

Ofcom Broadcast Bulletin

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Introduction

Ofcom's Broadcasting Code ("the 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>

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

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

Standards cases

Notice of Sanction

British Broadcasting Corporation (“BBC”)

Comic Relief, BBC1, 17 March 2007

Sport Relief, BBC1, 15 July 2006

Children in Need, 18 November 2005, BBC1 (Scotland)

TMi, BBC2 and CBBC, 16 September 2006

The Liz Kershaw Show, BBC 6 Music, 25 July 2005 - 6 January 2007

Russell Brand, BBC 6 Music, 9 April 2006

The Clare McDonnell Show, BBC 6 Music, from September 2006

The Jo Whiley Show, BBC Radio 1, 20 April 2006 and 12 May 2006

On 30 July 2007, Ofcom published its decisions to impose statutory sanctions on the BBC for breaches of Rules 2.11 (competitions should be conducted fairly) of the Code in the programmes listed above.

Ofcom has found that Rule 2.11 was breached in each programme as follows:

Comic Relief, BBC1, 17 March 2007

- Five participants were needed to take part in a competition. When only two participants were available and then provided incorrect answers, the programme’s Associate Producer arranged to be telephoned and subsequently went on air and won the competition.

Sport Relief, BBC1, 15 July 2006

- During pre-production the programme’s Executive Producer approved a contingency plan to deal with any failure with the telephony systems. In the event that there was no available shortlist of possible winners to participate in the competition live on air, a Production Co-ordinator would ‘stand-in’ as the winner. During transmission, a technical problem resulted in no callers being available to participate. The Production Co-ordinator went on air and was declared the winner.

Children in Need, BBC1 Scotland, 18 November 2005

- A competition was devised for a live regional opt-out for BBC1 Scotland. When pre-transmission arrangements with a local call centre were not communicated properly, resulting in no callers being available to participate on the night of transmission, a fictitious name was put on screen and confirmed as the winner.

TMi, BBC2 and CBBC, 16 September 2006

- A problem contacting potential winners who had called in to participate in a live competition led to the programme's Series Producer asking a Researcher to play the part of a contestant live on air. The Researcher went on air, assumed the role of a child, and won the competition.

The Liz Kershaw Show, BBC 6 Music, between 25 July 2005 and 6 January 2007

- In up to seventeen pre-recorded programmes, which were broadcast 'as live', listeners were encouraged to enter competitions that they would have no chance of winning. In these programmes, members of the production team posed as genuine winners and also made up fictitious names which were presented on air as genuine winners.

Russell Brand, BBC 6 Music, 9 April 2006

- In a pre-recorded programme, which was broadcast 'as live', listeners were encouraged to enter a competition they would have no chance of winning. A BBC staff member was presented in the programme as a genuine winner.

The Clare McDonnell Show, BBC 6 Music, from September 2006

- In an unspecified number of programmes, the production team made up the names of competition winners, when there were not enough correct entries to the competition. In addition, the production team sometimes denied genuine winners their prize because they had previously won competitions on BBC 6 Music; this was not made clear in the terms and conditions of the competition.

The Jo Whiley Show, Radio 1, 20 April 2006 and 12 May 2006

- In a partially pre-recorded edition of the programme transmitted on 20 April 2006, listeners were invited to enter a competition which they would have no chance of winning. The section of the programme containing the competition had been pre-recorded, but was broadcast 'as live'. The individual presented in the programme as the winner of the first part of the competition was a BBC employee and the name of the winner of the second part of the competition was made up by the production team. .
- In a pre-recorded edition of the programme transmitted on 12 May 2006, which was broadcast 'as live', listeners were invited to enter a competition which they would have no chance of winning. The individual presented in the programme as the winner of the first part of the competition was a member of the public who had been contacted specifically by the production team to take part in the pre-recorded competition. The name of the winner of the second part of the competition was made up by the production team.

For the reasons set out in the adjudications, Ofcom imposed a financial penalty on the BBC in relation to each programme, and in some cases directed the BBC to broadcast statements of its findings in a form to be determined by Ofcom, as follows:

Comic Relief: a fine of **£45,000** was imposed on the BBC for the breach of Rule 2.11 in the live programme on BBC1;

Sport Relief: a fine of **£45,000** was imposed on the BBC for the breach of Rule 2.11 in the live programme on BBC1;

Children in Need: a fine of **£35,000** was imposed on the BBC for the breach of Rule 2.11 in the live programme on BBC1 (Scotland);

TMI: a fine of **£50,000** was imposed on the BBC for the breach of Rule 2.11 in the live programme transmitted on BBC2 and CBBC. In addition the BBC has been directed to broadcast a statement of Ofcom's findings on BBC2 and CBBC in a form to be determined by Ofcom on two specified occasions;

The Liz Kershaw Show: a fine of **£115,000** was imposed on the BBC for the breaches of Rule 2.11 in up to seventeen pre-recorded editions of the programme on BBC 6 Music. In addition, the BBC has been directed to broadcast a statement of Ofcom's findings on BBC 6 Music in a form to be determined by Ofcom on two specified occasions;

Russell Brand: a fine of **£17,500** was imposed on the BBC for the breach of Rule 2.11 in a pre-recorded edition of the programme on BBC 6 Music;

The Clare McDonnell Show: a fine of **£17,500** was imposed on the BBC for the breaches of Rule 2.11 in a number of unspecified pre-recorded editions of the programme on BBC 6 Music;

The Jo Whiley Show: a fine of **£75,000** has been imposed on the BBC for the breaches of Rule 2.11 in two pre-recorded editions of the programme on Radio 1. In addition, the BBC has been directed to broadcast a statement of Ofcom's findings on Radio 1 in a form to be determined by Ofcom on two specified occasions.

The full adjudications can be found at:

http://www.ofcom.org.uk/tv/obb/ocsc_adjud/bbcjuly08/comicrelief.pdf

http://www.ofcom.org.uk/tv/obb/ocsc_adjud/bbcjuly08/sport.pdf

http://www.ofcom.org.uk/tv/obb/ocsc_adjud/bbcjuly08/cin.pdf

http://www.ofcom.org.uk/tv/obb/ocsc_adjud/bbcjuly08/tmi.pdf

http://www.ofcom.org.uk/tv/obb/ocsc_adjud/bbcjuly08/kershaw.pdf

http://www.ofcom.org.uk/tv/obb/ocsc_adjud/bbcjuly08/whiley.pdf

http://www.ofcom.org.uk/tv/obb/ocsc_adjud/bbcjuly08/brand.pdf

http://www.ofcom.org.uk/tv/obb/ocsc_adjud/bbcjuly08/mcdonnell.pdf

Portland Enterprises (C.I.) Limited

Television X – The Fantasy Channel, 8 June 2007, 22:00

On 23 July 2008 Ofcom published its decision to impose a statutory sanction on Portland Enterprises (C.I.) Limited (“Portland Enterprises”) in respect of its service Television X – The Fantasy Channel (“Television X”) for serious breaches of the Code. Television X included in its service so-called ‘babe’ programming, i.e. live programmes using female presenters (described as ‘babes’) who interact with viewers through the use of premium rate services (“PRS”). Elements of this programming – both encrypted and free-to-air – were found in breach of the following Code Rules:

- 1.24 (‘adult-sex’ material);
- 1.25 (R18-rated films or their equivalent must not be broadcast);
- 2.1 (generally accepted standards);
- 2.3 (material that may cause offence must be justified by context).

Ofcom found Portland Enterprises in breach of these rules due to the following conduct:

- the free-to-air transmission of material of a character that should have been subject to protection by encryption and other controls (breach of rule 1.24);
- the transmission under encryption of material that was equivalent to BBFC R18 classification (breach of rule 1.25); and
- the broadcasting of sexually explicit content contrary to viewer expectations for a free-to-air unencrypted channel (breaches of Rules 2.1 and 2.3).

For the reasons set out in the adjudication Ofcom imposed a financial penalty of **£25,000** on Portland (payable to HM Paymaster General).

The full adjudication can be found at:

http://www.ofcom.org.uk/tv/obb/ocsc_adjud/portland.pdf

In Breach

Saturday Early Breakfast

Dream 100 Radio, 15 March 2008, 07:20

Introduction

A listener complained to Ofcom that on 15 March 2008 the message “Text Dream by sending the word DREAM and your message to 64477. Texts are charged at 25p plus your standard network rate” was aired during Dream 100’s Saturday Early Breakfast show in a programme that was pre-recorded. The complainant was therefore concerned that listeners were being encouraged to interact with a programme where it was not possible to do so.

Ofcom asked Tindle Radio, the owner of Dream 100 Radio, for its comments under Rule 2.2 of the Code which states that factual programmes or items “must not materially mislead the audience”.

Response

Tindle Radio said that training had been given to staff at all of its radio stations and in particular at Dream 100 to ensure that presenters did not solicit for texts in pre-recorded programmes. However, it said that this was not what had occurred on this occasion. It continued that, as a precaution to listeners to ensure they knew about the 25p text charge for texting comments into the station, PhonepayPlus (the premium rate services (“PRS”) regulator) requires broadcasters to transmit approximately eight 'wealth warnings' throughout the day to ensure listeners are made aware that texts are charged at a higher rate. It continued that it had never been advised that they should only be transmitted in 'live' hours and that it had just ensured that it was rotating them as required. However, it said it accepted that there was the potential for it to be unclear as to when contributors should expect their message to be read out if they were not aware that they were listening to a recorded programme. As a consequence, it had removed all such promotions from pre-recorded programming.

The broadcaster also confirmed that it had slightly changed the wording of the 'wealth warnings' it transmits, which now state "If you want to text Dream 100" which it considered made it clearer that its purpose was not to solicit for messages but to warn listeners of the costs.

Tindle Radio concluded its response by apologising for any errors it had made and stated that there had not been any intention to harm listeners by charging them unduly, adding that the price of the texts only covered the costs of the shortcode text system it uses.

Decision

On 25 February 2008 (in Broadcast Bulletin 103), Ofcom resolved a complaint against Dream 100 Radio which involved the broadcast of pre-recorded programming containing direct calls to action for listeners to submit song requests by text message, using PRS. After a full investigation, Tindle Radio apologised and told Ofcom that it had instructed its presenters to avoid promoting its interactive services during pre-recorded programming. In view of the broadcaster’s previous assurances

Ofcom was therefore extremely concerned to note that listeners were still likely to be misled into potentially submitting text messages during pre-recorded programmes without it being made clear whether any such texts were likely to be put to air. In addition, given that text messages were submitted using PRS, there was also the potential to cause material harm. In this instance, whilst the broadcaster believed that the messages in question were 'wealth warnings', Ofcom considered that the inclusion of the first sentence, in the form of a direct 'command' i.e. "*Text Dream by sending the word DREAM and your message to 64477*" amounted to a 'call to action' and therefore did have the potential to mislead the audience by encouraging them to consider that they could legitimately interact with the programme they were listening to; which they could not.

Ofcom acknowledged the broadcaster's admission that the 'wealth warnings' had the potential to mislead and welcomed its actions in removing them from pre-recorded programming. However, given its previous finding published in Bulletin 103, Ofcom considered it unacceptable that the broadcaster, which should have been in no doubt regarding the seriousness of this issue, continued to appear to encourage its listeners to pay to submit texts during pre-recorded programmes.

Broadcasters must at all times ensure that the audience is not misled into thinking they can legitimately interact with pre-recorded programmes and especially when they are being charged to do so. Ofcom therefore expects Tindle Radio to take particular care in ensuring that its use of PRS and interactivity complies with the Code in the future.

Breach of Rule 2.2

Rick Shaw's Drivetime

XFM, 21 January 2008, 16:45

Introduction

Rick Shaw's Drivetime featured a regular competition called "*The Random Question Generator*" during January and February 2008. To enter, listeners were invited to send a text message to a five digit short code (charged at their standard network rate). An entrant was then selected at random to appear on air at a later date, usually the following day, to answer a series of questions.

During the competition, the presenter, Rick Shaw, asked the questions in a 40 second period. When the 40 seconds had elapsed, he announced that the contestant could have a prize for every correct answer given and proceeded to ask what prizes they would like. Rick Shaw then agreed to each of the contestant's prize requests, irrespective of their absurdity (e.g. "*a girlfriend*", "*a private jet*" and "*a pint of milk*"). However, there was at no time any intention of these prizes being awarded – instead, each contestant was sent a selection of CD and DVDs.

Ofcom received a complaint from a "winner" who had also contacted XFM directly. The complainant considered that the competition was misleading because he had understood that the prize pledges made by Mr Shaw were genuine. Ofcom asked GCap Media, the owner of XFM, for its comments under Rule 2.11 of the Code (fair conduct of competitions).

Response

GCap, who owned the broadcaster at the time, explained that this particular competition was in essence a joke and was presented as such. It argued that the sheer nonsensical nature of some of the requests and the presenter's nonchalant response clearly indicated this. It added that it was standard procedure to advise entrants prior to going on air that they would be asked to state a random but fictitious prize. In GCap's view, therefore, it considered this was sufficient in informing contestants of the true, informal nature of the competition. Nevertheless, it stated that to prevent any further misunderstanding, *The Random Question Generator* had been withdrawn from the schedule after the complainant contacted the station.

Decision

Rule 2.11 of the Code requires that "competitions should be conducted fairly, prizes should be described accurately and rules should be appropriately known".

Whilst Ofcom acknowledges the advice given to entrants before taking part, in this instance, it is principally concerned by how the competition was likely to have been perceived on air by listeners. Ofcom considered whether there was any likelihood of listeners and indeed entrants believing that Mr Shaw's acceptance of their prize requests was genuine. Whilst some of the items chosen by winners were unrealistic and therefore clearly a joke, Ofcom notes that other requests, such as a satellite navigation system or concert tickets were not and, as such, the audience's understanding of the competition would have largely depended on which particular edition they were listening to and whether they were regular listeners who would "get the joke".

Further, Ofcom noted that there was no description given on air of the actual prizes awarded to the competition's winners (CDs and DVDs); the presenter simply stated that he would send the winner "*some stuff*".

Whilst Ofcom acknowledged the relaxed tone of the competition, the often irreverent nature of XFM and its significant following, it did not consider it reasonable for the broadcaster to assume that potential entrants would have always recognised the presenter's on-air agreement to supply specific prizes as "a joke". Ofcom therefore concluded that there were some occasions when the descriptions of both the prizes and the rules were misleading.

Ofcom noted that the competition in question had been withdrawn from the schedule. Nevertheless, it considered that XFM should make every effort to ensure that its listeners are not misled in the future by the comical nature of such competitions and that it is made clear to listeners and competition entrants what prize is actually on offer – and that the requested prizes will not be awarded. This is especially important when listeners are paying to enter a competition on the understanding that it is being conducted fairly and that the prize on offer has been described accurately.

Breach of Rule 2.11

Quiz Call

"Middle Money", Five US (Channel 5 Broadcasting Ltd), 21 May 2007, 01:00

Introduction

Quiz Call is a late night Call TV quiz show running various competitions which viewers are invited to enter via a premium rate number (or free via the internet).

In a competition broadcast on 21 May 2007, viewers were invited to send a text message or call a premium rate number to identify "WORDS STARTING WITH 'S' AND ENDING IN 'T'". Eleven pre-selected words were hidden under stickers on a stand in the studio. When a contestant identified a correct answer, the sticker on that word was removed. At the end of the competition, the remaining answers were revealed. By the end of the broadcast, four contestants had identified correct answers ("SUBJECT", "SEAPORT", "SHIPMENT" and "SUBSCRIPT"). The presenter then revealed the remaining answers including the word "SAILCLOTH". Realising that the word did not end in 'T', the presenter apologised to viewers on air.

A viewer complained to Ofcom about the inclusion of the word "SAILCLOTH" as one of the answers in the competition because it does not end in 'T', as specified.

Response

Five admitted that the incident had occurred, and described it as "an innocent yet stupid mistake". Games on *Quiz Call* are devised by the producers and then passed to an approver to ensure the games are fair and correct. The games are then sent to Five to be signed off. On this occasion, the producer believed that the game had been reviewed and approved by Five when in fact it had not.

Five emphasised that, at the end of the competition, viewers still had the opportunity to guess the remaining six correct answers and as such no entrants had suffered financial loss. It had instructed the production company to contact everyone who had called or entered by text and offer a refund. As there were four callers who had withheld their numbers and could not be contacted, Five broadcast an on-air apology the following week, inviting any entrants who had not yet been contacted to claim a refund.

Following discovery of the error, Five revised its sign-off process for all competitions on *Quiz Call* by adding two additional stages of checking and approval. It said that in the future no game would be scheduled for broadcast until written approval had been received from Five. It also put in place additional checks to be made immediately prior to broadcast.

Decision

Ofcom welcomed the further compliance checks that Five had put in place and noted that Five had apologised for the error and had made extensive efforts to refund viewers who had entered the competition.

Human error had caused the inclusion of an answer which was impossible for viewers to have identified. In competitions with a number of available answers, some are likely to be more difficult than others, but it is essential that, in order to achieve fairness, all the answers are reasonable. An impossible answer is not reasonable.

Although viewers still had the opportunity to identify one of the six remaining correct answers, Ofcom believed that the number of available answers is one of the factors viewers would have been likely to have taken into account when deciding whether to pay to enter the competition. By giving the impression that there were seven answers left to be guessed, when in fact there were only six, Five conducted the quiz unfairly, in breach of Rule 2.11.

