of the programming, and then into what could have appeared to be editorial references to DAB, it was likely that listeners would not have been aware where the editorial ended and the commercial material started. The way in which the presenter-read advertisement was incorporated into the station's output therefore breached Rule 10.2 of the Code.

The original decision to find this programme in breach was appealed by the broadcaster, leading to a review. This finding is the result of that review.

Breach of Rule 10.2

Top 20 Freaks of Pop

The Hits, 13 October 2006, 19:45

Introduction

A viewer complained that *The Hits* broadcast the unedited version of Michael Jackson's 1983 music video *Thriller* at 19:45. The complainant was concerned that this video had a BBFC '15' Rating and was therefore unsuitable for transmission before 21:00.

Ofcom asked Emap (the licence holder for *The Hits*) to comment on the video's suitability for transmission before the watershed with specific regard to Rule 1.3 of the Broadcasting Code ("the Code"), which requires children to be protected from material that is unsuitable for them by appropriate scheduling.

Response

Emap stated that it broadcast *Thriller* as a music video supplied by SonyBMG and that it was unaware of a BBFC rating for it. Emap further stated that it reviewed every piece of content for its suitability for the time of transmission and in this case considered that the horror elements of the video, filmed 23 years ago, were of an almost humorous 'B movie' quality by today's standards. Emap considered that in comparison, some of the scary and realistic effects used in the most recent *Dr Who* series indicated to them that today's children were more aware and used to seeing such material particularly given that *Dr Who* was transmitted in the same timeslot as the *Top 20 Freaks of Pop*.

Emap also said that *The Hits* targeted 16-34 year olds and that programming on Friday evenings (when this video was broadcast) was always designed to appeal to an older audience, with a chart based format featuring 'oldies' or rock music that was not considered child friendly. Emap also pointed out that the programme had a relatively low proportion of children watching, compared to the general population.

Decision

Rule 1.3 of the Code states: "Children must also be protected by appropriate scheduling from material that is unsuitable for them." Appropriate scheduling should be judged according to various factors including:

- the nature of the content;
- the likely number and age range of children in the audience;
- the start and finish time of the programme;
- the nature of the channel or station and the particular programme; and
- the likely expectations of the audience.

On 13 October 2006, *The Hits* broadcast the full 13 minute unedited version of Michael Jackson's *Thriller* music video at 19:45 in a programme item entitled *The Top 20 Freaks of Pop*. The video portrays Michael Jackson 'morphing' into a werewolf and teaming up with a group of zombies to pursue his girlfriend.

The Code specifically requires (Rule 1.21) that BBFC '18'-rated films can only be broadcast on free to air services after 21:00. All other material, including 'PG' and '15' rated films and videos, shown before the watershed must be assessed by

broadcasters to ensure the content complies with Sections 1 and 2 of the Code. This may mean that some editing of 'PG' and '15' rated films is required if pre-watershed transmission is planned.

Ofcom's legacy regulator the Independent Television Commission (the ITC) previously judged the horror elements of this unedited version of *Thriller* to be unsuitable for transmission pre-watershed (ITC Programme Complaints Bulletin: Monday 27 January 2003). Whilst Ofcom noted Emap's claim that the programme *Top 20 Freaks of Pop's* had a relatively low proportion of children watching it is nevertheless important to underline that this is only one of the factors to be taken into account in considering appropriate scheduling. The Hits is a free-to-air music channel broadcasting primarily chart pop videos, which is likely to be of significant appeal to children. Whilst *Thriller* was primarily a dance video and widely acknowledged as a significant piece of pop culture, it nonetheless featured horror elements (in the form of Michael Jackson 'morphing' into a werewolf and the realistic presentation of zombies) which Ofcom considered inappropriate for broadcast at this time. In particular, research conducted by the ITC concluded that young children find images which portray an individual undergoing a dramatic physical change (such as 'morphing'), while their psychological identity remains the same, particularly disturbing. Ofcom considered that the imaginary horror in the full unedited version of *Thriller* was materially different to that contained in a programme like *Dr Who* – which was aimed at a young audience and was of a sci-fi nature. Ofcom therefore judged that the 'morphing' of Michael Jackson into a werewolf was likely to have been capable of causing significant distress to younger viewers.

Ofcom therefore considered that the broadcast was in breach of Rule 1.3 of the Code.

Breach of Rule 1.3

Resolved

Married in the Morning

GMTV, 31 August 2006, 07:25

Introduction

Married in the Morning was an interactive feature on GMTV in which viewers were given the opportunity to choose a couple who were to be married and arrange their wedding. The item broadcast on 31 August 2006 featured the chosen couple at the wedding destination, Mauritius. During the broadcast, a presenter interviewed a representative from Virgin Holidays. The representative spoke about why Mauritius was popular with tourists and talked about the services offered by Virgin Holidays. She said:

“Virgin Holidays is able to offer a great selection of holidays here to Mauritius. We’re also able to pre-book all of your wedding packages and we’re thrilled that, as of next year, Virgin Atlantic will be flying here direct.”

Ofcom asked GMTV for comments on the broadcast under Rules 10.3 (no promotion of products and services within programmes) and 10.4 (undue prominence) of the Broadcasting Code (“the Code”). Ofcom also asked for details of any arrangement between GMTV and Virgin Holidays.

Response

GMTV explained that Virgin Holidays provided the holiday package for the *Married in the Morning* feature but no arrangements of any sort were made for credits to be given to Virgin Holidays on the programme in return for these services. While GMTV did provide links and information regarding Virgin Holidays on its website, these were at the broadcaster’s sole discretion. GMTV provided a copy of its contract with Virgin Holidays.

GMTV stated that the *Married in the Morning* feature generated a large number of viewer responses for information about Mauritius as a holiday destination. In the light of this, in planning the programme on 31 August 2006, the producers decided at their own volition, and without obligation, to interview a representative of Virgin Holidays on this topic. It was arranged to interview the representative, who was specifically told that she should not mention any services provided by Virgin.

Unfortunately, the representative used the live interview as an opportunity to promote the company. GMTV acknowledged that this did result in undue prominence to Virgin Holidays. This was recognised immediately by the producers, and they ended the interview at the earliest opportunity. After the interview, the producers explained to the interviewee that her actions were inappropriate.

GMTV said it very much regretted the incident and had taken urgent steps to remind producers of the dangers of undue prominence, and that, under its standard procedures, the interview should not have taken place at all.

GMTV said the error was entirely unintentional, and re-iterated that no arrangements were in place to provide Virgin Holidays with on-screen publicity in return for services provided by them to GMTV.

Decision

Based on the information provided to it, Ofcom was satisfied that there had been no financial arrangement between GMTV and Virgin Holidays that resulted in influence over the editorial content of the programme.

However, as GMTV acknowledged, the references in the interview to services offered by Virgin Holidays were unduly prominent and promoted the company. The fact that the company had provided valuable products and services that helped with the production of the feature was likely to give rise to the impression that Virgin Holidays had inappropriately influenced the content of the programme.

In view of GMTV's remedial action and acknowledgement that it had breached the rules of the Code concerning undue prominence and the promotion of products, Ofcom considered the matter resolved.

Resolved

Bean: The Movie

Nickelodeon UK, 25 October 2006, 12:00

Introduction

Nickelodeon UK is a dedicated children's channel available on satellite and cable. A viewer complained that whilst watching the film *Bean: The Movie* on the channel with her young daughter, a Hell's Angel character gave Mr Bean 'the finger' which in turn prompted Mr Bean to use 'the finger' gesture repeatedly to passers by.

Response

Nickelodeon said that *Bean* was a family film but to ensure it was suitable for a children's audience it had undergone a difficult editing process. After reviewing the scenes with the insulting finger gesture again following the complaint, Nickelodeon decided that it had been a mistake not to edit them out of the film especially due to the number of times the gesture was used. Nickelodeon added that it had now edited the offending gestures from the film for all future broadcasts. Nickelodeon apologised that its original decision on this particular occasion was incorrect and offered the complainant its full apologies for the offence caused.

Decision

Ofcom acknowledged the steps taken by Nickelodeon to edit the finger gesture scenes from the film for future broadcast and noted its apology to the complainant. Ofcom therefore considered the matter resolved.

Resolved

Not In Breach

A Girl's Guide to 21st Century Sex

Five, 30 October, 6 November, 20 November & 4 December 2006, 23:05

Introduction

21 viewers complained to Ofcom about four episodes of *A Girl's Guide to 21st Century Sex* broadcast at 23:05 on Five. Complainants were concerned that:

- some of the material broadcast was "shocking and explicit";
- some of the sexual activity featured was "immoral or/and breached UK obscenity laws" and was so explicit that it equated to BBFC R18¹ content which is prohibited from broadcast; and,
- the programme could impart "inappropriate information to vulnerable young girls".

Decision

Ofcom considered the programme and the complaints in the light of the following rules from the Broadcasting Code ("the Code"):

Rule 2.1: "Generally accepted standards must be 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 harmful and/or offensive material."

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context."

A Girl's Guide to 21st Century Sex, presented by Dr Catherine Hood, examined sex, sexual health and sexual behaviour in contemporary society. Ofcom noted that this was a factual educational programme featuring advice, information and tips from a range of doctors and sexual health practitioners on sexual behaviour and practices.

The sexual editorial content of the series featured brief explicit visuals of sexual activity, discussion of male and female masturbation, close-camera work of the biology of the male and female body including the filming of ejaculation in a woman's vagina, and at times detailed discussion of sexual health matters including sexually transmitted diseases.

In assessing complaints relating to offence as set out in Rules 2.1 and 2.3 of the Code, Ofcom noted there was no absolute prohibition on the broadcast of 'real' sexual intercourse on television and further noted that images of 'real' sex had been broadcast on free to air television before. Further, it should be noted that clear images of 'real' sex on UK television should not automatically be equated with BBFC-rated R18 material. In Ofcom's view the portrayal of sex in this programme genuinely sought to inform and educate rather than stimulate or arouse sexually. Explicit

¹ The R18 category is a special and legally restricted classification primarily for explicit works of consenting sex between adults. Films may only be shown to adults in specially licensed cinemas, and videos may be supplied to adults only in licensed sex shops.

images of adult sexual activity may be exceptionally justified by context, particularly if the context has an educational purpose.

Given the nature of the programme's sexual content, Five scheduled it at 23:05 and highlighted to viewers, in the form of detailed pre-transmission information, the explicit nature of the content which followed in order that viewers could make an informed choice as to whether or not to watch the programme. Before each programme, the following oral information was given: "A look at contemporary sex in a Girl's Guide to 21st Century Sex which contains very explicit scenes of a sexual nature."

Information was also given in the following form by the programme's presenter (Dr Hood) within the programme prior to any visuals that were to be considered particularly explicit: "I should warn you that the material you are about to see is of a particularly explicit nature."

Ofcom also noted that the most complained of scenes - the internal camera work of sexual organs during intercourse - were medical and biological in presentation and intended to educate and could not be described as images designed to titillate or arouse. Ofcom therefore judged that Rules 2.1 (concerning offence) and 2.3 of the Code were not breached.

Ofcom considered Rule 2.1 as regards the inclusion of harmful material. A number of complainants were concerned that elements of this series could be harmful and embarrassing to younger girls and could give them a distorted view of sex. Ofcom has concluded that whilst the visuals were explicit at times, nothing was transmitted in a manner that could be construed as having the potential to harm people under the age of eighteen. The programme was presented by a doctor and featured a range of doctors and sexual health experts. The advice and information given comprised sexual education information albeit set in a modern context and, whilst some of the visuals of sex were explicit, they did not breach the requirements of the Code. The programme was therefore not in breach of Rule 2.1 of the Code (concerning harm).

In conclusion, Ofcom found no breach of Rules 2.1 or 2.3 of the Code.

Not in Breach

Fairness and Privacy Cases

Not Upheld

Complaint by Ms V on behalf of her daughter (a Minor)

Dispatches, Channel 4, 7 July 2005

Summary

Ofcom has not upheld this complaint of unfair treatment in the broadcast of the programme.

Ms V complained that her daughter was treated unfairly in an edition of the Channel 4 current affairs programme *Dispatches*. The programme examined failing standards in British secondary schools. The reporter, a qualified teacher, worked undercover as a supply teacher in a number of schools and covertly recorded her work and observations. Covertly recorded footage of Ms V's daughter throwing a pencil and responding "No" to a question from the teacher was included in the programme with her face pixelated.

Ms V complained that her daughter was treated unfairly by the programme in that she was secretly filmed in her classroom and the material broadcast without Ms V's consent; and Ms V was not given an opportunity to respond to the material prior to broadcast. Ms V further complained that her daughter's privacy was unwarrantably infringed in both the making and broadcast of the programme in that: she was filmed without Ms V's consent while at school; she was recognised in spite of pixelation by friends, family and others; the method used to obtain the material was disproportionate; and, the programme makers did not pay particular attention to her age and other vulnerabilities.

Channel 4 responded that the programme revealed important issues of such overriding public interest that, given a number of steps taken in the conduct of the filming and in concealing Ms V's daughter's identity, it was not incumbent on the programme makers to seek Ms V's consent or offer her a right of reply. Furthermore, any infringement of Ms V's daughter's privacy in the making or broadcast of the programme was warranted by the public interest in the failures within the education system revealed by the programme.