Breach of Rule 2.11

The Great Big British Quiz

"Which Signs Are Wrong?", Five, 29 October 2006, 00:45

"Which Flags are Wrong?", Five, 25 November 2006, 01:25

Introduction

The Great Big British Quiz was a late night live Call TV quiz show running various competitions which viewers were invited to try to solve via a premium rate telephone number (or for free via the internet).

On 29 October 2006, in a competition called *"Which Signs Are Wrong?"*, viewers were shown a graphic of several road signs and asked which signs were not correctly displayed. Ofcom received five complaints from viewers that this competition was not resolved satisfactorily in that a correct answer was not provided on air and, when the five "wrong" signs were revealed by the presenter, the errors on those five signs were not identified to the audience.

On 25 November 2006, in a competition called *"Which Flags Are Wrong?"*, viewers were shown several national flags and asked to identify which were incorrect. Ofcom received a complaint from a viewer that the correct answer was revealed as the flag of Japan, but the complainant did not consider that there had in fact been any alteration to that flag.

Ofcom asked Five to provide comments on Rule 2.11 of the Code (competitions should be conducted fairly), and to provide details of the images that had been altered in the two competitions.

Response

"Which Signs are Wrong?"

Five provided Ofcom with details of the alterations which had been made to the road signs. These were simple graphics and the presenter had made it clear that the signs had been altered only "slightly". Five said that the competition had been approved by an independent promotional verification service prior to broadcast and that the graphics were magnified to full screen eight times for up to two minutes each time viewers were instructed to *"look closely"*. In the course of the programme, it said that some viewers identified one or more of the signs which had been altered, each of which was correctly identified on air. In addition, it stated that viewers could have deduced the correct answer by eliminating aired answers which were incorrect. However, it admitted that no viewer identified them all as a single answer. Five also accepted that one way in which the competition could have been won was by guesswork.

"Which Flags Are Wrong?"

Five explained that the official version of the Japanese flag had a height:width ratio of 2:3 with the red disc in the exact centre of the flag. The diameter of the red disk is three-fifths of the flag's height. In the competition, the red disc had been enlarged by 5% making it larger than three-fifths of the flag's height. It said that the competition had been approved for broadcast by an independent promotional verification service prior to broadcast.

It said that viewers were told that they would need a “*keen eye*” to spot which flag or flags were wrong, thereby indicating that the difference would be slight. It continued that the flags were on screen for the duration of the game and were magnified to full screen on several occasions. In addition, it stated that some contestants did correctly identify the Japanese flag as being one of the flags which had been altered. It said that given that the Japanese flag had only one element (i.e. a red disc on a white background); it was not unreasonable to believe viewers would draw the conclusion that the dimensions of the disc might have been changed. Five explained that guesswork was one possible method by which the competition could have been solved, and elimination of the aired incorrect answers was another.

Decision

“Which Signs are Wrong?”

Four of the signs appeared to Ofcom to be so indistinctly altered that it considered it was doubtful that the errors could reasonably have been detected by viewers and that any success in the competition would have had to have been largely down to guesswork.

“Which Flags Are Wrong?”

Ofcom took the view that the 5% alteration to the red disc in the Japanese flag made success in the competition largely a matter of guesswork.

In relation to the fair conduct of each competition, Ofcom judged that whilst some viewers had correctly identified the images in both competitions, this would in all likelihood have been down to guesswork. The two competitions were presented on air as being “solvable” when in fact it was highly unlikely that they could be solved through traditional means and that guesswork was the overriding factor required in each case. This was not made clear to viewers and this lack of transparency as to the methods required to solve each puzzle meant that the competitions were conducted unfairly, in breach of Rule 2.11 of the Code.

“Which Signs Are Wrong?” - Breach of Rule 2.11

“Which Flags are Wrong?” - Breach of Rule 2.11

It should be noted that Ofcom’s updated guidance for competitions¹ (published on 23 April 2007) stated that for competitions to be conducted fairly, we believe its correct solution should be reasonable (i.e. not unfairly obscure) and certain. This applies to all competitions, including those that Ofcom judges to be dependent to any extent on factual recall and/or the application of established protocol (e.g. accepted mathematical process). However difficult or cryptic the competition itself, we would expect application of the methodology to produce only the correct solution. All methodologies should be clear, comprehensive and precise.

¹ http://www.ofcom.org.uk/tv/obb/prog_cb/obb83/

The Great Big British Quiz

"How Many Cats?", Five, 16 December 2006, 01:00

Introduction

The Great Big British Quiz was a late night live Call TV quiz show running various competitions which viewers were invited to try to solve via a premium rate telephone number (or for free via the internet).

On 16 December 2006, the programme featured a puzzle in which viewers were shown a graphic of the cat with the following question:

*"15 cats meet 3 cats each. Those cats all meet 25 cats and they all go for a curry!
How many cats?"*

Viewers were invited to call a premium rate number for a chance to answer the question. The answer was later broadcast as being 2,641. No contestant correctly identified the answer.

Three viewers complained to Ofcom, querying the validity of the answer 2,641. Ofcom asked Five for its comments on Rule 2.11 of the Code (competitions should be conducted fairly) and for the details of the methodology involved in solving the puzzle and how it was applied to reach the figure 2,641.

Response

Five provided the methodology as requested and an explanation of how it was applied and admitted that the answer broadcast in the programme was incorrect and that it should have been 2,461. It explained that the methodology was overseen by an independent verification service and it had been correctly applied. However, at the time the game went on air its computerised "Answer Checker" system was briefly out of action due to technical problems and a sealed envelope was used instead so that the presenter could reveal the solution manually. Unfortunately, on this occasion, the production company's Head of Content erroneously reversed the "6" and "4" when writing the answer that was inserted into the envelope. The answer was, in fact, 2,461 rather than 2,641.

Five said that it had checked the recording of the programme and confirmed that no viewer had come through to the studio with either the actual answer, 2,461, or the incorrectly stated answer, 2,641. As a consequence of no viewers having given either of the answers, Five considered that no viewer suffered any financial loss as a result of the wrong answer being transmitted. It continued that the incident was the result of an honest human error but that it had, nevertheless carried out a review of the way games and puzzles are set, checked and approved. Further checking procedures had now been implemented to ensure the answer given on air was the correct one.

Decision

Ofcom considered that the methodology to resolve the competition was accurate, explained satisfactorily and considered fair. We also noted that the incident on this occasion appeared to have arisen from human error.

However, while Five had submitted that no financial detriment had been caused to viewers as a result of the incorrect answer being broadcast, Ofcom nevertheless considered that the competition in question had not been conducted fairly. Due to the incorrect answer being placed in the envelope at the outset of the competition, the broadcast of its solution on that occasion could never have been accurate.

It is important that broadcasters understand that a perceived lack of financial harm to viewers does not necessarily mitigate the inherent unfairness resulting from the conduct of a flawed competition, particularly when viewers are paying a premium rate charge to participate. This competition was therefore conducted unfairly, in breach of Rule 2.11 of the Code.

Breach of Rule 2.11

It should be noted that in accordance with Ofcom's updated guidance for competitions¹ (published on 23 April 2007) broadcasters should ensure that however difficult or cryptic the competition itself, Ofcom would expect application of the methodology to produce only the correct solution. All methodologies should (in addition) be clear, comprehensive and precise.

¹ http://www.ofcom.org.uk/tv/obb/prog_cb/obb83/

The Great Big British Quiz

“Catch of the Day”, Five, 19 November 2006, 01:30

“Get Sum”, Five, 17 December 2006, 01:55

Introduction

The Great Big British Quiz was a late night live Call TV quiz show running various competitions which viewers were invited to try to solve via a premium rate telephone number (or for free via the internet).

On 19 November 2006, in a competition called *“Catch of the Day”*, viewers were asked to add the numbers featured on screen on three kites. Each of the kites featured letters or numbers on them; the first had the word *“NINETY”* with *“III”* written underneath, the second kite had the number *“110”*, and the third had the number *“45”* written in digital numerals (as it would appear on a calculator). Towards the end of the competition a clue was screened which stated *“Answer is between 1418 – 1420!”* A contestant then identified 1419 as the correct answer. However, the way in which the answer had been reached was not revealed to the audience. Ofcom received one complaint from a viewer querying the answer.

On 17 December 2006, in a competition called *“Get Sum”*, viewers were asked to add the numbers in a number puzzle presented in a graphic on screen. No contestant who was put through to the studio identified the correct answer. When the competition ended the answer was revealed as 1,928, but no explanation was provided as to how the answer had been reached. Ofcom received complaints from two viewers querying the answer.

Ofcom asked Five for its comments on Rule 2.11 of the Code which states that “competitions should be conducted fairly”.

Response

Five provided the methodology for both competitions and stated that a promotional verification service had approved the competitions prior to broadcast. It said that several types of puzzles include the words “Add the Numbers” but the design and presentation varied from game to game.

“Catch of the Day”

Five provided a detailed breakdown of how the methodology applied in this competition. It explained that to solve it, viewers had to calculate every possible number within the kites (which were also different colours i.e. red, green and blue), including: numbers within other written numbers and numbers within digital numbers. Viewers then had to add each of these possible numbers to each of the other numbers. In addition, if a kite was facing right, then all the numbers that could be made on that kite were positive numbers and, if facing left, all the numbers on that kite were negative numbers. Viewers then also had to work out the total of the numbers for the different coloured kites. Then every number from each of the kites needed to be added or deducted from the other respective kite. The final answer was the result of all these sums, plus the original numbers that could be made from each of the numbers on the kites.

Upon investigation Five accepted that there was a fault with the formula used to calculate the answer on this occasion. It said that this had not been picked up during the verification process and acknowledged it was wholly inadequate that this was the case. It continued that it was “astonished and angry” that the puzzle was not checked properly by its verification service before it was transmitted. However, it stated that in relation to the overall complexity of the puzzle it did not believe that the methodology in this case was unfairly obscure given that equally complex rule sets in other puzzles are solved by its viewers.

“Get Sum”

Five provided a detailed breakdown of how the methodology was applied in this puzzle. It said that the layout of the numbers and text in this puzzle was important and to calculate the answer viewers had to add all the possible sums from the numbers. This included numbers within numbers. All and any numbers made from roman numerals are added and any other sums that can be made that are grammatically correct were included. Upon investigation however, it was acknowledged that the roman numerals had not been included in the calculation and Five therefore accepted that an error had occurred and the correct answer was in fact 1,930, not 1,928 as broadcast.

Five said that it had checked the recording of the programme and confirmed that no caller to the studio had presented an answer of either 1,928 or 1,930 and that therefore no viewer had suffered any financial loss as a result of its mistake. It said however that it was “extremely disappointed” that the independent verification service it used had not entirely eliminated the potential for error.

Following the discovery of both of these incidents, Five decided to withdraw this style of cryptic counting game from its call TV quiz services. It provided Ofcom with details of improved measures it had put in place to ensure that in future all solutions when revealed are correct and explained where necessary.

Decision

A basic principle in the fair conduct of running a competition is to ensure that viewers are told the correct answer and the methodology used to reach the answer is consistent and applied correctly. This avoids potential financial detriment to viewers should a similar competition be run in the future. Ofcom was concerned that incorrect answers had been broadcast on two occasions as a result of the broadcaster’s reliance on an independent verification service. While Ofcom welcomed the steps Five had taken to ensure its compliance with the Code in this respect, the procedures which were in place at the time to ensure that the methodology was correctly applied had clearly failed. In addition, Ofcom considered that the methodology in each of these competitions was so obscure that they could be deemed unfair. Both competitions were therefore in breach of Rule 2.11 of the Code.

“Catch of the Day” - Breach of Rule 2.11

“Get Sum” - Breach of Rule 2.11

On 23 April 2007 Ofcom published updated guidance to Rule 2.11¹ which specifically addressed the explicit expectation that the correct solution to any quiz should be reasonable (i.e. not unfairly obscure) and certain. In the

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

accompanying note to broadcasters², Ofcom stated that it did not believe it would be appropriate to find broadcasters in breach of Rule 2.11 retrospectively. Therefore Ofcom did not find either broadcast in breach of Rule 2.11 on the grounds of any obscure methodology applied in these two competitions.

² http://www.ofcom.org.uk/tv/obb/prog_cb/obb83/

Advertisements for The Politics Programme on Revelation TV and Genesis TV

Premier Christian Radio, various times between 25 April and 1 May 2008

Introduction

On 30 April 2008, Premier Christian Radio transmitted an advertisement promoting *The Politics Programme* broadcast on Revelation TV and Genesis TV¹. It stated:

“Alan Craig, the Christian People Alliance and Christian Party's candidate for London Mayor has seen ITV force him to re-write comments in his party election broadcast about a radical Muslim group. Join me George Hargreaves on The Politics Programme on Genesis TV and Revelation TV on Wednesday 30 April at 9pm when we ask the question: ‘Has the Christian People Alliance and Christian Party's mayoral candidate, Alan Craig, been a victim of political censorship gone bad and political correctness gone mad?’ ”.

Ofcom received a complaint from a listener who was concerned that this advertisement promoted a particular candidate in the London Mayoral election and that no other advertisements for the other candidates were transmitted.

Premier Christian Radio confirmed that the advertisement was transmitted between 25 April and 1 May 2008 - that is, during the run-up, or election period, and on the day of the election for the London Mayor as well as other occasions.

Section 321 of the Communications Act 2003 (“the Act”) prohibits political advertising. Section 2, Rule 15 of the BCAP Radio Advertising Code (“the BCAP Radio Code”) states that

“No advertisement:

- (a) shows undue partiality in matter of political or industrial controversy or relating to current public policy; and
- (b) is broadcast by, or on behalf of, any body whose objects are wholly or mainly of a political nature, and no advertisement is directed towards any political end”.

Premier Christian Radio cleared the advertisement through the Radio Advertising Clearance Centre (“RACC”). Ofcom wrote to the RACC and to Premier Christian Radio for their comments on how the advertisement complied with the BCAP Radio Code². All holders of Ofcom radio licences must comply with the BCAP Radio Code as a condition of their licences.

Response

The RACC said that it considered that the advertisement was not directed towards a political end, but was rather advertising a television debate. It said that it was careful

¹ This edition of *The Politics Programme* was not, in the event, broadcast by Revelation TV and Genesis TV.

² The Broadcast Committee of Advertising Practice (“BCAP”) Radio Advertising Standards Code (“the BCAP Radio Code”) is maintained and administered by BCAP and the Advertising Standards Authority (“the ASA”) under the terms of the co-regulatory agreement between Ofcom and those two bodies. Political advertising is prohibited under section 321 of the Communications Act 2003 and by Section 2, Rule 15 of the BCAP Radio Code. While the political advertising rules are set out in the BCAP Radio Code, Ofcom remains responsible for their enforcement.

to ensure that the wording of the advertisement did not give a political view but asked a question that would be debated on *The Politics Programme*. The RACC said that listeners were not invited to react in a particular way, which they would if it had been directed towards a political end. It stated that the statement about ITV made in the advertisement was a matter of fact and that it was not felt that this was a political comment or a comment directed towards a political end. The RACC stated that the advertisement made no political point about the policies of the Christian Alliance Party.

Premier Christian Radio said that the advertisement had gone through the usual clearance process which it believed to be sufficient to ensure compliance of the Code. It said that the RACC had cleared the advertisement because it promoted a political discussion programme. It said that not to have cleared it would be akin to not allowing *Newsnight* to be advertised. Premier Christian Radio said that the advertisement took no sides in whether Alan Craig had been the victim of political censorship and political correctness, but that it directed listeners to *The Politics Programme* to watch the debate and to make up their own minds.

Decision

Taken as a whole, Ofcom considered that the advertisement showed undue partiality in relation to the London Mayoral election (i.e. a matter of political controversy). While the advertisement did not call on listeners to vote for any particular candidate, it implicitly promoted the London Mayoral candidacy of Alan Craig. First, the advertisement made two references to one specific candidate in the context of the London mayoral election. Second, the advertisement clearly implied that Alan Craig had in some way been a victim of unjust treatment during the election period. Ofcom does not accept that ending the advertisement with a question changed its overall message. Finally, the advertisement was worded in such a way that it left listeners with a one-sided view of ITV's decision to instruct Alan Craig to re-write his Party Election Broadcast as being some form of censorship without offering an alternative view point.

Ofcom notes that Premier Christian Radio cleared this advertisement before broadcast through the RACC. While the advertisement could be seen as a programme trailer, that is promoting an upcoming political programme, it also served another purpose however. By focusing so centrally on one candidate and specific issues relating to him, the advertisement became directed towards a political end. The advertisement was therefore in breach of Section 2, Rule 15 of the BCAP Code.

Breach of Section 2, Rule 15 of the BCAP Radio Advertising Standards Code

The World's Got Talent

ITV1, 6 April 2008, 19:00

ITV2, 2 June 2008, 19:00

Introduction

The World's Got Talent is a spin-off from *Britain's Got Talent* and features variety performers from around the world in different international versions of the ITV talent show. The programme complained of included acts such as a man who climbed into a giant washing machine and rotated inside it as it operated, a human dartboard, a performer eating glass and another setting himself on fire as part of his routine.

Ofcom received 8 complaints from viewers who were concerned about children emulating these potentially dangerous activities. The programme was repeated on ITV2 on 2 June 2008. This attracted one complaint from a viewer who referred specifically to clips featuring the washing machine.

Ofcom asked Channel Television ("Channel"), which complies this series on behalf of ITV1 and 2, to comment with reference to Rules 1.3 (appropriate scheduling) and 1.13 (dangerous behaviour that is likely to be easily imitable by children in a manner that is harmful must not be broadcast before the watershed) of the Code.