Ofcom found that the programme was of significant public interest in exposing failures in the secondary education system. In part it relied on the evidence of cumulative, persistent low-level misbehaviour in the classroom which resulted in serious disruption in order to expose how the education system was failing the children. In light of this, and of the appropriate measures taken to obscure Ms V's daughter's identity, and having taken account of the particular vulnerabilities of children, Ofcom did not find that inclusion of the footage of Ms V's daughter resulted in unfairness to her, nor that her privacy was unwarrantably infringed in either the making or broadcast of the programme.

Introduction

This documentary programme, part of the *Dispatches* series, was entitled *Undercover Teacher* and examined failing standards in British secondary schools. The reporter, a qualified teacher, worked undercover as a supply teacher in a number of schools and

covertly recorded her work and observations. Some of the covertly recorded material was broadcast in the programme and contained evidence of what was referred to as “a serious problem with pupil discipline” in classrooms, and of staff concealing the true picture from Ofsted education inspectors. The faces of children covertly filmed for the programme were pixelated.

Ms V’s daughter (a minor), a pupil at one of the schools featured in the programme, was filmed covertly. Footage of her throwing a pencil and responding “No” to a question from the teacher was included in the programme. Her face was pixelated.

Ms V, complained that her daughter was treated unfairly in the programme as broadcast and that her privacy was unwarrantably infringed in both the making and broadcast of the programme.

The Complaint

Ms V’s case

In summary, Ms V, represented by Harrison Bunday solicitors (“Harrison Bunday”), complained that her daughter was treated unfairly in that:

- a) Her daughter was covertly filmed and the material broadcast without Ms V’s consent, resulting in unfairness to her daughter.
- b) Although the school informed Ms V that the covert filming had occurred, this was only days before the programme’s transmission, and Ms V was not informed that her daughter specifically had been filmed, nor informed of the nature and purpose of the programme. Ms V did not therefore have an opportunity to respond to the material prior to broadcast, resulting in unfairness to her daughter.

In summary, Ms V, represented by Harrison Bunday, complained that her daughter’s privacy was unwarrantably infringed in both the making and broadcast of the programme in that:

- c) Her daughter had a legitimate expectation of privacy while at school, which is a sensitive place, but was filmed without the consent of Ms V, the local Education Authority or the school, resulting in her daughter’s privacy being unwarrantably infringed in both the making and broadcast of the programme.
- d) Her daughter’s privacy was unwarrantably infringed in the broadcast of the programme, in that although her daughter’s face was pixelated in the broadcast she was recognised by her image and voice by friends, family and others.
- e) Her daughter’s privacy was unwarrantably infringed in the making of the programme in that the method used to obtain the material was disproportionate and an abuse of the teacher/pupil relationship. Furthermore her daughter should not have lost her right to privacy because of events at her school.
- f) Her daughter’s privacy was unwarrantably infringed in the making and broadcast of the programme in that the programme makers should have paid particular attention to her daughter’s age. She was also vulnerable due to behavioural problems at school. These are a private matter but were the very issues the programme sought to expose.

As background to Ms V's complaint, Harrison Bunday noted that prior to the broadcast an application was made (by some other parents at the school) to the High Court in an attempt to obtain an injunction. The Judge concluded that although the filming and broadcast amounted to a breach of the children's rights under Article 8 of the European Convention on Human Rights, this was outweighed by the public interest in showing the film which showed important issues of public concern. Channel 4 agreed that there would be substantial editing to remove any images of children who were at serious risk if identified from the footage.

Channel 4's case

In summary Channel 4 responded to the fairness complaint made by Ms V on behalf of her daughter as follows:

- a) Channel 4 first addressed Ms V's complaint that her daughter was covertly filmed and the material broadcast without her consent. Channel 4 stated, by way of background that the programme, a one hour documentary, highlighted serious problems in the education system. It arose from the programme makers' research evidence that the secondary school state education system was suffering from chronic disruption by misbehaving children in the classroom and that teachers were at best unable to control it and at worst colluding to hide its impact from school inspectors.

Proper procedures were adhered to in obtaining authorisation for the secret filming and included detailed discussion by the production team, the commissioning editor and a senior lawyer in the Legal and Compliance Department at Channel 4. A protocol was put in place covering the undercover reporter's conduct in obtaining and fulfilling her teaching contracts during the making of the programme. The undercover reporter maintained meticulous logs of the classes for which she had responsibility in order to enable those classes to be readily identified subsequently. The broadcaster stated that it only filmed children in "normal" state schools and not those in special schools for particularly vulnerable children.

The focus of the programme was the systemic failure of the school and its functions, not the behaviour of individual children. The programme revealed a number of important public interest issues concerning: the breakdown of discipline (which often led to teaching becoming impossible and sometimes led to dangerous behaviour); the deliberate misrepresentation by staff of the normal functioning of another school during an Ofsted inspection; and significant staff demoralisation which affected discipline and expectations of the children.

Following the filming, the material was considered and discussed by the commissioning editor and lawyer at Channel 4. The two local authorities whose schools had been filmed were advised of the filming, given details of the schools and classes involved, and an outline of the issues raised. The programme makers explained that although the names of the schools would be disclosed in the programme, the identity of all pupils and staff members was to be obscured by full pixelation of their faces.

A full opportunity for right of reply was offered to both of the local education authorities where schools were featured. A dialogue was entered into about how best to deal with concerns that some children (and particular members of staff) might be unduly vulnerable. These were children who could be at risk of serious

physical harm if they were to be identified by estranged members of their family who did not know their present whereabouts. Also, children who were living in families with a history of domestic violence might be at serious risk of physical reprisals by parents or carers because of their bad behaviour in school. Such staff or children would then either be removed from the programme or their identity further obscured. Both local education authorities were offered the opportunity to attend a viewing of the programme in advance of the broadcast, in order to establish that none of the staff or children in the at risk category were included in the version of the programme that was to be broadcast.

The local authority in this case, Leeds City Council, declined to attend a viewing of the programme or to provide any details to assist in the process. Instead the parents and family members of such children (who did not include Ms V's daughter), together with their solicitor, from Harrison Bunday, attended a viewing of the programme with Channel 4. Channel 4 agreed to all the requested measures which required further obscuring of identity. The solicitor for the group viewed the final version of the programme once the measures had been taken, and was fully satisfied.

Channel 4 had no reason to believe that Ms V's daughter necessitated different treatment from the generality of children in the programme, as there was no suggestion that she fell into the category of being at risk of serious harm in the event that she might be recognised by people who knew her very well. Her behaviour was the kind of low level disruptive behaviour typical of many children featured and far less serious than some.

- b) Regarding Ms V's complaint about how she was informed of the programme and the issue of right of reply, it was Channel 4's view that, given the nature of the programme, an opportunity for the complainant to respond was neither appropriate nor required, especially as the identities of all concerned were fully and properly obscured. Indeed such a right of reply would have been impractical and would have significantly distorted the focus of the programme (namely systemic rather than individual failures).

In summary, the broadcaster responded to the privacy complaint made by Ms V on behalf of her daughter as follows:

- c) Channel 4 addressed Ms V's complaint that her daughter had a legitimate expectation of privacy while at school but was filmed without consent from her, the local Education authority or the school. Channel 4 noted that in addition to the dialogues with the local education authorities discussed above at head a), an injunction application was brought on behalf of two of the children (not including Ms V's daughter) at one of the schools in Leeds. The Judge, Mr Justice Munby, declined to grant the injunction on the basis that the "reasonable right to privacy" (Article 8 of the European Convention on Human Rights) had to be balanced against freedom of expression rights (Article 10). His conclusion was that the programme exposed issues of such important public interest that, in weighing in the balance all the various rights under the Convention, he said "the case comes down fairly heavily in favour of Channel 4". He further stated that such issues could only be brought to the attention of the public through the use of "surreptitious methods". He endorsed the importance of the range of matters of public interest raised in the programme.

As far as Ms V's privacy complaint was concerned, Channel 4 said that the complaint was made not by a direct and identified main subject of an

investigation, but on behalf of a child who was part of a wider classroom scene and whose identity was properly obscured. Channel 4 said that the strength and importance of the public interest in the issues exposed by the programme, together with the fact that proper and prudent measures were taken to conceal the identity of those unavoidably filmed, meant that any infringement, in the filming and broadcast of the programme, was proportionate and fully warranted. This was especially so, in light of Mr Justice Munby's decision, that the only way of providing evidence of these issues of important public interest was by secret filming. Furthermore, Mr Justice Munby had found that it was fundamental to the importance of democracy that such material be given general publicity and not "merely private disclosure to those directly concerned with what the film shows".

If Ofcom were to conclude that any infringement of privacy it believes to have occurred were not warranted, it would effectively throw into very serious doubt the ability of programme-makers to expose wrong-doing and incompetence especially where vulnerable groups of people are directly suffering as a consequence.

- d) Regarding Ms V's complaint that her daughter was recognised by friends, family and others, Channel 4 stated, as discussed above, that the identity of all pupils and staff members was obscured by full pixelation of their faces. Channel 4 had no reason to believe that Ms V's daughter necessitated different treatment from the generality of children in the programme as there was no suggestion that she fell into the category of being at risk of serious harm.
- e) Channel 4 next responded to Ms V's complaint that the method used to obtain the material was disproportionate and that her daughter should not have lost her rights to privacy because of events at her school. Channel 4 stated that the contention that the methods used to obtain the material were disproportionate was rejected. Channel 4 stated that there was nothing more that it could have done to avoid or reduce the interference with the privacy rights of those filmed, short of not filming the children or not broadcasting the footage. As discussed above there was an important public interest in those issues being made known by the making and broadcast of the programme. Protocols in place regarding the undercover reporter's role as a teacher were dealt with above at head a).
- f) Regarding Ms V's complaint that the programme makers should have paid particular attention to her daughter's vulnerabilities Channel 4 stated, as discussed above, that the identity of all pupils was obscured by full pixelation of their faces. However Channel 4 had no reason to believe that Ms V's daughter necessitated different treatment from the generality of children in the programme as there was no suggestion that she fell into the category of being at risk of serious harm. Her behaviour was the kind of low level disruptive behaviour typical of many children featured and was far less serious than some.

Ms V's second statement

In summary, Ms V, represented by Harrison Bunday, commented on the broadcaster's response regarding fairness that:

- a) On the issue of filming and broadcasting material without her consent, Ms V noted Channel 4's response that only children in normal state schools, not those in special schools for particularly vulnerable children, were filmed. However all children are inherently vulnerable due to their age and the special relationship

between teacher and pupil. Her daughter was particularly vulnerable due to behavioural problems that she had at the school prior to the filming. The choice of ordinary state schools does not eliminate every risk of vulnerability and thus unfairness.

Channel 4 further stated, in its response, that her daughter's behaviour was "unexceptional" and "low level". Ms V responded that it was therefore neither essential nor even desirable to show her behaviour in order to fulfil the aim of the programme which was to raise issues including that of "disruptive" behaviour being allowed to escalate to "sometimes dangerous" behaviour. Ms V argued that featuring her daughter's behaviour therefore resulted in unfairness to her.

Regarding Channel 4's discussion of the background to the broadcast of the programme, although Channel 4 entered into dialogue with the local authority this did not include parents until Friday 1 July 2005. Some parents, including Ms V, were included as late as Monday 4 July 2005, others as late as Tuesday 5 July with the broadcast scheduled for Thursday 7 July 2005. Harrison Bunday were only able to act on behalf of those children considered to be at very high risk of physical harm if recognised. Other parents, who objected to the filming and broadcast on basic principles of privacy, and who had additional concerns relating to their children's behavioural problems, had to rely on the injunction action which was unsuccessful. An appeal was not lodged against the injunction due to the practical difficulties which ensued as a result of the London bombings

- b) No further comment was made regarding the issue of right of reply.

In summary, Ms V, represented by Harrison Bunday, commented on the broadcaster's response regarding privacy that:

- c) On the issues of legitimate expectation of privacy and consent Ms V commented, as discussed at head a) above, that Channel 4 had stated that only children in normal state schools, not those in special schools for particularly vulnerable children, were filmed. However it was Ms V's view that all children are inherently vulnerable due to their age and the special relationship between teacher and pupil. Ms V's daughter was particularly vulnerable due to behavioural problems that she had at the school prior to the filming. The choice of ordinary state schools does not eliminate every risk of vulnerability and thus an unwarranted infringement of privacy.

Ms V noted that Channel 4 had further stated that her daughter's behaviour was "unexceptional" and "low level". It was therefore neither essential nor even desirable in fulfilling the aim of the programme, which was to raise issues of "disruptive" behaviour escalating to "sometimes dangerous" behaviour. Featuring her daughter's behaviour therefore resulted in an unwarranted infringement of her privacy

As discussed at head a) above, regarding Channel 4's outline of the background to the broadcast of the programme, Channel 4 entered into dialogue with the local authority but this did not include parents until Friday 1 July, and some as late as Monday 4 July (including Ms V) and Tuesday 5 July, with the broadcast scheduled for Thursday 7 July. Harrison Bunday was only able to act on behalf of those children considered to be at very high risk of physical harm if recognised. The editing meeting, attended by the solicitor, was specifically to ensure protection from identification for these particular

children who did not include her daughter. Other parents, who objected to the filming and broadcast on basic principles of privacy and who had additional concerns relating to their children's behavioural problems, had to rely on the injunction action which was unsuccessful. An appeal was not lodged against the injunction due to the practical difficulties which ensued as a result of the London bombings.