Response

Channel stated that the show aired as a prelude to the new series of *Britain's Got Talent* and aimed to show how standards of entertainment vary enormously from country to country. The clips which led to complaints were all screened in the second part of the programme in a montage of "risky" stunts and performances. Channel pointed out that the section was introduced with the following guidance:

"Across the globe viewers have watched some of the world's greatest daredevils, who push themselves to perform amazing and somewhat unspeakable acts. Are they brave? Yes. Are they all a bit crazy? Definitely. Do not try this at home!"

This was followed by another warning as the man climbed into the giant washing machine: *"Do not, I repeat, do not try this at home under any circumstances"*

As a man was seen spinning in a large washing machine the US show's host, Jerry Springer, was seen looking on in a concerned manner as if fearful that the man might be in danger. Following on from the sequence of "risky" stunts, the show then included a montage of clips that showed how some of the acts had gone wrong. This was introduced with: *"Some of the following stunts are so dangerous that these budding daredevils risk serious personal injury."* Channel believed that this sequence reinforced the obviously dangerous nature of the acts and the fact that they should not be attempted by the untrained.

Channel argued that the dangerous stunts section was responsibly scheduled and was suitable for a family audience. It maintained that the clips were editorially justified as they served to illustrate the cultural and social differences that *The World's Got Talent* aimed to highlight to the audience. Channel stated that the 19:00 schedule had previously featured thrilling family dramas like *Primeval* and was a time when the very youngest children were likely to be in bed. It argued that the number of warnings alongside the brevity of the clips served to ensure a minimal possibility of imitation amongst younger viewers.

After Ofcom asked for comments on this content, the broadcaster edited this episode of the programme to exclude the washing machine sequence entirely and reduce considerably the length of the section devoted to dangerous stunts. This was to ensure that any future repeats of the episode would comply with the Code.

Decision

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; and likely audience expectations. Audience figures for the original broadcast on 6 April 2008 show that the programme attracted a high number of children, making up almost 13% of the total audience share (624,000). A total of almost 6% or 291,000 viewers were children aged between 4 and 9.

We note the attempts the broadcaster made to alert viewers to the dangers of such behaviour through guidance, and recognise the steps it took to try to address its responsibilities in this regard. However, we do not believe that repeated warnings would be sufficient, in the case of this particular kind of material, in this particular kind of programme, and with this particular audience, *necessarily* to provide sufficient protection from harm - especially for the significant numbers of younger viewers mentioned.

Shown on a Sunday evening on ITV1 on 6 April 2008, a time when younger children are often allowed to stay up later than usual, the show would have appealed to family audiences familiar with *Britain's Got Talent*, which had achieved high ratings when first screened in 2007. Research referred to in the Code Guidance Notes¹ points to the fact that children are prone to emulate what they see on television and specifically points to areas of concern such as "everyday household items such as micro-waves and tumble-dryers, which can cause harm if misused".

It is unlikely, in our view that verbal warnings or merely implied concern from the presenters (such as Jerry Springer looking concerned) would have necessarily registered with younger viewers – who, in our view, would have been attracted to and entertained by the image of a human being revolving in the porthole window of a washing machine. This may have been particularly the case here, where some of the warnings may have been lost on children, where the content was exciting, fast moving and eye catching.

Moreover, a sequence featuring such extreme routines as getting into washing machines, eating glass, people being used as a human dartboard or being set on fire would more typically be expected to feature in shows broadcast after the watershed where, at the very least, parents and carers would be alerted to the need to supervise more closely any child's viewing.

Ofcom notes that the repeat of the episode on 2 June 2008 was on ITV2. This repeat (not being broadcast on ITV's flagship channel and being aired on a Monday night) was not likely to attract the same number of younger viewers as the original showing in April. ITV2 is however a general entertainment channel likely to attract a significant number of children and the repeat was also in breach of the Code.

¹ <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/guidance1.pdf>

On balance, therefore, it is our view that the broadcaster, despite providing verbal warnings and featuring visual clues as to the unacceptability of the behaviour featured, failed to offer adequate protection to child viewers in this specific instance. Both broadcasts of this programme were therefore in breach of Rules 1.3 and 1.13 of the Code.

Breach of Rules 1.3 and 1.13

Drive with Dominik Diamond & Marissa

talk107 (Edinburgh and East Central Scotland), 28 March 2008, 14:00

Introduction

The programme included a regular travel feature sponsored by The Travel Company Edinburgh ("TTCE") in which a representative of the company was interviewed – in this case, about the problems at Heathrow Terminal 5. Listeners were not told that the feature was sponsored⁸ but the interviewee was credited on air as a representative of TTCE and allowed to promote specific holidays offered by the company. One of the presenters referred listeners to TTCE's website. A listener complained that the feature "blurred the boundaries between advertising and an editorially justified travel feature."

We therefore asked talk 107 to comment on the following Rules of the Code:

9.4 A sponsor must not influence the content and/or scheduling of a channel or programme in such a way as to impair the responsibility and editorial independence of the broadcaster.

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

9.6 Sponsorship must be clearly identified as such by reference to the name and/or logo of the sponsor. For programmes, credits must be broadcast at the beginning and/or end of the programme.

9.7 The relationship between the sponsor and the sponsored channel or programme must be transparent.

Response

UTV Radio, which owns talk 107, accepted that the broadcast raised issues under Section 9 of the Code concerning transparency, separation and editorial independence. It said that all promotional references were removed from subsequent broadcasts as soon as it became aware of the complaint and added that the sponsorship arrangement had ended on 30 May 2008 and that the feature was no longer being broadcast.

UTV said that the Station Director and Acting Programme Manager had taken steps to avoid recurrence and ensure future compliance with Section 9 of the Code. All producers, presenters and sales staff had been briefed and a training programme concerning sponsorship had been initiated for new starters.

Decision

UTV confirmed to Ofcom that the programme was sponsored by TTCE. However, this information was not appropriately conveyed to listeners in breach of Rule 9.6 and 9.7 of the Code. Transparency is a fundamental principle of commercial references in

⁸ The sponsorship arrangement was later confirmed to Ofcom by the broadcaster.

editorial. The audience must be made aware of any commercial arrangement between the broadcaster and a commercial third party.

The travel feature clearly promoted TTCE's (the sponsor's) products and services (i.e. its website, ttce.com, and holidays, such as a 2 bedroom mobile home in Blackpool for 4 nights from 7 April 2008, reduced from £265 to £109). The item also featured a representative of the sponsor, who was credited as a TTCE employee on air. The feature was therefore in breach of Rule 9.5 of the Code.

It also appeared to Ofcom that the sponsor (TTCE) had been permitted to influence the travel feature's content on a regular basis. The broadcaster had ceased to take effective responsibility for its output and ceded editorial independence by allowing the sponsor regularly and repeatedly to promote its products and services, in breach of Rule 9.4 of the Code.

We welcome the action taken by UTV to avoid future recurrence. However, this particular output highlighted a repeated compliance failure since the item was featured weekly. Ofcom is concerned that programming so clearly in breach of the Code remained on air until we had alerted UTV to this complaint.

This case represents a serious lapse in talk 107's compliance and Ofcom may consider further regulatory action in the event of any similar breaches.

Breach of Rules 9.4, 9.5, 9.6 and 9.7

Graham Torrington's Late Night Love

SGR Colchester (Colchester), 22 April 2008, 22:00

Introduction

During this late night phone-in concerning personal relationships, the presenter promoted his internet dating site, hatebeingsingle.com, when he said:

"If you are single and looking for love, my new internet dating site, hatebeingsingle.com, has over five million users on there. If that's you, and you don't like being single, let's see if we can sort out a new partner for you or just somebody to be a friend to. [Hatebeingsingle.com](http://hatebeingsingle.com) has five million users, so get yourself registered right now. And if you're a single parent or if you're over forty, there's two new special sections on there. So get yourself registered on hatebeingsingle.com..."

A listener claimed that the site was a commercial operation and that the presenter's repeated references to it (as above) were not therefore editorially justified.

Section 10 of the Code concerns, among other things, commercial references in programmes. Rules 10.3 and 10.4, respectively, prohibit the following in programming:

- the promotion of products and services; and
- undue prominence being given to products and services.

We asked for the broadcaster for its comments with regard to these Rules.

Response

GCap Media plc, which owned SGR Colchester at the time of broadcast, acknowledged that the presenter had promoted his own franchise (the website, www.hatebeingsingle.com) within programming. It added that the presenter had not sought SGR's consent to do so before the broadcast and that, if he had, it would have been refused. GCap acknowledged that the presenter's comments breached the Code and apologised for the broadcast.

GCap said that the presenter had been made aware of the seriousness of the matter and added that SGR's Programme Controller had taken steps to prevent recurrence, which included "strengthened guidelines alongside increased monitoring." GCap said that it takes its "obligations relating to the Ofcom Broadcasting Code extremely seriously and issues regular guidance to its radio stations and radio station personnel."

Decision

The Code prohibits the promotion of goods and services in programming. In this case, a dating website – a commercial product/service – was clearly and actively promoted on *Graham Torrington's Late Night Love*. This was in breach of Rule 10.3.

While Ofcom recognises that the programme concerned personal relationships, the manner in which the presenter referred to his own business was overtly promotional and therefore lacked any editorial justification. The result was that "undue prominence" was given to the presenter's website, in breach of Rule 10.4.

Breach of Rules 10.3 and 10.4

Sex Station

Lucky Star, 11 & 26 July 2007, 21:00

Introduction

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

While monitoring the output of channels within the ‘adult’ section of the Sky EPG, Ofcom found material broadcast in *Sex Station* on the 11 July 2007 that included some explicit images featuring, in particular, apparent female masturbation. The presenters and viewers’ texts also used some explicit sexual language, such as (at 21:08), “*We want a paddling pool filled with your hot, horny man-muck*” and a viewer’s text (at 21:43) saying, “*Tammy would you punish me if I didn’t lick your fanny good enough?*”

Ofcom asked Lucky Star to comment on the broadcast under the following Code Rules:

- Rule 1.2 (the broadcaster must take reasonable steps to protect under 18s);
- Rule 1.24 (‘adult-sex’ material is restricted to overnight encrypted services);
- Rule 2.1 (the broadcaster must apply generally accepted standards); and
- Rule 2.3 (offensive material must be justified by context).

While our investigation was underway, Ofcom received a complaint concerning similar output on 26 July 2007. We noted in particular that during this output a frank sexual discussion took place from 21:00 to 21:10, which included such language as, “*I’m looking for a dirty man who’s going to make me cum everywhere*”, and, “*I reckon you guys should spunk all over that [i.e. a presenter’s white bodice]. Cover her up with white*”.

Ofcom therefore asked Lucky Star to comment on the broadcast under the same Rules of the Code, as above.

Response

In response to our request for comment concerning the monitored output on 11 July 2007, and with reference to Rule 1.2 of the Code, Lucky Star said that *Sex Station* appears post watershed, with an ‘18’ warning and within the ‘adult’ section of the Sky EPG. It added that the presenters are instructed to moderate their language nearer the watershed and that, while the programme is live, viewers’ texts are “heavily moderated prior to being put to screen and acutely rude words are not allowed.”

In respect of Rule 1.24 in particular, the broadcaster did not believe the language used on 11 July 2007 made the output ‘adult-sex’ material. It added that such language was “in common currency and in use by persons younger than age 18” and its primary purpose was not sexual arousal or stimulation.

With Rules 2.1 and 2.3 in mind, Lucky Star added that viewer texts often include stronger language and “substantial moderation is used.” The broadcaster

acknowledged that the viewer texts quoted by Ofcom had been moderated and added that, after “careful reflection”, it was making every effort to ensure that all language, including that of the presenters, was less graphic in future.

In response to our request for comment concerning the output on 26 July 2007 Lucky Star apologised for the discussion broadcast, “not only because it was so close to the watershed but because it contained language of a strength which would not, under normal circumstances, be broadcast [in] this programme at all.”

While not wishing to detract from its apology, the broadcaster added that the channel was experiencing technical difficulties on the night – as evidenced by periods in which the screen went blank – and “the programme producer distinctly remembers informing the presenters that they were not going on air.” In conclusion the broadcaster said that, since this unfortunate incident, the content of the show had been changed dramatically and that “careful note [had...] been taken of Ofcom’s concerns regarding ‘babe’ type content.”

Decision

Ofcom notes that the programmes were broadcast with a warning, post-watershed and on a service operating within the adult section of the Sky EPG. We also note that the broadcaster chose not to comment on the visual content of the material broadcast.

Ofcom judged that much of the material broadcast after 21:00 was sexually explicit, as regards both the images (in particular, apparent masturbation) and language. This content had insufficient editorial or contextual justification to allow its exceptional transmission unencrypted on free-to-air television. For these reasons this content was in breach of Rule 1.24, which requires such material to be encrypted and restricted to broadcast after 22:00. We acknowledge Lucky Star’s policy of allowing only moderated language closer to the watershed and we recognise that technical difficulties appear to have occurred on 26 July 2007. Nevertheless, in both programmes the broadcaster included much stronger language than Ofcom considers suitable for broadcast so soon after the 21:00 watershed.

The broadcasts were therefore in breach of Rules 1.2 and 1.24 of the Code.

Ofcom welcomes Lucky Star’s apology concerning the language broadcast on 26 July 2007. Nevertheless, this content was sexually explicit and unsuitable for free-to-air television. It was therefore also in breach of generally accepted standards to ensure adequate protection for viewers in general from harmful and/or offensive material. In Ofcom’s opinion, factors such as this channel being in the ‘adult’ sector of the EPG and the content being broadcast after 21:00 did not justify the broadcast of this material.

Ofcom has issued sufficient information, in the form of findings and guidance, for broadcasters within the ‘adult’ section of the EPG to know that special care is required when assessing what material is likely to be acceptable on unencrypted services. In this case, Lucky Star failed to apply generally accepted standards to ensure that viewers were adequately protected from the broadcast of offensive material.

The broadcasts were therefore in breach of Rules 2.1 and 2.3 of the Code.

Lucky Star was unaware of Ofcom's concern about the programme it broadcast on 11 July 2007 before it broadcast the programme on 26 July 2007 (about which we received the complaint). We therefore welcome the broadcaster's decision to moderate the content of the programme after being alerted to our concerns. It is a fundamental responsibility of any broadcaster to ensure that its viewers are adequately protected against the inclusion of harmful or offensive material in its output.

Ofcom regarded these breaches of the Code as serious and considered whether to recommend this case for consideration of a statutory sanction. Taking into account all the relevant circumstances however (including the broadcaster moderating its output on being made aware of Ofcom's specific concerns, its apology and its previous compliance record), Ofcom decided on balance not to pursue a sanction on this occasion. However, any further breaches of this nature by Lucky Star are likely to result in Ofcom considering the imposition of a statutory sanction.

Breach of Rules 1.2, 1.24, 2.1 and 2.3

House of Fun

House of Fun, 26 July 2007, 22:00 and 29 August 2007, 23:00

Introduction

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

Ofcom received two complaints that the channel broadcast material that featured explicit images in particular apparent female masturbation.

Ofcom viewed recordings of the material broadcast on the above dates and noted that the content contained images of the presenters engaged in acts of an apparently explicit sexual nature including:

- various shots of presenters with their hands in their underwear appearing to masturbate;
- two presenters licking another presenter’s breasts while they had their hands inside the first presenter’s underwear, appearing to masturbate her; and
- two of the female presenters removing their underwear and, while the picture was pixelated, appearing to masturbate.

Ofcom asked House of Fun Television Limited (“House of Fun TV”), which holds the licence for *House of Fun* to comment on how the content complied with the following Code Rules: 1.24 (‘adult-sex’ material); 2.1 (generally accepted standards); and 2.3 (material that may cause offence must be justified by context).

Response

The broadcaster stated that the primary purpose of the broadcasts was to entertain. It said that the fact that numerous callers phoned in simply to chat to the presenters in a harmless and non-sexual manner, although there were other callers who had “a more racy bias to their conversation.” This indicated that the purpose of the broadcasts was not to arouse or stimulate sexually, but to stimulate an interaction between the presenter and the off-screen caller.

House of Fun TV said that great care was taken to ensure that there was no real masturbation was broadcast, although undoubtedly there was “posturing and gesturing with hands in the vaginal regions and on the upper thighs of the presenters”. The broadcaster stated that suggestion, innuendo, titillation were all part of the presenters’ performances. It stated that from a purely visual point of view, a pixelated image is a pixelated image and an overexcited viewer may imagine many things, but the reality is that the image was pixelated and nothing inappropriate was broadcast which could be identified.

The broadcaster stated that *House of Fun* was broadcast in the ‘adult’ section of the EPG and viewers expected its content to be appropriately ‘adult’ in this context. The programme, although entertaining, contained scenes of nudity, and parodied, in a light-hearted way, acts of sexual fantasy, eroticism and society’s sense of decency.

Decision

Ofcom notes that the programmes were broadcast with a warning, post-watershed and on a service operating within the adult section of the Sky EPG.

Ofcom judges that the material broadcast was visually sexually explicit, in particular the apparent masturbation. This content had insufficient editorial or contextual justification to allow its exceptional transmission unencrypted on free-to-air television. For these reasons this content was in breach of Rule 1.24, which requires such material to be encrypted and restricted to broadcast after 22:00.

Under the Code 'generally accepted standards' must be applied to the content of programmes (Rule 2.1). In applying these standards, broadcasters must ensure that material which may cause offence is justified by context (Rule 2.3). Context can include such factors as the editorial content of the programme, the channel on which it is shown and the time of broadcast, and the expectations of the likely audience.

This content was sexually explicit and unsuitable for free-to-air television. It was therefore also in breach of generally accepted standards to ensure adequate protection for viewers in general from harmful and/or offensive material. In Ofcom's opinion, contextual factors such as this channel being in the 'adult' sector of the EPG and the content being broadcast after 23:00 did not justify the broadcast of this material.

Ofcom therefore found that Rules 1.24, 2.1 and 2.3 of the Code were breached.

Ofcom has issued sufficient information, in the form of findings and guidance, for broadcasters within the 'adult' section of the EPG to know that special care is required when assessing what material is likely to be acceptable on unencrypted services. In this case, House of Fun failed to apply generally accepted standards to ensure that viewers were adequately protected from the broadcast of offensive material.

These were serious and repeated breaches of the Code. Ofcom reviewed whether the matter should be referred to the Content Sanctions Committee (the "Committee") for consideration of a statutory sanction. However, taking account of all the relevant circumstances, including that no explicit language was transmitted, the late time of the broadcasts and the fact that monitoring by Ofcom showed subsequent improvements in compliance, Ofcom decided that, on balance on this occasion, the matter would not be referred to the Committee. Should there be further breaches of a similar nature however by this Licensee, it is likely that the contraventions of the Code will be referred to the Committee.

Breaches of Rules 1.24, 2.1 and 2.3

Resolved

Big Brother: Celebrity Hijack

E4, 25 January 2008, 21:00

Introduction

Big Brother: Celebrity Hijack was first broadcast in January 2008 and was a variation on the theme of *Big Brother*. In *Celebrity Hijack*, the role of “Big Brother” was assumed by a different celebrity each day and, at various stages of the programme, viewers were invited to vote using premium rate services (“PRS”) to determine which ‘housemate’ was evicted.

The penultimate episode of this series featured a “double eviction” where six out of the eight remaining housemates faced the public vote and viewers were asked to vote for who they wanted evicted from the house.

A viewer contacted Ofcom alleging that whilst on-screen information stated that viewers were voting to ‘evict’, on two occasions the programme’s presenter said “*the two housemates with the least amount of votes*” would be withdrawn from the show. The complainant argued that if viewers were ‘voting to evict’ then the two housemates with the ‘most votes’ should have been leaving the house.

Ofcom asked Channel Four, the owner of E4, for its comments under Rule 2.2 of the Code which states that “factual items must not materially mislead the audience”.

Response

Channel Four acknowledged that the information given by the presenter contradicted the on-screen instructions (“vote to evict”) seen several times during the programme. It said that it regretted the incident and attributed the oversight to a scripting error. However, it continued that that this error was outweighed by the occasions that viewers were informed both visually and verbally that their vote was “to evict”. It also added that, aside from the final show, *Big Brother* generally follows the principle of voting to evict and that viewers would be aware of this.

Channel 4 said that to ensure complete transparency, a statement was posted on its website the following day explaining the circumstances. The statement also confirmed that the position of the two housemates who were actually evicted did not alter while the programme was being broadcast and Channel 4 provided Ofcom with voting statistics to confirm this.

Decision

Ofcom judged that the directions of how to vote that were shown on screen and explained by the presenter were, on two occasions, contradictory and were therefore potentially misleading to viewers. In addition, as voting involved viewers calling a premium rate number, there was also the potential for material harm as a consequence of the two errors that occurred. However, Ofcom accepted that the programme did, and historically always has, generally instructed viewers to vote to evict and considered that it was therefore unlikely that any significant harm was caused by these two mistaken references by the presenter. Moreover, having assessed in detail the voting data supplied by Channel 4, Ofcom could find no

evidence that voting patterns were affected during the programme as a result of the errors and therefore the correct result, reflected by the voting, was achieved.

In conclusion, Ofcom welcomed the broadcaster's swift public acknowledgement of the problem and the steps it took to clarify the matter with its viewers and considers the matter resolved. However, broadcasters are urged to be aware at all times of the importance of the accuracy of scripts that include 'calls to action' and particularly where premium rate charges are involved. In addition, live broadcasts which use audience participation and voting should be responsibly monitored as they are transmitted by appropriately trained personnel so that any 'live' mistakes can be brought to the attention of viewers at the earliest opportunity and preferably in the same programme.

Resolved

F1: Canadian Grand Prix Live

ITV1, 8 June 2008, 17:05

Introduction

Ofcom received 14 complaints about ITV1's coverage of the Formula 1 Canadian Grand Prix. The complaints concerned the use of the word "pikey" by commentator Martin Brundle, during a 'grid walk' interview with Bernie Ecclestone. Martin Brundle asked Mr Ecclestone: *"There are some pikeys out there putting some new tarmac down at Turn 10 apparently. Are they out of the way yet?"* The complainants objected that the word was offensive and racist towards the travelling community.

Ofcom asked ITV to respond to the complaints with regard to Rule 2.3 (generally accepted standards).

Response

ITV responded that during ITV1's live F1 coverage presenter Martin Brundle's 'grid walk' interviews are unscripted and spontaneous. It confirmed that the interview with Mr Ecclestone on this occasion did include the use of the term "pikey" and accepted that the term is regarded by some viewers as offensive due to its origin as a derogatory term for Irish Travellers. However, ITV also felt that the word is used more widely today as a non-specific but admittedly derogatory term.

ITV emphasised that in the context in which the term was used in the programme there was no intention for it to have been interpreted as referring to the travelling communities (whether Travellers, Gypsies or Roma). It stated that Martin Brundle was unaware of the potential racial or ethnic connotations and in no way intended the remark to be understood as derogatory towards Travellers. The broadcaster added that Mr Brundle sincerely regrets any offence the remark may have caused. ITV also pointed out that during the course of his career as a commentator, racing journalist and driver, Martin Brundle has never received any criticism of this nature before.

In response to the error and subsequent complaints the ITV Press Office issued an apology to any viewers who were offended by the comment and also apologised for any offence to the 22 viewers who contacted its Duty Office. The broadcaster has also provided compliance advice to the production team and the presenter in relation to potentially offensive language.

Decision

Ofcom notes ITV's acknowledgement of the potential offence the word "pikey" can cause to some viewers and the compliance measures taken in response to this incident. It welcomes the apologies issued by its Press Office and directly to individual complainants. In view of these actions, Ofcom considers this matter resolved.

Resolved

The Nathan Caton Show (Short Cut)

Paramount Comedy 2, 14 May 2008, 15:58

Introduction

A viewer complained about a short comedy sketch from *The Nathan Caton Show* which appeared between programmes. This featured comedian Nathan Caton as a caricature of a streetwise teenager having a car makeover, and included the character saying, “*It’s supposed to pimp my ride, not shit my ride*”, “*Is that fuchsia red? That’s fucked up black*”. The viewer believed it was not appropriate to show this material at this hour.

Ofcom asked Paramount for its comments against Rules 1.14 (the most offensive language must not be broadcast before the watershed) and 2.1 and 2.3 (generally accepted standards) of the Code.

Response

Paramount Comedy apologised and explained that the programme was originally reviewed and allocated to Paramount 1 for scheduling after 22:00, but due to human error was made available on both Paramount Channels with no restriction. Paramount advised that it has updated its systems to prevent any similar recurrence.

Decision

The Code requires broadcasters to avoid the most offensive language before the watershed, and when broadcasting offensive language to take into account frequency and context. Ofcom notes that this compliance mistake was the result of human error, is an isolated case, and that Paramount has taken steps to ensure such mistakes do not recur.

Ofcom also took into account that this occurred on a niche station aimed at a predominantly adult audience and at a period when viewing figures indicate no children were watching. We therefore consider the matter resolved.

Resolved

Fairness and Privacy Cases

Partly Upheld

Complaint by the Fairtrade Foundation

Channel 4 News, Channel 4, 2 May 2007

Ofcom has upheld part of a complaint of unfair treatment by the Fairtrade Foundation ("Fairtrade").

This edition of *Channel 4 News* included a report concerning the Fairtrade Foundation ("Fairtrade") in which the programme makers questioned whether Fairtrade¹ always delivered on its promise of a better deal for workers in poorer countries. This report focused on two tea estates in southern India, Welbeck/Kotada and Dunsandle, which were "Fairtrade certified". It included interviewees who were employed on the estates.

Fairtrade complained that it had been treated unfairly in the programme as broadcast, in that the programme makers had implied that Fairtrade was not delivering on its "Fairtrade promise". The programme had failed to take account of material facts about how the Fairtrade system operated and about the two estates on which the allegations were based; it had misrepresented statements made by Fairtrade in the programme as broadcast; it had made it appear that Fairtrade had previewed the report prior to its broadcast; and it had falsely stated that the workers on the estates who took part in the programme were "scared of losing their jobs".

Ofcom's Fairness Committee found that:

The clear message to viewers was that the intention of the report was to question whether, when consumers purchased Fairtrade tea, the workers who produced it benefited from the promised better deal. The Committee acknowledged that in its examination of this premise the programme provided an overview of the Fairtrade system. The report explained that there are minimum requirements that a company must meet in order to become and remain certified as a Fairtrade producer. It also explained that when a producer is certified, it will receive a Fairtrade premium on Fairtrade goods sold. The report also referred to the progress requirements that establish a framework for continuous improvement as the organisation starts to receive additional income from sales to the Fairtrade market. In examining its premise, the report looked at the Welbeck/Kotada estate, which had not sold any tea on Fairtrade terms from 1999-2004, and the Dunsandle estate, where sales of tea on these terms were acknowledged in the report to be "very low". This was a significant factor in the Committee's view as it necessarily meant that the two estates which were the focus of the programme had earned very little premium which could benefit the workers. In view of the fact that the programme set out specifically to examine whether, when consumers purchased tea bearing the Fairtrade logo, the producers got a better deal, the Committee considered that the report failed to make sufficiently clear that it was low Fairtrade sales that were the reason workers were not benefiting from significant amounts of Fairtrade premium on these estates. Furthermore, in

¹ Fairtrade is a non-profit making organisation, which aims to improve trading conditions with the developing world. It authorises the use of the Fairtrade Mark. Fairtrade say that only products produced in accordance with internationally agreed standards, that ensure fair terms of trade for the producers, can carry this mark.

relation to the Dunsandle estate, the report included a confusing reference to the fact that it still had Fairtrade certification. This was misleading and was likely to have confused viewers' understanding of how the Fairtrade system works and whether it lived up to its publicly stated guarantee in relation to this particular estate. In light of these considerations the Committee found that the report's portrayal of Fairtrade, in relation to the two estates featured in the programme, resulted in unfairness to Fairtrade.

The programme makers misrepresented part of a statement from Fairtrade by using it in a context which suggested that Fairtrade accepted that there was a problem relating to the issue of retirement bonds for workers at the Dunsandle estate.

There was no unfairness in the programme's claim that Fairtrade "describes our report as not a fair representation of the reality of the estates in question" because this would not have led viewers to believe that Fairtrade had viewed the programme prior to transmission and, in any event, it would have been clear to viewers that Fairtrade did dispute the allegations.

The programme's claim that Fairtrade had "admitted" that delays in paying the premiums had been due to "administrative problems" was not a misrepresentation or a significant allegation of wrongdoing. The Committee noted Fairtrade's acknowledgement that there had been legal problems in India in delivering the premium, and that it was a matter which they had had difficulty in resolving. In this context, the Committee considered that the words used were not unfair to Fairtrade.

There was no unfairness in the way the programme reported how the Fairtrade premium had been spent by the Welbeck/Kotada estate. The figures shown in the programme reflected those provided by Fairtrade, and the programme had fairly reported what the premium had been spent on by citing four examples from a long list provided to the programme by Fairtrade.

The programme makers had not unfairly stated that the tea workers who had been interviewed in the programme had wished to remain anonymous because "they were scared of losing their jobs". Based on the information before it, the Committee was satisfied that at least three workers appeared to have been concerned about their management finding out that they had participated in the programme, and that their participation had been contingent on the concealment of their identities.

Introduction

On 2 May 2007 *Channel 4 News* broadcast a report concerning Fairtrade. The report stated that "[Fairtrade] promises a better deal for the poorer countries" and then posed the question "*but does Fairtrade always deliver on the promise?*"

The report examined two tea estates in India which the programme stated had the Fairtrade "*stamp of approval*". These estates were the Welbeck/Kotada estate and the Dunsandle estate.

The reporter interviewed a number of workers from the two tea estates who, it was explained, wished to remain anonymous, because they were scared of losing their jobs. During the interviews the workers spoke of their living conditions; their understanding of how the Fairtrade premium had been spent within their estate; and their dislike of the Fairtrade "retirement bond" (a scheme not dissimilar to a pension scheme). The reporter summarised her discussion with the estate workers by saying

“for the workers we met they said they couldn’t really see any difference between working on a Fairtrade certified estate and any other tea estate”.

During the report, extracts from a statement by Fairtrade were read-out and shown on-screen. Extracts from pre-transmission correspondence between Fairtrade and Channel 4 were also included in the report.

Fairtrade made a complaint to Ofcom that it had been treated unfairly in the programme as broadcast.

The Complaint

Fairtrade's case

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

- a) The programme repeatedly implied that Fairtrade was not delivering on its "*Fairtrade Promise*", and that there was a failure of the Fairtrade certification. In making these allegations the programme makers did not take account of material facts relating to:

- i) How the Fairtrade system operated.

Fairtrade stated that the programme implied that Fairtrade was not delivering on its promise and repeatedly referred to the Fairtrade "*stamp of approval*". Fairtrade said the only promise made by its organisation related to the Fairtrade Mark which "guarantees a better deal to Third World producers". Fairtrade said the Fairtrade Mark was on products so that supporters of Fairtrade and consumers knew that if they bought the product, benefits could go back to the producers. Fairtrade said it was only by increasing the amount sold as Fairtrade that workers were able to receive a steady stream of additional income to use to improve their lives. Fairtrade said they repeatedly explained this to the programme makers.

- ii) The two tea estates on which the allegations were based.

Fairtrade said the programme focused on two tea estates which they knew sold virtually no tea on Fairtrade terms. Fairtrade said the programme makers never explained or justified their choice of the two estates. Fairtrade said it was entirely unreasonable to expect workers from these two estates to benefit greatly from the Fairtrade premium, given the small amount of Fairtrade tea sold. Fairtrade said that in between the two estates was another estate which sold a large amount of tea on Fairtrade terms; a considerable amount of Fairtrade premium was therefore produced, making a significant impact on the lives of the workers.

By way of background, Fairtrade said that the programme makers repeatedly refused invitations to meet with its representatives so that they could give information about the Fairtrade system. Fairtrade also said that the programme makers did not attempt to verify their information by speaking directly with the Joint Body (the workers' committee responsible for spending the Fairtrade premium), trade union representatives or the estate managers, but rather only spoke to a few of the workers on the estates.

- b) The programme makers misrepresented statements by Fairtrade in the programme as broadcast:

- i) When discussing the issue of retirement bonds at Dunsandle estate, the programme stated that Fairtrade had said the "*Relevant Fairtrade authorities will ensure the issue is given special attention*". Fairtrade said this was unfair because this statement by Fairtrade was in relation to a different point, (namely, in respect of the operation of the Dunsandle Joint Body) and incorrectly implied that Fairtrade accepted that the organisation of the retirement bonds needed attention, which it did not. Fairtrade said the

retirement bonds were due on retirement (contrary to what the programme said), and such schemes were always controversial in poor societies with low life expectancy and pressing daily needs.

- ii) The programme stated that Fairtrade had said the programme was “*not a fair representation of the reality of the estates in question.*” Fairtrade said the use of the comment implied that it had seen the programme prior to broadcast, which it had not.
 - iii) The programme stated that Fairtrade had “*admitted*” the reason for a delay in premiums reaching the tea workers was “*administrative problems*”. Fairtrade said that it had informed the programme makers that the delay had been because the premiums had been frozen under the Foreign Currency Regulation Act of India. Fairtrade said the use of the term “*admitted*” and “*administrative problems*” was incorrect and implied wrongdoing on the part of its organisation.
 - iv) The programme makers did not fairly represent Fairtrade’s statement in relation to how the Joint Body at Welbeck/Kotada estate had used its Fairtrade premium. This premium constituted £21,000 which was the total the estate had earned from Fairtrade sales 1996-1998 and which the estate used for eight years including the five year period from 1999 to early 2004, during which time Welbeck/Kotada sold nothing under Fairtrade terms. The estate started selling under Fairtrade terms again in 2004 when the total premium the Joint Body earned was €802.17.
- c) The programme falsely and unfairly stated that the workers at the two tea estates who took part in the programme wished to remain anonymous because “*they were scared of losing their jobs*”.

Ofcom considered the following as background information only:

Fairtrade provided Ofcom with a DVD from the workers on the tea estates which had been compiled after the programme had been transmitted. In the DVD, the workers on the estates attested that they believed the programme makers were with the Fairtrade Labelling Organisation International (“FLO”); that they were being filmed surreptitiously; that they had not advised the programme makers that they were too afraid to be filmed; and that they did not request that their identities be kept a secret.

Channel 4's case

- a) In response to Fairtrade's complaint that the programme makers repeatedly implied that Fairtrade was not delivering on its "*Fairtrade Promise*" and that there was a failure of the Fairtrade certification, Channel 4 responded as follows:
- i) In relation to the allegation that the programme implied Fairtrade was not delivering on its promise, Channel 4 disagreed with Fairtrade's contention that the only promise it made was that contained within the Fairtrade Mark, which "guarantees a better deal to Third World producers". Channel 4 stated that it considered it was clear that the Fairtrade "guarantee" was made up of a range of promises designed to help and benefit workers in developing countries and deliver to them the "better deal" that was referred to on each Fairtrade product.