- d) Regarding her complaint that her daughter was recognised from the programme, Ms V commented that Channel 4 appeared to accept in their submission that even with the pixelation techniques employed, Ms V's daughter was recognisable by those who knew her well, in part due to recognition of her voice. This made her recognisable to the very people whose subsequent opinions and reactions were likely to cause her distress and upset.
- e) No further comment was made regarding the issue of teacher/pupil relationship.
- f) Regarding her daughter's vulnerability, Ms V commented that Channel 4's submission discussed a protocol governing the undercover reporter's conduct and priorities, as well as logs of classes she taught. Channel 4 would, consequently, have had knowledge of her daughter's background and could therefore have reasonably anticipated that she could have suffered some harm if recognised (albeit not serious physical harm).

Channel 4's second statement

In summary the broadcaster responded to the comments on the fairness complaint made by Ms V on behalf of her daughter as follows:

- a) Regarding the issue of consent and by way of background, Channel 4 stated that should this complaint be upheld it would have profound implications for legitimate investigative journalism. In order to film secretly in a busy sensitive environment, for the purpose of establishing an issue of important public interest, the vulnerabilities and sensitivities of every single individual incidentally caught by the camera would have to be established. This would be an impossible burden.

The local education authorities were advised of the filming well in advance so that the schools could raise issues of concern about those filmed. Regrettably Leeds City Council declined to discuss the issue or assist in the process. Individual parents therefore instructed solicitors to approach Channel 4, resulting in precautionary edits to further safeguard those children at risk of physical harm from estranged family members. As explained in Channel 4's first response to the complaint, this meeting was held at a late stage because the local education authority in Leeds refused to assist in the process of identifying these children. Unless the solicitor from Harrison Bunday who was representing the parents had confirmed that every agreed edit had been undertaken, the programme would not have been broadcast due to the seriousness of the risks to the children.

The footage including Ms V's daughter was an intrinsic part of an editorially important sequence illustrating how unexceptional low level disruption often makes it impossible to teach. It was therefore important to include this as evidence of a systemic failure at the school.

Schools have a responsibility to draw to the attention of all supply teachers the identity of any children who have special needs or who require special attention.

Neither the undercover teacher nor the programme makers were given such information about Ms V's daughter at any stage.

- b) On the issue of right of reply, Channel 4 responded that the schools concerned in the filming were contacted in writing and a letter sent to Ms V's daughter's head teacher. It raised the specific matters arising from filming. The response received was fairly represented within the programme.

In summary the broadcaster responded to the comments on the privacy complaint made by Ms V on behalf of her daughter as follows

- c) Concerning expectation of privacy and consent, as discussed above at head a), and by way of background, Channel 4 stated that should this complaint be upheld it would have profound implications for legitimate investigative journalism. In order to film secretly in a busy sensitive environment to establish an issue of important public interest, the vulnerabilities and sensitivities of every single individual incidentally caught by the camera would have to be established. This would be an impossible burden. There are difficult judgements to be made in balancing personal privacy rights against the public interest. However the meticulous steps taken before and during filming and editing rendered any such infringement entirely warranted.

As discussed above at head a), the footage including Ms V's daughter was an intrinsic part of an editorially important sequence illustrating how unexceptional low level disruption often makes it impossible to teach. It was therefore important to show as evidence of a systemic failure at the school.

Again as discussed above at a), schools have a responsibility to draw to the attention of all supply teachers the identity of any children who have special needs or who require special attention. However neither the undercover teacher nor the programme makers were given such information about Ms V's daughter at any stage.

The complainant stated that no appeal was made due to the London bombings. However Channel 4 did attempt to assist by providing a tape of the programme on the morning of broadcast, and the Court of Appeal is accustomed to dealing with appeals at short notice and in difficult circumstances.

- d) Regarding Ms V's daughter being recognised from the programme, Channel 4 said that the measures taken by the programme makers to conceal the identity of all the children were effective, proportionate, and appropriate, given the nature of the filming and the content of the programme. Children's voices were heard throughout and Ms V's daughter only spoke one short word ("No"). Distorting her voice was neither necessary nor appropriate.
- e) No further comment was made regarding the issue of teacher/pupil relationship.
- f) On the issue of Ms V's daughter's vulnerability, and as discussed above at head a), Channel 4 responded that schools have a responsibility to draw to the attention of all supply teachers the identity of any children who have special needs or who require special attention. However neither the undercover teacher nor the programme makers were given such information about Ms V's daughter at any stage.

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment in programmes, and from unwarranted infringement of privacy in the making and broadcast 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, consistent and targeted only at cases in which action is needed.

Ms V's complaint was considered by Ofcom's Fairness Committee ("the Committee"), Ofcom's most senior decision making body with respect to Fairness and Privacy complaints. The Fairness Committee considered the complaint, the broadcaster's response, together with supporting material and subsequent submissions from both parties, and a recording of the programme as broadcast.

This programme was broadcast on 7 July 2005 and the ex-BSC Fairness Code ("the Fairness Code") was the applicable Code at the time of broadcast. In taking account of the Fairness Code, the Committee had particular regard throughout their deliberations to paragraph 32 under which broadcasters are reminded that "Children's vulnerability must be a prime concern for broadcasters. They do not lose their rights to privacy because of...events in their schools".

In the circumstances of this case the Fairness Committee found the following:

- a) The Fairness Committee first considered Ms V's complaint that her daughter was covertly filmed and the material broadcast without Ms V's consent, resulting in unfairness to her daughter.

The Committee took account of paragraph 13 of the Fairness Code under which broadcasters should not normally obtain or seek information or pictures through deception, except where the disclosure is reasonably believed to serve an overriding public interest and the material cannot reasonably be obtained by any other means. The paragraph further states that where the use of deception is judged permissible, it should always be proportionate to the alleged wrongdoing and prior editorial approval at the most senior editorial levels within the broadcasting organisation should be obtained for such methods.

The Committee considered whether Channel 4 had reasonable grounds for believing that it served an overriding public interest to obtain the pictures taken at Ms V's daughter's school by surreptitious filming without consent, bearing in mind the particular vulnerabilities of children. The Committee noted Channel 4's response that, prior to filming, the programme makers had research evidence that the secondary school state education system was suffering from chronic disruption by misbehaving children in the classroom, and that teachers were at best unable to control it and at worst colluding to hide its impact from school inspectors. The Committee considered that these grounds were reasonable and they supported Channel 4's view that, given the nature of the research evidence on severe failures in the education system, it would serve an overriding public interest to obtain the pictures by surreptitious filming. Furthermore it was the Committee's view that such material could not have been obtained had consent been sought from the school and

parents, and that the programme could not have portrayed a true picture of the school. The material at the heart of the investigation, showing the reality of disruption in the classroom was, in the Committee's view, in the public interest and could only be obtained by surreptitious recording.