Channel 4 stated that it strongly disagreed that the guarantee was generally understood by consumers to mean that if they bought Fairtrade products benefits could go back to the producers. It stated that consumers would understand the guarantee to be an actual guarantee that workers in developing countries producing goods bearing the Fairtrade Mark were actually receiving a better deal, not that they may get a better deal only on the condition that sufficiently large volumes of the Fairtrade product in question are sold. Channel 4 stated that Fairtrade publications available on the Fairtrade website made clear that there was no proviso on the guarantee and that the guarantee was made up of a number of promises. Channel 4 further stated that Fairtrade's description of how it believed its guarantee was understood by consumers ignored the claim it made about the minimum standards that must be met by producers in order to carry the Fairtrade Mark.

In response to Fairtrade's concerns regarding the reference to the Fairtrade "stamp of approval", Channel 4 stated that it was a stamp of approval. Channel 4 said, as described in some of the Fairtrade publications, the Fairtrade Mark appearing on a product told consumers that its ingredients had been sourced from a producer organisation that met certain standards and was working towards others.

- ii) In respect of Fairtrade's complaint regarding the programme makers choosing the Dunsandle and Welbeck/Kotada Estates over other estates, Channel 4 stated that the two estates were selected because they were worthy of further investigation. Channel 4 said the decision was based on research conducted in the United Kingdom and also discussions with a number of workers from several tea plantations.

Channel 4 stated that workers from the Welbeck/Kotada estate consistently raised the same issues: workers did not have a written contract of employment, the infrastructure and condition of workers' homes was poor with no proper drainage, water supply was inadequate and wages were low. Channel 4 then stated that similar issues were raised by workers from the Dunsandle estate, namely that: housing conditions were poor, workers were unaware of how much money was being received from Fairtrade or what it was being spent on, other financial benefits they were receiving after 11 years as a Fairtrade certified estate were minimal; and wages appeared to be below the minimum industry standard.

Channel 4 stated that as a result of the information provided by the workers and to corroborate their testimony, the programme makers decided to investigate further. This included covert filming. Channel 4 then referred to the footage in the programme of a water standpipe on the Welbeck/Kotada estate that workers had to walk to in the summer and the footage of a worker's home on the Dunsandle estate which appeared in to be in poor condition.

Channel 4 disputed Fairtrade's complaint that the programme makers chose to focus on two estates that "sold virtually no tea on Fairtrade terms". Channel 4 stated that it was incorrect that virtually no tea was sold on the estates, and that by Fairtrade's own admission, the Welbeck/Kotada estate had earned close to £33,000 in Fairtrade premium since 1996. Further, Channel 4 stated that the point the report was making was primarily about the nature of the Fairtrade guarantee, consumers' expectations about that guarantee and whether Fairtrade was actually delivering on its guarantee of a better deal.

Channel 4 noted that there was some initial confusion regarding the amount of tea sold on the Welbeck/Kotada estate, stating they were led to believe that the estate sold considerable amounts to the Clipper brand. However, correspondence with Clipper and Fairtrade revealed the actual amounts of Fairtrade tea sold and the report accurately reflected the correct figures. Channel 4 concluded by stating that the fact that the amount of Fairtrade tea sold by the estates was less than other estates did not materially affect the thrust of the report, which was that workers on the two estates were claiming that Fairtrade's own rules were not being complied with contrary to the Fairtrade guarantee.

In respect of the background information referred to in Fairtrade's complaint, namely, that the programme makers repeatedly refused invitations from Fairtrade to meet and discuss how the Fairtrade system operated, Channel 4 stated that it offered Fairtrade the opportunity to put forward a spokesperson for interview, but that offer was refused. Channel 4 said that when the offer from Fairtrade was made to meet off camera, Channel 4 decided the best way forward was to seek Fairtrade's response through correspondence or in the form of a written statement, which was duly provided. In respect of Fairtrade's issue that Channel 4 did not speak directly with the Joint Body, trade union representatives or the estate manager, Channel 4 stated that they spoke with a number of estate workers who gave consistent testimony about conditions on the estate and that all the claims and allegations were put to the two tea estates and Fairtrade to allow them an opportunity to respond.

- b) In respect of Fairtrade's complaint that the programme makers misrepresented statements by Fairtrade in the programme as broadcast, Channel 4 stated:
- i) It disagreed strongly that the statement attributed to Fairtrade - "*relevant Fairtrade authorities will ensure the issue is given special attention*" was used out of context. Channel 4 stated that the point being made in the programme was not to do with the "organisation of the retirement bond" but rather that the workers felt that the bond was worthless to them. Further, Channel 4 said that as the bond was the main benefit the Joint Body had awarded to workers at Dunsandle, the claim being made was that the Joint Body was not responding to and addressing the needs and wishes of the workers. Channel 4 went on to state that on that basis, the response included from Fairtrade was the most relevant to the issue at hand, was on point and was reproduced accurately.

- ii) Fairtrade complained that by stating in the programme that it believed the report was “*not a fair representation of the reality of the estates in question*” it implied Fairtrade had viewed the programme prior to transmission. Channel 4 said the statement was included to represent fairly and accurately Fairtrade’s response to the issues raised in the report.

Channel 4 said that Fairtrade said in the statement that: “...it takes any allegations about the way Fairtrade operates very seriously but describes our report as ‘not a fair representation of the reality of the estates in question’”. Channel 4 further said that the statement would not have given viewers the impression that Fairtrade had previewed the report, but rather that Fairtrade disagreed with what the workers were claiming and the general thrust of the report and that this had been put to Fairtrade prior to transmission. Channel 4 then stated that even if some viewers did gain the impression claimed by Fairtrade, it did not result in unfairness to Fairtrade. Channel 4 stated that the line of commentary was taken from the statement Fairtrade provided to it prior to the broadcast.

- iii) Channel 4 then responded to Fairtrade’s complaint that the statement in the programme that Fairtrade had “*admitted*” that the delay in premiums reaching the tea workers was due to “*administrative problems*” was incorrect and implied wrongdoing on the part of Fairtrade., Channel 4 stated that it was accurate and appropriate to use the terms “*admitted*” and “*administrative problems*”. Channel 4 said that the commentary was based on correspondence with Fairtrade in which Fairtrade admitted that FLO-Cert (an international certification company responsible for the inspection and certification of producer organisations and traders against the agreed Fairtrade standards) needed to make “corrective action” to the Joint Body and that funds had not been distributed to the workers prior to the end of 2006 because they were being held in a German trust fund. Channel 4 further said that the correspondence stated that the money wasn’t getting to the workers and that the old system was being “phased out”. On that basis Channel 4 said there was an admission by Fairtrade that the old system was not working and to summarise the problems as “administrative problems” was fair and accurate. This was not an allegation of wrongdoing.
- iv) In response to Fairtrade’s complaint that Channel 4 did not fairly represent Fairtrade’s statement regarding how the Joint Body at the Welbeck/Kotada estate, had used the Fairtrade premium, Channel 4 stated that the information included in the report fairly and accurately reflected what Fairtrade had advised the programme makers in correspondence. Channel 4 said that Fairtrade had confirmed that the Fairtrade premium for the Welbeck/Kotada estate for the period 1996-1999 was €30,428, and that since 2004 there was a further amount of premium of €17,911.94. Adding the figures together gave €48,339.94 which converted to sterling was “close to £33,000”. Channel 4 stated this figure (€48,339.94) was confirmed by a Fairtrade representative: “From 1998 to 2006, Welbeck/Kotada Fairtrade tea sales attracted a Fairtrade Premium of €48,339.94”. Channel 4 said that all figures included were fair and accurate and clarification was sought from Fairtrade in respect of all figures.
- c) With reference to the complaint that the programme falsely stated that the workers interviewed were only willing to do so anonymously because they were scared of losing their jobs, Channel 4 denied that was the case. Channel 4 rejected the implication that workers were lied to or misled in any way, that there

was any attempt to bribe them or that they did not know they were being filmed. Channel 4 stated that throughout the research period it was clear the workers feared talking on camera openly due to the possibility of losing their jobs. Channel 4 then stated that each interviewee gave consent and, as was evident from the visibility of the cameras, was filmed openly in full knowledge that he/she was being filmed. Channel 4 stated that the interviewees consented only on the basis that the estate would not find out that they had agreed to speak with the programme makers. On that basis, Channel 4 submitted that the statement was justified and not unfair to Fairtrade or the estate.

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment in programmes included in such services. Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness, if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

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

Fairtrade's complaint was considered by Ofcom's Fairness Committee, its most senior decision making body in matters of Fairness and Privacy. In reaching its decision, the Committee carefully considered all the relevant material provided by both parties. This included viewing a recording of the programme as broadcast; reading the transcript; watching the untransmitted footage provided by Channel 4 and the recording provided by Fairtrade; reading the accompanying transcripts and all the written submissions (which included supporting documents). At Channel 4's request, the Committee reconsidered head a) of its decision. Having considered representations by both parties, the Committee confirmed its decision to uphold this part of the complaint.

- (a) The Committee considered Fairtrade's first complaint that the programme makers repeatedly implied that Fairtrade was not delivering on its "Fairtrade Promise" and that there was a failure of the Fairtrade certification. Fairtrade stated that in making these allegations the programme makers did not take account of material facts relating to: (i) how the Fairtrade system operated and (ii) the two estates which the allegations were based on.

As these two sub-heads of the complaint raised inter-related issues the Committee decided to consider them together.

Rule 7.1 of the Code provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. In applying this rule to the complaint under head (a) the Committee took account of Practice 7.9 of the Code. This provides 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.

The premise of the report

The Committee first noted what the programme said at the outset about the premise of the report. The introduction to the report stated:

“Now it promises a better deal for workers in poorer countries but does Fairtrade always deliver on the promise?...are things more complicated than the pictures of happy workers on the sides of the packets?”

In the item, the reporter then expanded:

“When you buy a product with the Fairtrade logo, you’re buying into the promise that producers will get a better deal. We decided to investigate the Fairtrade promise.”

Having visited the estates at Welbeck/Kotada and Dunsandle, the reporter said at the end of the report:

“There’s still clearly quite a way to go to bridge the gap between the Fairtrade experience of workers we spoke to and the aspirations of the Fairtrade foundation. Of course these are just two estates. Elsewhere Fairtrade may well be delivering the better deal it promises”

The reporter then quoted Fairtrade’s response to the report, in which Fairtrade said:

“Choosing tea carrying the Fairtrade label is one positive way that consumers can support workers on tea estates in developing their own projects to improve the future for their families and communities”

In response to this the reporter said:

“That may be, but the workers we met – they said they couldn’t see any real difference between working on a fair trade certified estate, and any other tea estate...It says on the packet it guarantees a better deal for workers in third world countries. That’s why we buy it... and that’s what it should do”

Taking together the introduction and the conclusion to the report, the Committee considered that the clear message to viewers was that the intention of the report was to question whether, when consumers purchased Fairtrade tea, the workers who produced it benefited from the promised better deal. Its conclusion - based on the two tea estates visited by the programme makers - was to cast doubt on whether this was the case.

The Committee set out to consider whether, in keeping with Practice 7.9, the programme maker took reasonable steps to ensure that material facts presented in the programme supported this premise.

The Fairtrade system

On the basis of the information provided by the parties, the Committee noted that the Fairtrade mark states that it “guarantees a better deal for Third World producers” and that the Fairtrade Labelling Organisation (“FLO”), of which the member for the UK is the Fairtrade Foundation, sets and maintains standards that apply to producers. The “Generic Fairtrade Standards for Hired Labour”

apply to all Fairtrade organisations working with hired labour, such as the two tea plantations featured in the programme. These standards set out minimum requirements, which a company must meet in order to become and remain certified as a Fairtrade producer. When a producer is certified, it will receive a Fairtrade premium on produce it sells on Fairtrade terms. Certification does not however mean that all goods sold will be purchased on Fairtrade terms. Tea and coffee from certified estates can be, and is, sold both to conventional and Fairtrade purchasers. Once a producer has received Fairtrade certification there are also progress requirements that apply. These establish a framework for continuous improvement as the organisation starts to receive income from the Fairtrade premium as a result of its sales to the Fairtrade market. The premium is paid into a fund reserved for investment in projects decided upon with the agreement of members of the estate's Joint Body.

In the Committee's view, and on the basis of the material provided to it, both the minimum requirements and the progress requirements form a key part of the Fairtrade pledge to guarantee "a better deal". It appeared to the Committee that the "better deal" (i.e. one that is guaranteed to be better than that achieved by non-Fairtrade producers) begins with the minimum requirements necessary for certification (for example, a Joint Body has to be in place to decide how the Fairtrade premium, once it is earned, will be used) and is followed by a requirement that any income from Fairtrade sales is spent in accordance with agreed progress requirements (for example, there are detailed progress requirements as to how the Joint Body should operate, including requirements about membership and reporting).

The Committee noted that the programme made reference to the minimum requirements, the progress requirements, and the premium paid for Fairtrade goods sold. It took the view that the programme adequately set out an overview of how the Fairtrade system worked.

The Committee next considered the evidence presented in the report and on which its investigation relied. The Committee noted that in examining the premise of the report, the programme makers visited two estates, Welbeck/Kotada and Dunsandle.

The Welbeck/Kotada estate

The Committee noted that in relation to the Welbeck/Kotada estate, the report said:

"[Welbeck/Kotada] received the stamp of Fairtrade approval 11 years ago. It supplies tea to the UK and internationally. Since 1996, Fairtrade figures reveal Welbeck/Kotada has earned close to £33,000 in what's known as Fairtrade premium...We wanted to find out whether workers at Welbeck were feeling the direct benefits of Fairtrade".

The report then looked at workers' concerns about water supply and the functioning of the Joint Body at Welbeck/Kotada.

At the end of her visit to the Welbeck/Kotada estate, the reporter said:

"Meeting the workers and looking at this footage, it's all very consistent. They say patently in clear terms, that they have seen no real improvement in their own living conditions since their estates became part of Fairtrade".

The Committee considered that the report was clearly suggesting that Fairtrade was not fulfilling its guarantee of a better deal for Fairtrade workers in relation to Welbeck/Kotada, and that the workers on this estate were not really benefiting from the premium. While it acknowledged that the £33,000 premium referred to was earned over a period of 11 years, viewers would have gained the impression from the tone of the report that the workers were not receiving corresponding benefits and improvements that might have been expected. In the Committee's view £33,000 over 11 years was not in fact a particularly substantial sum, especially as during this time there was a long period without any income. The Committee queried whether viewers would have fully appreciated this from the context of the report. In its opinion, viewers would have been left with the very clear picture that the amount earned ought to have made a more significant difference. In the Committee's opinion - based on the evidence - it was unfair to criticise Fairtrade for failures to make "real improvement" or progress, given the limited size of the premium and the actual length of the period over which it was earned.

Furthermore, the Committee noted that the report did not refer to the fact that the Welbeck/Kotada estate had not sold any tea on Fairtrade terms between 1999 and 2004 and therefore had not earned any Fairtrade premium at all in that period. Since the estate did not sell any Fairtrade tea during that time, the Committee took the view that the report was unfair to Fairtrade in relation to the presentation of material facts about the Welbeck/Kotada estate.

The Dunsandle estate

In relation to Dunsandle, the reporter said:

"We wanted to find out whether Welbeck was the only estate in the area where workers felt their lives hadn't really benefited from Fairtrade. Dunsandle Estate – which sells tea to markets outside the UK – has accumulated nearly £13,000 in Fairtrade premium since 1996. But in recent years, its Fairtrade sales have been very low. Now they account for only a small proportion of total production. But it still has the Fairtrade stamp of approval but with so little money are the workers still getting a better deal?"

The Committee noted that the report acknowledged that sales of Fairtrade tea had been "very low" in recent years. However the statement "but it still has the Fairtrade stamp of approval" appeared to suggest that it was surprising, and perhaps inappropriate, that an estate producing small quantities of Fairtrade tea could remain Fairtrade certified. It was evident to the Committee from the submissions that certification depended on the estate observing the minimum standards and not on sales figures. Although the report had provided an overview of how the Fairtrade system works (as referred to above), the Committee considered that this passage was misleading and was likely to have confused viewers' understanding of how the Fairtrade system works and whether it lived up to its publicly stated guarantee in relation to this particular estate.

As with the Welbeck/Kotada estate, the Committee took the view that the report was clearly suggesting that Fairtrade was not appropriately fulfilling its guarantee of a better deal for Fairtrade workers at Dunsandle and that workers at the estate were not really benefiting from the premium. The programme stated that "...when you buy Fairtrade tea you buy into a promise – a promise that it will directly benefit the workers". The Committee took the view that although the report

acknowledged that the amount earned was low, it nevertheless suggested, both from the tone and context of this reference, that there ought to have been a greater impact on the workers. In other words, the report suggested that the workers on the Dunsandle estate were not receiving the better deal that was supposedly guaranteed by Fairtrade. In the Committee's opinion this was unfair to Fairtrade given the very small amount of money earned and the length of the period over which it was earned.

Since Dunsandle was producing only "very low" amounts of Fairtrade tea, the Committee took the view that it did not demonstrate the failing on the part of Fairtrade that the report suggested. As set out above in relation to the Welbeck/Kotada estate, the report appeared not to acknowledge that workers at the estate would only benefit from the premium if they were producing tea sold on Fairtrade terms. Nor did it sufficiently make clear the fact that continuing to remain certified by Fairtrade was not dependent on the quantity of tea sold under Fairtrade terms. In these circumstances, the Committee took the view that the report was unfair to Fairtrade in its presentation of material facts in relation to the Dunsandle estate

Conclusion

In all the circumstances, the Committee considered that the programme makers did not take sufficient care to ensure that material facts were not presented in a way that was unfair to Fairtrade. This was because, in examining its premise that Fairtrade was not delivering the better deal it promised to third world workers, the report focused on two estates which, although Fairtrade certified, were not selling significant amounts of Fairtrade tea. In the Committee's view, the report did not make clear that this was the reason workers on these estates were not benefiting from significant amounts of Fairtrade premium but suggested, rather, that workers were not receiving the better deal that was supposedly guaranteed by Fairtrade. This contention was not supported by the evidence put forward in the report. This was unfair to Fairtrade.

Accordingly, the Committee has upheld head (a) of Fairtrade's complaint.

- (b) The Committee considered Fairtrade's complaint that the programme makers misrepresented statements by Fairtrade in the programme as broadcast. Fairtrade identified four instances in which it considered it was misrepresented.

In reaching its decision in relation to the four sub-heads of complaint, the Committee took account of Rule 7.1 of the Code as detailed above. The Committee also took account of Practice 7.9 of the Code.

- i) The Committee first considered Fairtrade's complaint that the programme makers misrepresented its comment "*Relevant Fairtrade authorities will ensure the issue is given special attention*" when referring to the issue of the retirement bonds at Dunsandle estate.

In viewing the programme, the Committee noted the following relevant excerpts:

Commentary *"The estate told Channel 4 News it had not received any complaints about the function of the Joint Body and when asked about the bond, the Fairtrade Foundation told us:*

Fairtrade [excerpt read out on screen]:

"...with small amounts of money and hundreds of workers the Joint Body has to prioritise what will bring the broadest benefits..."

Commentary ***"In future though they say the relevant Fairtrade authorities will ensure the issue is given special attention."***

The Committee noted that the comment by Fairtrade was taken from Fairtrade's letter of 20 April 2007 in response to the programme makers' question contained in their letter of 12 April 2007. The exchange was as follows:

Programme makers:

"We have been told, although workers do have representatives on the Joint Body, it does not respond to their wishes or questions."

Fairtrade: "It is the prerogative of the workers to complain if the members of the Joint Body are not responsive to their requests – no such information has been conveyed to FLO-Cert. With small amounts of money and hundreds of workers with many proposals, the Joint Body has to prioritise what will bring the broadest benefits. **However, FLO-CERT will ensure this issue is given special attention as part of the future inspection visits**".

[All Ofcom's emphases]

Having considered the above material, it was apparent to the Committee that the comment "relevant Fairtrade authorities will ensure the issue is given special attention" was not made in relation to the retirement bond issue at the Dunsandle estate. Rather the comment was made in relation to the workers' view that the Joint Body on the Dunsandle estate was not responding to their concerns. The Committee noted that Fairtrade's position in relation to both the operation of the Joint Body at Dunsandle estate and the issue of the retirement bonds was set out clearly and separately in its first response to the programme makers. In this regard, the Committee noted Fairtrade's explanation as referred to above, in respect of the operation of the Joint Body, and also noted Fairtrade's detailed response in relation to how the insurance policies and bonds were issued to the workers.

In the Committee's opinion, viewers would have been likely to have understood that Fairtrade would re-examine the issue of retirement bonds at Dunsandle and that it had accepted that the organisation of the retirement bonds was a matter which required "*special attention*". The Committee considered that accepting that the issue of the bond needed "special attention" (which concerned the management of financial assets) was significantly and materially different from accepting that workers had complained that the Joint Body was not responsive. Taking into account the above factors, the Committee considered that the programme makers misrepresented the comment by Fairtrade and that this resulted in unfairness to Fairtrade.

- ii) The Committee next considered Fairtrade's complaint that the programme stated that Fairtrade had said the report was "*not a fair representation*", which implied Fairtrade had seen the programme prior to its transmission.

In considering this sub-head of complaint, the Committee took account of Rule 7.1 and Practice 7.9 as noted above, and also Practice 7.6 which provides that when a programme is edited, contributions should be represented fairly.

The Committee noted that the comment by Fairtrade used in the programme was taken from Fairtrade's statement for broadcast and was used in the following context:

Commentary *"The Foundation says it takes any allegations about the way Fairtrade operates very seriously, but describes our report as "not a fair representation of the reality of the estates in question."*

In the Committee's opinion, it is unlikely that viewers would have assumed Fairtrade had seen the report prior to its broadcast. In reaching this decision, the Committee took into account the context in which the statement was made, namely that Fairtrade considered seriously any allegations made against it and that it disagreed with the allegations made in the report. The Committee considered that viewers' attention would have been drawn to this over-arching message rather than to considering whether or not Fairtrade had viewed the programme before it was broadcast. However, even if viewers had drawn such a conclusion, the Committee considered that this would not have significantly affected viewers' understanding of Fairtrade's position in relation to the report, since it was clear that Fairtrade did dispute the allegations made in the report. On this basis, the Committee found that Fairtrade's statement was not unfairly edited and no unfairness resulted to Fairtrade.

- iii) The Committee then considered Fairtrade's complaint that the programme stated that Fairtrade had "*admitted*" the reasons for a delay in premiums reaching the tea workers were "*administrative problems*".

In considering this sub-head of complaint, the Committee took account of Rule 7.1 and Practice 7.9 of the Code, in conjunction with Practice 7.11 which provides that, if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

The Committee noted the following excerpt from the programme:

Commentary *"We asked the Fairtrade Foundation what had happened with the rest of the Fairtrade premium. They [Fairtrade] **admitted** that for the last two years, because of **administrative problems**, more than 12,000 pounds are still to be distributed by the Joint Body. And in India, that's the kind of money that can change people's lives."*

[Ofcom's emphasis]

The Committee noted that the issue of the delay of the premiums being distributed to the Joint Body was first raised by Fairtrade in its letter to the programme makers on 20 April 2007. Fairtrade advised that the Fairtrade premium payments to the Welbeck/Kotada Joint Body were received via an NGO as the Joint Body did not have Indian Government clearance. Fairtrade also advised that prior to that arrangement, the Fairtrade premium payments were held in a German Trust fund and that in February 2007, the premiums were transferred to the NGO account which in turn “now has to make this available to the JB”..

In later correspondence with Channel 4, Fairtrade referred to recent delays in delivering the Fairtrade premium and went on to say:

“...FLO Premium Trust Account held in Germany held premiums on behalf of producers in India until they were able to identify a channel that had FCRA clearance to receive funds from overseas...A series of solutions has now been found and this system is now being phased out...”

“The major problem has been overcoming the issue of getting FCRA clearance to transfer the premiums...into the designated Welbeck/Kotada Joint Body Account, so that the newly elected members of this body can get on with spending the money itself.”

The Committee acknowledged that the term “*admitted*” could be taken to imply an element of concealment on the part of Fairtrade which was not the case, particularly as Fairtrade provided the information voluntarily to the programme makers. Further, the Committee noted that the wording “*administrative problems*”, did not explain the complex legal restrictions on the movement of foreign currency that Fairtrade had referred to in its correspondence.

However, the Committee also considered that Fairtrade’s account had demonstrated that there were problems and failures in the system for delivering the Fairtrade premium to producers and that it was a matter which Fairtrade had not been able to resolve. In this context, the Committee considered that the commentary that Fairtrade had “*admitted*” to “*administrative*” problems was not unfair to Fairtrade. Further, the Committee did not consider that the terms used by the programme makers constituted significant allegations of wrongdoing that required them to give Fairtrade an opportunity to respond.

(iv) The Committee then considered Fairtrade's complaint that the programme makers did not fairly represent Fairtrade’s comments made in relation to how the Joint Body at Welbeck/Kotada estate had used its Fairtrade premium. As noted above, in considering this sub-head of complaint the Committee took account of Rule 7.1 and Practice 7.9.

The Committee noted the following references in the programme which related to how the Joint Body at Welbeck/Kotada had used its Fairtrade premium:

Commentary “*Since 1996, Fairtrade figures reveal Welbeck/Kotada has earned close to £33,000 in what is known as Fairtrade premium.*”

“*...over the first eight years they claimed approximately £21,000 was spent on benefits...including: “medical*

expenses for worker's children, grants to cover admission fees to a nursing course for two girls, scholarships for higher education."

Having considered the material before it, the Committee considered that the figures referred to in the programme as broadcast accurately reflected those provided by Fairtrade.

The Committee noted, as discussed above at head a), that the programme makers did not say in the report that the Welbeck/Kotada estate had not sold any tea on Fairtrade terms from 1999-2004 and as such, it had not earned any Fairtrade premium for that period. However, the omission of this information did not result in a misrepresentation of how the Joint Body at Welbeck/Kotada used the Fairtrade premium it had earned. In reaching this decision, the Committee considered that the purpose of the inclusion of the information was to indicate to viewers that the Fairtrade premium had been spent effectively over an eight year period, irrespective of when during that period the premium was actually accrued. The Committee considered this was further supported by the inclusion of details of what the Fairtrade premium was spent on, namely medical expenses, and education. Whilst it was noted that, in pre-transmission correspondence, Fairtrade provided a detailed inventory of expenditure of the premium, it was not incumbent on the programme makers to include all examples listed, but rather to give a flavour of the types of projects the premium was spent on.

Taking into account the factors noted above, the Committee considered that material facts were not misrepresented, disregarded or omitted in the programme's analysis of how the Joint Body had used the Fairtrade premium. Accordingly, no unfairness resulted to Fairtrade.

Taking into account the findings at sub-heads (b)(i) to (b)(iv), Ofcom partly upheld head (b) of Fairtrade's complaint.

- (c) The Committee lastly considered Fairtrade's complaint that the programme falsely stated that the workers on the two tea estates wished to remain anonymous because *"they were scared of losing their jobs"*. In considering this head of complaint, the Committee took account of Rule 7.1 and Practice 7.9 as detailed above.

In reaching its decision, the Committee viewed the untransmitted footage of tea estate workers from the Welbeck/Kotada and Dunsandle estate provided by the programme makers, and noted the following excerpts from three of the workers:

- | | |
|--------------------|---|
| Worker 1 | "Yes I agree sir, but the identification should not be revealed on any account. I agree so long as the identity is not known." |
| Worker 3 | "I agree as long as my identity is not revealed to them. Nobody should know that I have come here to talk to you...The estate shouldn't know who are here with us. If you agree for this, I am also agreeable." |
| Interpreter | "She says as long as her identity is not revealed, as she's come without knowledge of the management." |

Worker 4 “The company shouldn’t come to know our images. If they don’t reveal then we agree to be interviewed.”

The Committee also viewed the recording of the tea estate workers provided by Fairtrade following the broadcast of the programme, in which they stated they were not aware they were being filmed, they had not said that they were too afraid to be filmed and they did not request that their identities be kept a secret.

The Committee noted that the material provided by both parties relied on translation from the original Tamil. The Committee also noted that the Fairtrade material was recorded following the broadcast of the programme. The Committee’s role was not to establish conclusively from the material provided by the parties whether the workers on the tea estate requested anonymity because they were scared of losing their jobs, but rather to address itself to the issue of whether the programme makers took reasonable care in relation to material facts as discussed in Practice 7.9 of the Code.

In the Committee’s view it was clear from the transcript referred to above that the participation of at least three workers was contingent on the concealment of their identities. The Committee also noted from the untransmitted footage that the camera would have been in full view of several of the interviewees, there was no indication that covert filming had taken place, and that it appeared that these workers knew they were being filmed and requested anonymity in order that their identities would not be revealed to the management of the estates.

Taking into account these factors and the material before it, the Committee considered that the programme makers took reasonable care in relation to material facts, and that it was neither unreasonable nor unfair to Fairtrade for the programme makers to have stated that the workers requested anonymity because they were scared of losing their jobs.

Accordingly, the Committee did not uphold head (c) of Fairtrade’s complaint.

Fairtrade’s complaint of unfair treatment was upheld in respect of heads (a) and (b)(i) and the broadcaster found to be in breach of Rule 7.1.

Ofcom directed Channel 4 to broadcast a summary of this finding.

Complaint by Mr Darren McDermott

Stephen Rhodes Consumer Programme, BBC Three Counties Radio, 29 March 2007

Summary: Ofcom has upheld parts of this complaint of unfair treatment by Mr Darren McDermott. It has not upheld the complaint of unwarranted infringement of privacy in the broadcast of the programme.

During this edition of BBC Three Counties Radio's consumer programme, the presenter, Stephen Rhodes, spoke to Mrs Joyce van Buren about problems with her rented accommodation. Mrs van Buren had rented accommodation through Grants Lettings Agency ("Grants Lettings") in High Wycombe. She said to the presenter that a deposit of £1000 that she had paid to the landlord when she moved into the property had been withheld. Stephen Rhodes named Grants Lettings and disclosed its office address on air. He also explained that he had attempted to speak with a man called "Darren" at Grants Lettings who he described as "the manager or the owner, I'm not sure", but who had refused to talk to him. Mr Darren McDermott, the complainant, was the man referred to as "Darren" in the programme.

Mr McDermott complained that he was unfairly treated in the programme and that his privacy was unwarrantably infringed in the broadcast of the programme.

Ofcom found as follows:

- Ofcom took the view that the programme makers did not take adequate steps to satisfy themselves as to the facts relating to Mrs van Buren's tenancy agreement. In these circumstances the programme was not justified in criticising Mr McDermott in relation Mrs van Buren's loss of her deposit. Furthermore, in these circumstances, the programme makers were not justified in identifying Mr McDermott.
- In some circumstances a legitimate expectation of privacy may attach to the disclosure of an individual's name and the name and location of an individual's place of work, However Ofcom found that in the particular circumstances of this case and in view of the public-facing nature of Mr McDermott's work as a Lettings Manager, Mr McDermott did not have a legitimate expectation of privacy in relation to the disclosure of his first name, occupation and work address in the programme as broadcast. Ofcom therefore considered that Mr McDermott's privacy had not been infringed. Having reached this view, it was not necessary for Ofcom to go on to consider the question of whether any infringement was warranted.

Introduction

On 29 March 2007, BBC Three Counties broadcast an edition of *Stephen Rhodes' Consumer Programme*, a consumer complaints programme to which listeners could phone in to discuss a wide range of consumer issues and problems. During this edition of the programme the presenter, Stephen Rhodes, spoke to Mrs Joyce van Buren, referred to as "Joyce" in the programme. Mrs van Buren had rented accommodation through Grants Lettings Agency ("Grants Lettings") in High Wycombe, for whom Mr Darren McDermott worked as the Lettings Manager. Mrs van Buren complained to the programme that she had paid a deposit of £1000 to the

landlord when she moved into the property, but that when she left it, the landlord failed to return the money because, it was alleged, the property had been damaged.

During the programme Stephen Rhodes named Grants Lettings and disclosed its office address on air. He also explained that he had attempted to speak with a man called "*Darren*" at Grants Lettings who he described as "*the manager or the owner, I'm not sure*", but who had refused to talk to him. Mr Darren McDermott, the complainant, was the man referred to as "*Darren*" in the programme. Stephen Rhodes referred to "*Darren*" on two separate occasions during the relevant part of the programme and stated that he had been "*less than helpful or accommodating*" and had not wanted to assist him with his enquiries on behalf of Mrs van Buren and her attempts at trying to recover the deposit. Stephen Rhodes went on to advise Mrs van Buren to take Grants Lettings and the landlord to court to recover the deposit. During the same section of the programme, Stephen Rhodes reiterated the name and address of Grants Lettings and referred to its refusal to cooperate with his attempts to assist Mrs van Buren in recovering the deposit.

Mr McDermott complained to Ofcom that he was unfairly treated and his privacy was unwarrantably infringed in both the making and broadcast of the programme.

The Complaint

Mr McDermott's case

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

- a) The presenter, Stephen Rhodes, unfairly, and without proper research, referred to Mr McDermott as "*Darren*" on numerous occasions throughout the programme in derogatory terms as being partly responsible for the problems the tenant, Mrs van Buren, had encountered despite Grants Lettings having no contract with her. In relation to this head of complaint, Mr McDermott stated that:
 - i) He had explained to Stephen Rhodes prior to the programme that Grants Lettings' relationship with the landlord and the tenant of a property was "let only", which meant that Grants Lettings introduced the landlord to the tenant. It did not manage the property on the landlord's behalf nor did it hold the tenant's deposit. Mr McDermott complained that this information was not included in the programme.
 - ii) At no time was the landlord of the property, who was responsible for all contact with Mrs van Buren and for withholding the deposit, referred to in the programme by name.
 - iii) The advice given to Mrs van Buren by Stephen Rhodes with regard to taking both the landlord and Grants Lettings to court was inaccurate and misleading. Mr McDermott said that Mrs van Buren could not take Grants Lettings to court as she had no contract with the company. Nor was Grants Lettings responsible for holding (or withholding) the deposit or managing the property she had rented from the landlord.

In summary, Mr McDermott complained that his privacy was unwarrantably infringed in the broadcast of the programme in that:

- b) He did not consent to being referred to in the programme as an employee of Grants Lettings (in derogatory terms), which rendered him identifiable to the general public.

The BBC's case

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

- a) The BBC said that Mrs van Buren had contacted the programme about recovering a deposit of £1,000 for her former landlord. This deposit was paid in the first instance by her insurers (her house had been damaged by fire which meant that she needed to rent temporary accommodation) and it was her responsibility to recover the deposit. She told the programme that she had been unable to recover the money and as a consequence it had been deducted from her final insurance settlement. She asked for the programme for advice as to how to resolve the situation. The BBC said that it did not accept that any of the references to Mr McDermott in the programme were derogatory in tone or content. It said that it believed that this was borne out by the recording of the programme.