The Committee acknowledged that, as discussed in Channel 4's response, appropriate procedures were adhered to in obtaining authorisation for the secret filming. This included detailed discussion by the production team, the commissioning editor and a senior lawyer in the Legal and Compliance Department at Channel 4 before the recording and before the broadcast of these pictures.

The Committee turned to consideration of whether the material could have reasonably been obtained by other means. The Committee considered that the question of significant and systemic failures in the secondary school system (as discussed above) was a subject of significant public interest. The Committee accepted that the nature of this subject depended on obtaining relevant footage through the use of surreptitious recording and in the Committee's view it would not have been possible to obtain the material by other means. Therefore, in view of the overriding public interest in the alleged failures, the Committee considered that the use of deception in gathering the material was proportionate.

Having considered the recording of the material (i.e. footage of the classroom which included Ms V's daughter) the Committee then considered whether there was an overriding public interest in its broadcast. In the Committee's view the programme depended on broadcasting footage of general classroom behaviour which, taken as a whole, resulted in an unacceptable level of disruption and revealed a breakdown in the education system in relation to classroom discipline.

In relation to the footage of Ms V's daughter the Committee noted that she was not identified by name and that extensive efforts had been made to pixelate her face. The Committee accepted that it was likely that she would still be identifiable to family and friends and others who knew her. However, the Committee had received no evidence from the complainant that Ms V's daughter fell into the category of children who might be unduly vulnerable and could be at risk of serious physical harm if they were to be identified by estranged members of their family who did not know their present whereabouts; or who were living in families with a history of domestic violence and be at serious risk of physical reprisals by parents or carers because of their bad behaviour in school. This is also discussed in relation to Ms V's privacy complaint (see head b) below).

The Committee noted that whilst Ms V's daughter was seen in the footage of her classroom, her face was pixelated, and her appearance was brief and was within the context of the general behaviour of the class at the time. The relevant section did not seek to dwell on Ms V's daughter over and above any of the other children. There was nothing in the way the footage was presented to suggest that her particular behaviour was being singled out or specifically being drawn to the attention of viewers. This was consistent with the overall tone of the programme, and with Channel 4's submissions that the objective of the programme was to seek to highlight the significant and systemic failures in the secondary school system rather than to comment on the behaviour or wrongdoing of particular children.

It was the Committee's view that the broadcast of the material of Ms V's daughter in her classroom was an intrinsic part of the evidence of the cumulative effect of

sustained low-level disruptive behaviour by a number of children. In light of this, and in view of the responsible steps taken to obscure Ms V's daughter's identity, the Committee concluded that there was an over-riding public interest in the broadcast of this material.

The Fairness Committee next considered whether consent was required, from Ms V, before broadcasting the material of Ms V's daughter in her classroom. In its considerations the Committee paid particular attention to the vulnerabilities of children and the need to obtain consent unless (as stated in the Fairness Code) it is justified not to gain such consent because of an overriding public interest in the item. As noted above, the cumulative effect of the evidence of disruption made it necessary to the portrayal of systemic failures at the school to include general classroom footage. It was essential therefore, that children including Ms V's daughter should appear in footage showing the low-level disruptive behaviour in her class.

Furthermore the Committee was satisfied that the parents and legal representatives of those children who might be unduly vulnerable and could be at risk of serious physical harm (as mentioned above) were consulted about the inclusion of their children and that suitable effective steps had been taken to obscure totally their identity and thereby eliminate any risk of serious physical harm occurring. Although Ms V had stated in her second submission that her daughter was particularly vulnerable due to behavioural problems that she had at the school prior to the filming, the Committee had been provided with no evidence of any particular vulnerabilities that merited Ms V's daughter being accorded the same treatment by the programme makers as those children who had been identified prior to broadcast as being unduly vulnerable and at risk of serious physical harm.

Having given careful consideration to each of these factors, the Committee concluded that there was an overriding public interest in the broadcast of the material and that Channel 4 was justified in not having sought Ms V's specific consent in relation to the footage which included her daughter. Furthermore, for the reasons outlined above, the Committee considered that sufficient steps were taken to obscure Ms V's daughter's identity. It was the Committee's view that had the programme totally obscured the identity of all the children in the programme, and not just those at risk of serious physical harm if identified, the programme could not have brought to the public's attention the very issues which it sought to expose, namely issues surrounding systemic failures in the education system in which there was significant, and therefore overriding, public interest.

In light of the above considerations the Committee found that the covert filming and the broadcast of material including Ms V's daughter did not result in unfair treatment of her in the programme as broadcast.

- b) The Fairness Committee next considered Ms V's complaint that although the school informed her that the covert filming had occurred, this was only days before the programme's transmission, and she had not been informed that her daughter had been filmed, nor of the nature and purpose of the programme. Ms V complained that she did not, therefore, have an opportunity to respond to the material prior to broadcast and that this resulted in unfairness to her daughter.

When considering this complaint the Committee examined all submissions regarding the steps taken to inform parents, and in particular Ms V, that filming had taken place.

The Committee noted Channel 4's statement that the local authority had declined to assist the broadcasters in identifying and contacting the families of children who had been covertly filmed. The Committee also noted that the parents and family members of children who might be unduly vulnerable and could be at risk of serious physical harm if identified by the programme attended a viewing of the programme with Channel 4 in order to agree any measures required in order to further obscure their identity. The Committee also considered Channel 4's second response, which stated that although schools have a responsibility to draw to the attention of all supply teachers the identity of any children who have special needs or who require special attention, neither the undercover teacher nor the programme makers were given such information about Ms V's daughter at any stage.

The Committee also noted Ms V's submission that she was informed by the school that filming had occurred on Monday 4 July 2005, with its broadcast scheduled for Thursday 7 July 2005, but was not informed that her daughter had been filmed. Furthermore, according to Ms V, material included in the programme of her daughter, albeit pixelated, made her recognisable to the very people whose subsequent opinions and reactions were likely to cause her distress and upset.

As discussed above at Decision head a), the Committee concluded that no evidence had been provided by the complainant that her daughter fell into the category of children requiring specific special treatment by Channel 4 prior to transmission.

The Committee then considered whether it was incumbent on the programme makers to inform Ms V that her daughter had been filmed and to inform her about the nature and purpose of the programme, in order to provide Ms V with an opportunity to respond to the material to be included. In its considerations the Committee took account of the obligation on broadcasters to give those criticised in a programme an appropriate and timely opportunity to respond to or comment on the arguments and evidence contained within that programme where it alleges wrongdoing or incompetence, or contains a damaging critique of an individual or organisation.