On the facts available, the BBC said that the programme was justified in identifying Mr McDermott, and Grants Lettings, as being involved in the dispute. The BBC said that the lawyer who advised the programme on this issue informed the programme that the fact that Grants Lettings had no contract with the tenant did not mean that they could not be a party to this dispute. Mrs van Buren's insurers confirmed to the BBC that the initial rent for the property, and the £1,000 deposit for which she was ultimately liable, was paid by them directly to Grants Lettings, not to the landlord. In that respect, Mrs van Buren's dispute was arguably with Grants Lettings. The BBC said that Grants Lettings, not the landlord, had taken the deposit from her; it was not unreasonable to expect it either to refund it, or to explain why it would not be refunded.

The BBC said that Mrs van Buren's complaint was that she had received neither the money, nor an explanation. Mr McDermott, as Lettings Manager, was directly involved, and indeed, was identified by Grants Lettings as being the person responsible when first approached by the programme.

In response to the particular matters raised by Mr McDermott in relation to this element of the complaint, the BBC said that:

- i) It disputed Mr McDermott's account of the one conversation that took place between himself and Stephen Rhodes before Mr McDermott decided to take no further calls from the programme. The BBC said that Stephen Rhodes had no recollection of the information referred to in the complaint being given and there was no record of it being given in his notes of the conversation. The programme team was well aware of the issues relating to "let only" contracts and had dealt with a number of such cases in the past. The BBC said that the fact that, in this particular case, the deposit was paid directly to Grants Lettings meant that the advice given by the programme to Mrs van Buren was still appropriate and justified. The BBC said that during the single telephone conversation which took place between Mr McDermott and Stephen Rhodes, Mr McDermott did volunteer the information that Mrs van Buren deposit was being withheld by the landlord because of damage to the property. This had not, at this time, been communicated to Mrs van Buren and the BBC argued

that the fact that Mr McDermott was in possession of this information was not entirely consistent with his claim that his involvement ended when he introduced the landlord to the tenant.

ii) It did not accept that any unfairness attached to the fact that the landlord was not named. The BBC said that the fact that there was a landlord involved in the dispute was made perfectly explicit on a number of occasions in the broadcast therefore making clear that another party, other than Grants Lettings, might ultimately be held to be responsible for the treatment alleged by Mrs Van Buren. That was the basis of the advice given to her in the programme: that she should issue proceedings against both Grants Lettings and the landlord in the small claims court where the issue of responsibility could be resolved. Had the programme not mentioned the fact that there was a landlord who might ultimately be held to be responsible, this might well have been unfair to Mr McDermott. Omitting the name of the landlord, according to the BBC, was not.

iii) The advice given to Mrs van Buren in the programme was neither inaccurate nor misleading. The BBC said that despite there being no written contract between Grants Lettings and Mrs van Buren, this did not mean that she might not have some cause of action against it. This was particularly so as Grants Lettings had taken from her insurers the rent and deposit for the property. Thus, the BBC said that Grants Lettings was directly involved in transactions relating to the letting and, in taking the money, and could reasonably be seen to be acting as the landlord's agent. The BBC said that Grants Lettings might well, therefore, have had some responsibility for either refunding the deposit or providing an explanation as to why it was not being refunded. It would be for the small claims court to decide the issue. The BBC said that the programme went no further than this and it did not express a view as to which party should be held responsible. It had been stated only that for Mrs van Buren to establish who was responsible she might have to take both parties to the small claims court. This was good and appropriate advice that was itself based upon legal advice taken by the programme makers from a solicitor experienced in such matters.

In summary, and in response to Mr McDermott's complaint of unwarranted infringement of privacy in the broadcast of the programme, the BBC said that:

b) It did not accept that there was anything in the tone or content of the programme as broadcast that was in any way derogatory towards Mr McDermott. Nor did the BBC accept that being identified in the way Mr McDermott was breached his privacy: his company had taken money from Mrs van Buren and could reasonably be asked to account for that money. Mr McDermott was the Lettings Manager and thus directly responsible for the management of this dispute.

Mr McDermott's comments in response

In summary, and in response to the BBC's statement, Mr McDermott said that:

a) Mr McDermott said that he had had no involvement in the letting of the property in question and that he had not even started with the company at the time of the initial letting. The programme had unjustifiably identified him. In response to the particular points under this head of complaint, he argued as follows:

i) Mr McDermott said that in his first telephone conversation with Stephen

Rhodes he had stated that the arrangement with Mrs van Buren was a “let only” instruction and that he could not do anything legally. Mr McDermott said that Stephen Rhodes responded that “you may not be able to do anything legally, but surely you can do something morally”. Mr McDermott said that he told Stephen Rhodes that he would speak to the landlord and get him to contact him, which he did. Mr McDermott said that it was not his fault that Stephen Rhodes could not remember such an important piece of information. Mr McDermott said that the payment of a deposit to a certain party was in this case irrelevant as Mrs van Buren’s tenancy agreement clearly stated that the deposit was “HELD BY THE LANDLORD”. Mr McDermott said that Mrs van Buren’s claim that the deposit was being withheld because of damage to the property, and that this was not communicated to her, was refuted. Mr McDermott said that he had witnessed Mrs van Buren speak to his predecessor (when he first joined the agency) about the reasons and that she should communicate with the landlord directly. Mr McDermott said that he had nothing to do with the letting in question as he had not started employment at the relevant time.

ii) Mr McDermott said that the landlord was only ever referred to as the “the landlord” in the programme. This was a general term unlike the name “Darren” which was specific. Mr McDermott said that people could identify him as being involved (according to the programme) in the dispute, but nobody could identify the landlord from the term “landlord”. This, according to Mr McDermott, weighed the argument against him.

iii) Mr McDermott said that the BBC’s lawyer was incorrect in his advice that Grant Lettings could be a party to the dispute, as this was incorrect in law. Mr McDermott said that Mrs van Buren could, if she wished, make a claim against the landlord to recover the deposit and not Grant Lettings. Then, if Grant Lettings had made any error, the landlord could, in turn, make a claim against Grant Lettings.

b) Mr McDermott said that he had been identified by members of the public, though he was not involved with the letting of the property concerned.

The BBC’s Response

In summary, and in response to Mr McDermott’s comments, the BBC said that having studied Mr McDermott’s response to its first statement, and the copy of the tenancy agreement which he supplied to Ofcom, the BBC had taken further advice from two different legal sources about the advice which the programme offered to Mrs van Buren, namely that she should bring legal proceedings against both the landlord of the property she was letting, and Grants Lettings who had facilitated the let.

On the basis of the new advice, the BBC now accepted that the advice given to Mrs van Buren by the presenter was not appropriate and that the programme should have advised her to take legal action against the landlord only. The BBC said that it apologised to Mr McDermott for this error but it pointed out that it was a mistake made in good faith on the basis of legal advice which the programme makers obtained and which they had no reason to think might not be correct.

The BBC also said that although Mr McDermott said that he had not started at Grants Lettings when the contract with Mrs van Buren was completed, when the programme makers contacted Grant Lettings about the case they were told specifically that Mr

McDermott was the person who should be contacted. If this was not the case, then both Grants Lettings and Mr McDermott had opportunities to correct this, but they did not. The programme-makers proceeded on that basis, in good faith.

Decision

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

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.

Ofcom's Executive Fairness Group considered Mr McDermott's original complaint. The BBC requested a review of the Provisional Decision finding in relation to privacy. The Fairness Committee, Ofcom's most senior decision making body in matters of Fairness and Privacy, reviewed that part of the complaint. The adjudication reflects the Committee's decision.

In reaching a decision Ofcom considered a recording and transcript of the programme, and the submissions of both parties, including supporting material.

a) Ofcom first considered Mr McDermott's complaint that he was treated unfairly in the programme as broadcast in that he was referred to a number of times in the programme as being partly responsible for the problems that the tenant, Mrs van Buren, was experiencing.

In considering this element of Mr McDermott's complaint, Ofcom took account of Rule 7.1 of the Code. This states that broadcasters must avoid unjust or unfair treatment to individuals and organisations in programmes. Ofcom took account of Practice 7.9 of the Code which states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Ofcom also considered that it was open for programme makers and broadcasters to take a particular viewpoint to comment on a particular subject. However any such statements included in a programme should not be presented in a way that could lead to unfairness to others. Taking this practice into account, Ofcom first addressed separately each of Mr McDermott's specific points of complaint under this head concerning the programme's treatment of him.

i) Ofcom considered Mr McDermott's complaint that the programme's presenter, Stephen Rhodes, failed to mention that Grants Lettings' relationship with the landlord and tenant in this case was "let only". And that the agency did not manage the property or hold tenants' deposits on behalf of landlords, although this information was provided by Mr McDermott prior to broadcast.

With regard to the different recollections of Mr McDermott and the BBC about the content of the conversation that took place prior to the programme, Ofcom acknowledged there was a conflict of evidence between the parties. Ofcom is not required to resolve conflicts of evidence as to the nature or accuracy of

particular accounts of events but to adjudicate on whether the complainant has been treated unfairly in the programme as broadcast and/or its privacy unwarrantably infringed in the making of the programme or the programme as broadcast.

Ofcom noted the obligation on the broadcaster to present material facts, in relation to the tenancy under discussion in the broadcast programme, in such a way that it did not result in unfairness to Mr McDermott. It was not possible for Ofcom to conclude whether or not material information was provided to the programme makers and then omitted from the programme, as stated by Mr McDermott. However, Ofcom went on to consider (below at point iii)) whether the wider presentation of information relating to the tenancy and responsibility for the withholding of the deposit resulted in unfairness to him.

ii) Ofcom considered Mr McDermott's complaint that at no time during the programme was the landlord referred to by name although it was he who was at fault.

Ofcom again noted the obligation on broadcasters to ensure that the presentation of material facts does not result in unfairness. It considered that the programme makers were under no obligation to refer to the landlord by name in the programme but rather to ensure that material facts in relation to the tenancy under discussion were presented fairly. Ofcom therefore found that such an omission did not result in unfairness to Mr McDermott. However, Ofcom went on to consider (below at point iii)) the issue of whether the portrayal of Mr McDermott in connection with responsibility for the withholding of the deposit resulted in unfairness to him

iii) Ofcom considered Mr McDermott's complaint that the advice Stephen Rhodes gave on the programme was inaccurate and misleading and therefore unfair to him.

Ofcom noted the BBC's second statement, in which it accepted, after reading the tenancy agreement, that the advice given by Stephen Rhodes in the programme was not appropriate. Mrs van Buren should have been advised that she could take legal action against the landlord alone. Ofcom considered that, although the BBC said that it apologised to Mr McDermott for the error and that it was made in good faith, it was, nevertheless, the responsibility of the BBC to satisfy itself before the broadcast of a programme that the presentation of material facts did not result in unfairness.

Ofcom noted that the programme makers had relied at the time of the broadcast on their knowledge of tenancy agreements in general and considered that they had not taken the reasonable steps discussed above to satisfy themselves concerning the material facts in relation to this particular tenancy agreement. It was therefore, in Ofcom's view, not justified for the programme to criticise Mr McDermott for being partly responsible for the withholding of Mrs van Buren's deposit. Nor was it justifiable to identify him in this context by referring to his first name "*Darren*", together with his job title (Lettings Manager) and where he worked (Grants Lettings) and the company's full address. Ofcom considered that the programme had apportioned blame to, and had suggested wrongdoing by, Mr McDermott without taking reasonable care to ensure that the material facts presented in the programme did not result in unfairness to him.

Taking all the above factors into account, Ofcom found that the programme did result in unfairness to Mr McDermott in relation to his complaint at point a) iii) above.

Accordingly, Ofcom has partly upheld Mr McDermott's a complaint of unfair treatment in the programme as broadcast.

b) Ofcom then considered Mr McDermott's complaint that his privacy was unwarrantably infringed in the broadcast of the programme by the disclosure of his first name, occupation and place of work. Mr McDermott had complained that this had rendered him identifiable to the general public without his prior consent to do so. In Ofcom's view the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted? (Rule 8.1 of the Code).

Addressing the first of these questions, Ofcom first considered whether Mr McDermott had a legitimate expectation of privacy concerning the disclosure of his first name, occupation and place of work with its full address. Ofcom noted that there are circumstances where the disclosure of details such as someone's first name, occupation and place of work could attract a legitimate expectation of privacy. However, having examined the particular facts of this case Ofcom recognised that Mr McDermott worked in a customer focused environment. Further he was at the time of the broadcast a Lettings Manager, both a public facing role and one where he had responsibility within the company. In such circumstances Mr McDermott's name, position and work address would already have been publicly available information. While it is not necessarily the case that the prior disclosure or availability of information entirely negates the potential for information to be considered private, in this case the Committee considered that it significantly reduced the expectation of privacy in relation to that information.

Importantly, only Mr McDermott's first name was mentioned in the programme – further limiting Mr McDermott's expectation of privacy and reducing the likelihood of Mr McDermott being identifiable to those who did not know him already. Furthermore, although the report unfairly connected Mr McDermott with the problems that Mrs van Buren had been experiencing and thereby suggested professional wrongdoing (see head a)iii) above), in Ofcom's view these allegations, which were limited to his professional reputation and not his personal, home or family life, did not contain any inherently private or sensitive information. Taking all these factors into consideration, Ofcom considered that Mr McDermott did not have a legitimate expectation of privacy in relation to the disclosure of his first name, occupation and work address in the programme as broadcast.

Having found that Mr McDermott did not have a legitimate expectation of privacy in the circumstances of this case, Ofcom found that there was no infringement of privacy. Therefore Ofcom did not go on to consider whether any infringement was warranted.

In conclusion, the complaint of unfair treatment was partly upheld and the broadcaster found in breach of Rule 7.1 of the Code. The complaint of unwarranted infringement of privacy in the broadcast of the programme was not upheld.

On this occasion Ofcom has directed the BBC to broadcast a summary of the finding of unfair treatment.

Not Upheld

Complaint by Gentoo Group Limited brought on its behalf by Harbottle & Lewis LLP,

Inside Out, BBC1 North East & Cumbria,
Mike Parr Breakfast Show, BBC Radio Newcastle,
Look North, BBC1 North East & Cumbria, 14 November 2007

Summary: Ofcom has not upheld this complaint of unfair treatment, made by Gentoo Group Limited.

On 14 November 2007, BBC1 broadcast an edition of *Inside Out* that reported on the housing renewal and regeneration work, taking place in Sunderland, by the company Gentoo Group Limited ("Gentoo"). Shortened versions of the *Inside Out* programme were broadcast on the Mike Parr Breakfast Show and Look North, earlier in the day.

Gentoo complained to Ofcom that it had not been provided with an appropriate opportunity to respond to some of the programme's allegations, and, that the three broadcasts had presented its decision not to take part in the programme in an unfair way.

Ofcom found as follows:

- The programme makers provided Gentoo with a timely and appropriate opportunity to respond to significant allegations made against it in the programme.
- The *Inside Out* programme had presented Gentoo's reasons for not taking part in the programme, in a fair way.
- The Mike Parr Breakfast Show stated that Gentoo did not wish to take part in it because it had been given insufficient time to respond to the allegations. This was inaccurate as Gentoo had stated that the reason was that it had not been provided with adequate detail concerning the allegations. On balance, however, Ofcom found that this portrayal of Gentoo's position did not result in unfairness to Gentoo in the programme as broadcast.
- The Look North did not refer to Gentoo's reasons for not taking part in the *Inside Out* programme. Ofcom found this editorial decision by the programme makers did not result in unfairness to Gentoo in the programme as broadcast.

Introduction

On 14 November 2007, BBC1 North East & Cumbria broadcast an edition of its regional current affairs and investigative programme, *Inside Out*, which focused on the issue of housing renewal and regeneration in Sunderland.

The programme explained that in 2001, Sunderland City Council ("the Council") sold more than 36,000 council houses to a company called Gentoo Group Limited ("Gentoo"), formerly Sunderland Housing Group. It said that at the time the Council had explained that the sale would make it possible for repairs and improvements to be made to the properties. The programme sought to examine whether the work of Gentoo had improved the life of those on city estates, as promised.

The programme featured interviews with current and former residents on the affected housing estates, both tenants of Gentoo owned houses, and owner-occupiers. A number of these individuals felt that they were not better off, since Gentoo's purchase of the Council's housing stock. These included:

- Mr Atkinson, a tenant who had voted 'yes' to the housing stock transfer in the belief that the estate on which he lived would be modernised. He was unhappy as the estate on which he lived had been demolished and his old estate community had been "*destroyed*";
- Mr and Mrs McLoughlin, owner-occupiers who said Gentoo's offers to purchase their property did not allow them to buy a comparable property elsewhere; and
- Ms Smiles, a tenant with a disability who had voted for the housing stock transfer to Gentoo in the belief that it would be beneficial to her. She was unhappy as she felt her individual housing requirements were not being accommodated. Ms Smiles said in the programme that one of the properties offered to her, did not have a downstairs toilet. She said she was told that one could not be installed as it was "*far too expensive*".

A former owner-occupier, Stephen Hanratty, recounted his experience of a meeting attended by the CEO of Gentoo, Mr Peter Walls. Mr Hanratty referred to Mr Walls, as having stated "*I won't have any mingers living in my houses*". Shortly after, the presenter stated that: "*We invited Mr Walls to take part in the programme. He declined*".

One part of the programme looked at the issue of vandalism on estates which had been vacated. The programme contained footage of such estates being stripped of materials by vandals, including a clip of a boy on the roof of one property, stealing roofing lead.