The Committee considered Channel 4's submission that it had contacted the schools concerned in the filming, which included writing to the head teacher of the school that Ms V's daughter attended, and raising the specific matters arising from filming. It noted the response received from the head teacher was fairly represented within the programme.

In the Committee's view it was entirely appropriate that the headmaster should be given an appropriate opportunity to respond given the allegations of systemic failings in his school. As stated in head a) above, the Committee also considered that the context within which Ms V's daughter was shown was one in which failings were attributed to the school and to the state secondary education system as a whole, not to any individual children. The Committee therefore concluded that it was not incumbent on the programme makers to offer Ms V an opportunity to respond since no allegations were made about her daughter whose identity was, nonetheless, obscured.

The Committee took into account Channel 4's submission that it had informed the school that filming had taken place and taken measures to meet the parents and representatives of those children requiring special treatment. In light of this, and of the considerations set out above, the Committee found that it was not incumbent on Channel 4 to have taken any steps additional to the ones it had already taken in order to specifically inform Ms V that her daughter had been

filmed and to inform her of the nature and purpose of the programme. In relation to this head of Ms V's complaint, the Committee therefore found that no unfairness resulted to Ms V's daughter in the programme as broadcast.

- c) The Committee next turned to Ms V's complaint that her daughter had a legitimate expectation of privacy while at school, which is a sensitive place, but was filmed without the consent of Ms V or the local Education Authority or school, resulting in an unwarrantable infringement of her privacy in the making and broadcast of the programme.

The Committee took into account paragraph 14 of the Fairness Code which specifically acknowledges that the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering the complaint about the unwarranted infringement of privacy, the Committee therefore addressed itself to two distinct questions: First, was there an infringement of privacy? Second, if so, was it warranted?

The Committee acknowledged that the programme makers surreptitiously obtained footage which included a shot of Ms V's daughter in her school classroom. This was the type of situation recognised by the Fairness Code as attracting particular sensitivity and, consequently, one in which children would have a heightened expectation of privacy. The Committee therefore found that Ms V's daughter's privacy had been infringed in the making of the programme.

In relation to the broadcast, the footage was included without Ms V's consent and although her face was pixelated the Committee noted that Ms V's daughter's voice was not disguised and that she was likely to have been identifiable to family members and friends. Furthermore, her actions might not have been otherwise witnessed or known about by those to whom she was recognisable in the programme. Taking all of these factors into account, the Committee found that Ms V's daughter's privacy was also infringed in the broadcast of the footage.

The Committee then turned to the question of whether the infringement of Ms V's daughter's privacy was warranted. In doing so, the Committee took into account paragraph 32 of the Fairness Code, concerning the particular vulnerabilities of children (as discussed above), and considered whether the programme makers' actions were consistent with paragraph 16 of the Fairness Code when filming in the school (which states that consent for filming in sensitive situations should normally be obtained unless an individual's identity is concealed and an overriding public interest in the issue justifies not gaining consent). In considering whether the programme makers' actions were justified in relation to the surreptitious filming, and later broadcasting, of the material showing Ms V's daughter the Committee also took account of paragraph 18 of the Fairness Code (which requires that any words or images recorded secretly should serve an overriding public interest to justify the decision to gather, record and broadcast the material).

In the Committee's view the decisions to gather, record and finally to broadcast the material were each justified by an overriding public interest (as discussed at Decision head a) above). The Committee considered the submissions made in Channel 4's response and it was satisfied that in advance of any decision to film the programme makers had research evidence showing that the secondary school state education system was suffering from chronic disruption by misbehaving children in the classroom, and that teachers were at best unable to control it and at worst colluding to hide its impact from school inspectors. In the Committee's view this evidence

justified the decision to record the material at Ms V's daughter's school. The Committee noted that the programme makers employed a qualified teacher to carry out the recordings, and had established detailed protocols for her conduct in carrying out both her teaching and filming responsibilities. Given this background the Committee also considered that the public interest in the investigation into education failures justified the decision to record the material in Ms V's daughter's classroom.

The broadcast of the material showing Ms V's daughter was also justified by an overriding public interest in the evidence of severe failures in the education system. As discussed previously in the decision on the fairness complaint, it was the Committee's view that the broadcast of the material of Ms V's daughter in her classroom was part of the cumulative evidence of the serious effects of sustained low-level disruptive behaviour within the education system. Furthermore, and as discussed above at Decision head a), the Committee considered that responsible steps had been taken to obscure Ms V's daughter's identity.

In light of the above considerations, the Committee considered that the recording and broadcast of the material featuring Ms V's daughter, a minor, in a sensitive situation without her mother's consent was justified by an overriding public interest. Furthermore appropriate steps had been taken to obscure her identity in the programme. The Committee therefore found that the infringement of Ms V's daughter's privacy was warranted both in the making and broadcast of the programme.

- d) The Committee next considered Ms V's complaint that although her daughter's face was pixelated in the broadcast, she was recognised by her image and voice by friends, family and others resulting in an unwarrantable infringement of her privacy in the broadcast of the programme.

The Committee noted Ms V's comments that prior to the broadcast an application was made to the High Court in Newcastle in an attempt to obtain an injunction. She stated that the Judge concluded that although the filming and broadcast amounted to a breach of the children's rights under Article 8 of the European Convention on Human Rights, this was outweighed by the public interest in showing the film which showed important issues of public concern and that Channel 4 agreed that there would be substantial editing to remove any images of children who were at serious risk if identified from the footage.

As discussed in detail above at Decision head c), the Committee acknowledged that in spite of the use of pixelation in the programme as broadcast, it remained that Ms V's daughter was likely to have been identifiable to family, friends and others in a particularly sensitive context. The Committee therefore found that, in this particular context and given the sensitivity of the situation, Ms V's daughter's privacy was infringed in the broadcast of the footage.

However for the reasons again detailed above at head c) the Committee considered that appropriate steps were taken by the broadcasters to obscure the identity of Ms V's daughter. In coming to this view the Committee again took account of the significant public interest in the issues the programme sought to expose and accepted that the broadcast of the footage of Ms V's daughter was a necessary part of that investigation.

In light of the above the Committee found that the infringement of Ms V's daughter's privacy was warranted in the broadcast of the programme, and that appropriate steps had been taken to obscure her identity in the programme.

- e) The Committee considered Ms V's complaint that the method used to obtain the material was disproportionate and an abuse of the teacher/pupil relationship, furthermore that her daughter should not lose her rights to privacy because of events at her school, and that this resulted in an unwarrantable infringement of her daughter's privacy in the making of the programme.

As discussed above at head c) the Committee was satisfied that the means used to obtain the material were proportionate to the seriousness of the matters under investigation and that the programme makers took considerable care in employing a qualified teacher, subject to strict protocols, as an undercover reporter. Furthermore, and as discussed above at Decision heads a), c) and d), there was significant public interest in bringing the subject matter of the programme to the attention of the viewers. This could only be achieved through the use of surreptitious recording in part at Ms V's daughter's school.

In light of the above the Committee found that Ms V's daughter's privacy was not unwarrantably infringed in the making of the programme.

- f) The Committee turned finally to Ms V's complaint that her daughter's privacy was unwarrantably infringed in the making and broadcast of the programme in that the programme makers failed to pay particular attention to: her daughter's age; and, to her daughter's vulnerability due to behavioural problems at school that are a private matter and which the programme sought to expose.

The Committee took particular account of the obligations on programme makers (outlined in paragraph 32 of the Code and discussed in the preamble to the Decision) arising from Ms V's daughter's age and any other vulnerabilities which must be a prime concern for broadcasters.

For the reasons detailed at Decision heads c), d) and e), the Committee found that in the particular context of this programme, and given the sensitivities around the filming location, Ms V's daughter's privacy was infringed in both the making and broadcast of the programme.

The Committee noted that the programme makers took account of Ms V's daughter's age by pixelating her face which, as discussed above at Decision heads c) and d) were the appropriate measures given the nature of the investigation and the matters it sought to expose. In the Committee's view, and again as discussed above at Decision heads c) and d), no evidence of specific additional vulnerabilities had been provided by the complainant to suggest that further measures, totally obscuring her identity, should have been taken in Ms V's daughter's case.

In light of the above the Committee found that Ms V's daughter's privacy was not unwarrantably infringed in the making or broadcast of the programme.

The complaints of unfair treatment and unwarranted infringement of privacy were not upheld.

Other Programmes Not in Breach/Out of Remit 20 December 2006 – 3 January 2007

Programme	Trans Date	Channel	Categories	No of Complaints
100% English	20/12/2006	Channel 4	General Acceptance Standards	1
50 Best Chick Flicks	21/11/2006	E! Entertainment	Offensive Language	1
Alex Dyke	13/11/2006	Isle of Wight Radio	General Acceptance Standards	1
BBC News	18/12/2006	BBC1	Due Impartiality/Bias	1
Birth Night Live	08/10/2006	Five	General Acceptance Standards	1
Blunder	01/12/2006	Channel 4	General Acceptance Standards	1
Christmas is Coming	10/12/2006	The Hits	Sex/Nudity	1
Coronation Street	18/12/2006	ITV1	General Acceptance Standards	6
Coronation Street	08/12/2006	ITV1	Crime (incite/encourage)	1
Coronation Street	17/12/2006	ITV1	General Acceptance Standards	1
Coronation Street	12/12/2006	ITV1	General Acceptance Standards	1
Coronation Street	18/12/2006	ITV1	General Acceptance Standards	1
Eastenders	18/12/2006	BBC1	General Acceptance Standards	1
Cutting Edge: Cult Killer	21/08/2006	Channel 4	Violence	3
Danny & Nicky in the Morning	15/11/2006	Southern FM	General Acceptance Standards	1
Emmerdale	22/12/2006	ITV1	General Acceptance Standards	1
Extinct	16/12/2006	ITV1	Information/Warnings	1
Foxy & Tom at Breakfast	04/12/2006	2-Ten FM	Animal Welfare	1
Friday Night With Jonathan Ross	23/06/2006	BBC1	General Acceptance Standards	1
Ghosthunting With Girls Aloud	09/12/2006	ITV1	General Acceptance Standards	1
HIT40UK	27/08/2006	GALAXY105	Offensive Language	1
I'm A Celebrity, Get Me Out of Here!	20/11/2006	ITV1	General Acceptance Standards	2
I'm A Celebrity, Get Me Out of Here!	20/11/2006	ITV1	Offensive Language	1
ITV News	12/12/2006	ITV1	General Acceptance Standards	6
ITV News	15/12/2006	ITV1	Substance Abuse	1
ITV News	18/12/2006	ITV1	General Acceptance Standards	1
Jon Gaunt	06/12/2006	Talksport	Commercial References	1
Kerrang	22/09/2006	Kerrang!	General Acceptance Standards	1
LBC trail	02/10/2006	LBC	Religious Issues	1
Make Your Play	25/11/2006	ITV1	Competitions	1

Mark Radcliffe	14/12/2006	Radio 2	General Acceptance Standards	1
Monarchy	04/12/2006	Channel 4	Inaccuracy/Misleading	1
More4 News	30/08/2006	More4	Due Impartiality/Bias	2
Playboy UK	02/10/2006	Playboy UK	Sex/Nudity	1
School Time with Harold Crooks	27/11/2006	Radio Cracker Ballymena	General Acceptance Standards	1
Secretary	14/12/2006	Channel 4	Sex/Nudity	1
Secretary (trailer)	08/12/2006	Channel 4	Sex/Nudity	1
Sky Bet	09/09/2006	Sky Premier Plus	Sponsorship	1
Sky News	18/12/2006	Sky News	General Acceptance Standards	1
Soccer AM	02/12/2006	Sky Sports 1	General Acceptance Standards	2
Something For The Weekend	15/10/2006	BBC2	Dangerous Behaviour	1
Steve Wright	08/12/2006	BBC Radio 2	Dangerous Behaviour	1
The Blame Game	01/12/2006	BBC1 Northern Ireland	General Acceptance Standards	2
The British Comedy Awards: Live	13/12/2006	ITV2	General Acceptance Standards	3
The Bush and Troy Show	15/11/2006	GWR Radio	Dangerous Behaviour	1
The Catherine Tate Show	30/11/2006	BBC2	Offensive Language	1
The Championship	10/12/2006	ITV1	Sponsorship	1
The Chase	14/08/2006	BBC1	Offensive Language	1
The Chase	03/09/2006	BBC1	Offensive Language	1
The Chase	06/08/2006	BBC1	Offensive Language	3
The Chase	16/07/2006	BBC1	Offensive Language	7
The Chase	13/08/2006	BBC1	Offensive Language	1
The Chase	23/07/2006	BBC1	Offensive Language	2
The Chase	30/07/2006	BBC1	Offensive Language	1
The Indestructibles	09/10/2006	BBC3	Dangerous Behaviour	1
The Simpsons	01/12/2006	Channel 4	Sex/Nudity	1
The Trouble With Atheism	18/12/2006	Channel 4	General Acceptance Standards	2
Unsolved	23/11/2006	STV	General Acceptance Standards	1
Vanessa's Real Lives	14/12/2006	ITV1	Sex/Nudity	1