Towards the end of the programme the presenter said:

"Three weeks ago we asked Gentoo to respond to some of the issues we've raised tonight, however they declined to be interviewed. They said we hadn't given them details of the allegations and they told us: 'After viewing the programme we will respond in full on our website to the BBC's allegations'".

Shortened reports, based on the *Inside Out* report of 14 November 2007, were broadcast by two other BBC programmes, earlier that day. These programmes were the *Mike Parr Breakfast Show*, Radio Newcastle, and *Look North*, BBC1 North East and Cumbria region.

Gentoo complained to Ofcom that it was treated unfairly in all of the three BBC broadcasts. Gentoo's complaint of unfair treatment was brought on its behalf by Harbottle & Lewis LLP ("Harbottle").

The Complaint

In summary, Gentoo complained that it was treated unfairly in the broadcast of *Inside Out* in that:

- a) Gentoo was not given an appropriate opportunity to respond to the following serious allegations made against it in the programme:

i) Allegations made by Mr Atkinson.

Gentoo said that if it had been informed of the allegations to be made it would have explained that Mr Atkinson had been offered (and had rejected) four alternative temporary properties between December 2006 and May 2007 before moving into a temporary home on 14 May 2007. Gentoo said that it was also relevant that Mr Atkinson had been offered a choice of three different new properties and had accepted a house which would be ready in July 2008.

ii) Allegations made by Mr and Mrs McLoughlin.

Gentoo said the circumstances of this couple had changed between the filming of their interview and the broadcast of the programme. Gentoo said the change in circumstances was not reflected in the programme, which was unfair. Gentoo said that Mr and Mrs McLoughlin were helped by Gentoo to buy a new permanent home and had moved into the property in mid-October 2007 (prior to the programme's broadcast).

iii) Allegations made by Ms Smiles.

Gentoo said it had not refused to provide a downstairs toilet for Ms Smiles because of cost, as alleged in the programme. Gentoo said that this facility could not be provided in the property offered to her, because the concrete floor made it unsuitable. Gentoo said that if it had been informed of the allegations made by Ms Smiles, it would have also explained that Ms Smiles had refused a total of six alternative properties offered by Gentoo, and it was only when the fourth property was shown to Ms Smiles that she had first made a request for a downstairs toilet.

iv) The programme included an allegation that Gentoo had failed adequately to secure empty properties on its estates that put youngsters (tempted by the opportunity to steal valuables) at risk of serious harm:

Commentary *"Part of the estate has been demolished by Gentoo but the vandals appear to be beating them to it. This boy is risking his life to steal roofing lead."*

Resident *"Every time you turn your back the thieves are there. You complain to Gentoo, by the time you phone the police they are gone."*

v) The programme included an allegation that Gentoo was not trusted:

Commentary *"The challenge for Gentoo is now not just to rebuild homes but for some, to rebuild trust."*

By way of background, Gentoo said the programme makers did not provide it with a list of allegations to be made against it until 9 November 2007 (5 days prior to broadcast). Gentoo said this was despite extensive correspondence between Gentoo and the programme makers, dating back to 18 April 2007.

b) The programme makers failed fairly to represent the position of Gentoo or its CEO Mr Walls in the broadcast of the programme *Inside Out*:

- i) Gentoo complained that the edited version of its statement which appeared in the programme failed to reflect Gentoo's reasons for not participating in the programme; and would have misled viewers into believing that Gentoo had been given at least three weeks' notice of the issues.
- ii) Gentoo said the programme gave the impression that Mr Walls' refusal to give an interview was unjustified, uncooperative and evasive. Gentoo complained that the portrayal of its CEO, in this way, resulted in unfairness to Gentoo in the programme as broadcast.

By way of background, Gentoo said that the programme had treated Mr Walls' refusal to give an interview as being distinct from Gentoo's refusal to participate (when in reality at no time did Mr Walls respond separately from Gentoo). Gentoo said that the programme should have explained that Mr Walls' reasons for refusing an interview had been the same as Gentoo's reasons for not participating.

By way of background to the complaints about *Inside Out*, Gentoo said that the programme gave viewers the impression that all of the Gentoo tenants and home-owners featured in the programme were deeply dissatisfied with the way they had been treated by Gentoo. Gentoo said this was unfair as by the time of broadcast, the majority had achieved satisfactory outcomes. Gentoo said that while the programme did provide an update on some of the interviewees featured, this did not adequately reflect efforts that Gentoo had made to resolve the issues raised by the tenants and homeowners, for which the programme had alleged it was responsible. Nor did the programme include an example of the many home-owners who had sold their properties on failing renewal estates and re-located satisfactorily.

- c) In summary, Gentoo complained that it was treated unfairly in the broadcast of the *Mike Parr Breakfast Show* in that listeners were given the false impression that Gentoo had declined to participate because it believed it had not been given sufficient time to respond. Gentoo noted that the programme had stated:

"...three weeks ago we asked Gentoo to respond to some of the issues we've been talking about but the company declined to be interviewed saying we'd not given them sufficient time to answer our questions."

Gentoo said this was unfair as at no point did Gentoo give the programme makers such a reason for not participating. Gentoo said its objection to an interview rested solely on not having been given enough information to respond to the allegations.

- d) In summary, Gentoo complained that it was treated unfairly in the broadcast of *Look North* in that the programme made no reference to Gentoo's position or its reasons for not participating. Gentoo said this was despite the programme being a substantial item in its own right and containing the gist of the complaints against Gentoo.

The BBC's statement in response to the complaint

In summary the BBC responded to the complaint as follows:

- a) In response to the complaint that Gentoo had not been given an appropriate opportunity to respond to the serious allegations made against it in the programme *Inside Out*, the BBC addressed each sub-head of the complaint separately:
- i) The BBC said that Mr Atkinson had explained in the programme, that he had voted for the stock transfer to Gentoo because he accepted the assurances given by Gentoo that this would enable it to refurbish and improve the estate.

The BBC referred to Gentoo's complaint, and those arguments which it said it would have put forward, if it had been given an opportunity to respond to Mr Atkinson's contribution. The BBC said that none of the complainant's hypothetical arguments would have contradicted or denied the issues raised by Mr Atkinson.

- ii) In relation to Mr and Mrs McLoughlin, the BBC said the programme sought to convey the experience of residents, over time, of their dealing with Gentoo and of the refurbishment process generally. The BBC said that no change in circumstances would have changed the fact that Mr and Mrs McLoughlin had been complaining about the protracted and bitter experience in getting an outcome from Gentoo.

In any event, the BBC said that the McLoughlin's story had been brought up to date at the end of the programme where it was clearly stated that:

Commentary

"After years of fighting, David and Pearl have finally got a new house – but they only own part of it."

Mrs McLoughlin

"Fingers crossed it is a decent offer so I can have my house. I mean it has been certainly hell really."

- iii) The BBC said that in the programme Ms Smiles had not been referring to one particular house that she had been offered, but to a number of houses. The BBC said that Ms Smiles had told it that she had made it clear to Gentoo from the outset that because of her disability she had particular requirements including, notably, a downstairs toilet. In support of this, the BBC provided extracts from Ms Smiles' own diary which contained her records of her dealings with Gentoo. The BBC said that Ms Smiles' diary notes appeared to contradict Gentoo's claim that she did not raise the issue of a downstairs toilet until she was shown a fourth property.

The BBC said Ms Smiles' story illustrated the general point of problems which had been caused by adopting such a sweeping plan to move large numbers of people, some of whom would have particular requirements. The BBC said this point had been put to Gentoo in advance of the programme.

In any event, the BBC said that the points which Gentoo claimed it would have made, if given the opportunity, did not go to the issues being addressed

in the programme and therefore no unfairness could have resulted by them being omitted.

- iv) In response to Gentoo's complaint that the programme had alleged that it failed adequately to secure empty properties on its estates, which put youngsters at risk of serious harm, the BBC said that it did not agree that the programme made such allegations. The BBC said that the relevant part of the programme made no allegation against Gentoo, and in particular, no comment on Gentoo's security measures.

The BBC said the programme reflected the near-inevitability of vandalism and theft, in the wake of a demolition programme. The BBC said the segment could have been understood as an implied criticism (given that it alluded to Gentoo's inability to prevent the problem) but maintained that the segment had made it clear that Gentoo was on much the same footing as the police in the matter. It said viewers would have been more likely to take the segment as meaning that the problem was inherently difficult to deal with, rather than as an aspersion on Gentoo.

- v) The BBC next responded to the complaint about the commentary line: "*The challenge for Gentoo is now not just to rebuild homes but for some, to rebuild trust*". The BBC said it did not accept that this line of commentary amounted to a separate allegation against Gentoo, but had been more of an observation flowing from the experiences of some of the programme's interviews.

The BBC said it did not agree with Gentoo's interpretation of the commentary line which Gentoo referred to as: "Gentoo is not trusted by either its tenants or owner-occupiers living on its estates in Sunderland". The BBC said the programme had actually stated "*for some*" trust has to be rebuilt which implied that for others, their trust was unimpaired. Further, the BBC said that the programme had explicitly stated that there were a significant number of Gentoo residents who had had an extremely positive experience of the company and who would harbour no distrust at all.

By way of background, the BBC said it had written to Gentoo, on 24 October 2008, setting out the areas that the programme would seek to cover. It said that although the individual residents were not identified, the letter went into significant detail as to the nature of the grievances of which the programme makers were aware. It believed that the letter, sent fully two weeks prior to the intended date of transmission, provided more than enough detail to allow a full and considered response in interview, by a representative of Gentoo. The BBC noted that in the event, transmission of the programme had been delayed for one week, meaning that there were three weeks between the letter of 24 October 2008 and the broadcast of the programme.

- b) In response to the complaint that the programme makers had failed fairly to represent the position of Gentoo or its CEO Mr Walls in the programme *Inside Out*, the BBC addressed each sub-head separately:
 - i) In relation to the presentation of Gentoo's statement for broadcast the BBC said it believed the words used in the programme were a perfectly reasonable summary of the position expressed by Gentoo in the statement it provided for broadcast. The BBC said it was not obliged to use the statement in full, but rather to represent it fairly.

The BBC said it accepted that the programme gave the impression that Gentoo had been given three weeks' notice of the issues, however, did not agree with the complainant that such an impression was misleading. The BBC said that it believed Gentoo was given sufficient details of the contents of the programme, three weeks prior to transmission, to be able to formulate a response.

- ii) In relation to the complaint about Mr Wall's refusal to give an interview, the BBC said the commentary line "*We invited Mr Walls to take part in the programme. He declined*" had been presented as neutrally as possible.

The BBC said that it was perverse to argue that the viewer might have drawn a distinction between Mr Walls and the company in the absence of a different explanation being offered for Mr Walls' refusal to participate. It said the only reasonable view which viewers might have reached, was that the reasons given at the end of the programme for Gentoo's non-participation would have applied equally to Mr Walls (who was Gentoo's Chief Executive, the public face of the company and the only representative of the company identified in the programme).

By way of background, the BBC said that it accepted that the programme did not mention the specific cases of homeowners who had been relocated satisfactorily; however, it did not believe that any unfairness attached to such an omission. It said that full acknowledgement had been given to Gentoo's performance and achievements in a number of respects. The BBC referred to the following parts of the programme:

- | | |
|--------------------------|--|
| Presenter | <i>Of course, there are two sides to most stories and despite the criticism Gentoo has scored some notable successes. It spent more than £300 million modernising 17,500 houses to the highest standards and it has done this ahead of schedule. The tenants here love it.</i> |
| Angela Stephenson | <i>All, the electrical was done, had walls knocked out, cupboards knocked out. They skimmed the whole kitchen and the ceilings, did all the rewiring. Just opened it right up. It looks much better.</i> |
| Jackie Waites | <i>Oh it's lovely. Yeah, you can walk along the street now and be proud that you live where you live because you haven't got doors falling off the hinges. I mean the back door had a big hole where the last tenant had put a hole in for the dog's head to go through.</i> |
| Presenter | <i>The group has been cleared of serious allegations about the management of clearance areas by a number of independent investigations. It has also consistently received positive reports from the audit commission and the Housing Corporation which says Gentoo is delivering quality housing and demonstrates good performance in meeting its targets.</i> |

- c) In response to the complaint that the programme *The Mike Parr Breakfast Show* had given viewers the false impression that Gentoo had declined to participate because it believed it had not been given sufficient time, the BBC said that it did not believe that unfairness attached to this minor factual inaccuracy.

The BBC said that nothing of significance could be hung on the distinction between not participating because of insufficient detail, and not participating because of insufficient time. The BBC said both reduced to a claim that there had been an inadequate opportunity to respond, and unfairness could not attach to one claim being made rather than another.

The BBC said that in any event, the presenter's description of Gentoo's reasons for not taking part were part of a wider piece of commentary. The BBC said this commentary included statements made by Gentoo, in the past, about the renewal process:

Reporter

"However, in the past they have pointed out that renewal is difficult and sensitive but that most people they've consulted are in favour of the plans. The company says they've already brought...bought more than 300 privately owned homes and only have another 52 to go; and in terms of the packages homeowners are offered, Gentoo says they are restricted by certain rules which means they cannot afford to offer people over the odds for their home but they do their best to make it attractive to owners to sell up. Also Gentoo have modernised all their houses which aren't going to be demolished and they said to a high standard."

The BBC said that fairness was achieved in the broadcast, by the inclusion of these statements (i.e. the ones that had been made by Gentoo in the past) as they responded to the specific points raised in programme.

- d) In response to the complaint that the item featured in *Look North* failed to make any reference to Gentoo's reasons for not participating, the BBC said that no unfairness attached to the omission of the fact that Gentoo had declined to appear in the *Inside Out* programme.

The BBC said that it believed the appropriate place to report the company's refusal to participate in a particular programme was in the programme itself. It did not believe that it had responsibility, in a short news item about another programme, to report a refusal to participate in the other programme.

In any event, the broadcaster believed that fairness was achieved by using the following, publicly stated, position of Gentoo, to answer the points raised in *the Look North* programme:

"Gentoo says that most homeowners have moved out and they're doing their best to make attractive offers to the remaining ones. So far, Gentoo has built 365 new homes."

The BBC maintained that the above reporting of Gentoo's position adequately balanced the grievances aired by the residents in the *Look North* programme.

Decision

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

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

Gentoo's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included recordings and transcripts of the programmes as broadcast and both parties written submissions. These submissions included copies of correspondence between the parties, prior to broadcast.

- a) Ofcom first considered the complaint that Gentoo had not been given an appropriate opportunity to respond to serious allegations made in the programme *Inside Out*. Ofcom considered each of the five sub-heads of the complaint separately.

In reaching a decision in relation to each subhead of the complaint the Committee took account of Practice 7.11 of the Code which states:

"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."

- i), ii), iii)

Ofcom viewed a recording of the programme and noted that it contained contributions from a number of residents who were very unhappy with the effect that the stock transfer had had on their lives. These included Mr Atkinson, Mr and Mrs McLoughlin and Ms Smiles. Ofcom noted that each contributor had expressed his or her own individual experience of life after the Council's stock transfer to Gentoo:

Mr Atkinson stated his view in the programme that he regretted voting for the stock transfer to Gentoo. His comments in the programme included:

"I voted for the stock transfer because I thought at the time the promises they were making and everything else, we thought it would be a good thing...we thought it would be better, but now I am not so sure. Because it has been destroyed, the community has been destroyed. I do regret voting for the stock transfer."

Mr and Mrs McLoughlin who were owner-occupiers stated in the programme that from their perspective, Gentoo had not made acceptable offers to purchase their property and as a result they could not move and had to remain in a part demolished site. Their comments in the programme included:

“We are frightened to go anywhere and leave the house for too long in case they break in...this has got my nerves bad, shot to pieces.”

“We lose money on every deal or option [Gentoo] put to us...I just cannot afford it, we haven't got it. We haven't got an income you see, all we've got is a pension...We can't move, we are in limbo.”

Ofcom noted that towards the end of the programme it was explained to viewers that Mr and Mrs McLoughlin had been able to move to a new property, but remained of the view that the process of relocating had been “hell”.

Ms Smiles stated in the programme that she felt very disappointed that the stock transfer had not turned out to be the positive development she had believed it would be. Ms Smiles' comments in the programme included:

“To me it was a wow factor, it was a pot of gold...you know this is going to be really great. Because of the disabilities and the requirements I need, I don't feel they are actually listening to me...I've looked at properties and I've said, “you know, well there's no downstairs toilet, put me one in and I'll think about it”. No way, far too expensive. I said fair enough, if you can't do that I'm not moving...It is a shame to actually feel this way because I was 100% in support of it all. “

Looking at the programme as a whole, Ofcom considered that the programme made clear that the views expressed by each of these contributors were personal reflections on their own experiences. In Ofcom's view their contributions were not in themselves significant allegations against Gentoo, rather they were illustrative of two more general allegations against Gentoo. These were:

- Firstly, that some tenants who had voted for the Council's stock transfer to Gentoo, now felt misled, as they had not as yet, received the positive benefits they believe had been promised at the time of the vote.
- Secondly, home-owners who felt that Gentoo had not offered them a fair price for their property, which left them stranded in a demolition site.

In Ofcom's view, these allegations were significant and in the interests of fairness Gentoo was entitled to an opportunity to respond to them.

Ofcom considered the pre-broadcast communications between the programme makers and Gentoo in order to understand whether the programme maker's had offered Gentoo a timely and appropriate opportunity to respond to the allegations made in the programme, and illustrated by the contributions from Mr Atkinson, Mr and Mrs McLoughlin and Ms Smiles.

Ofcom noted that on 24 October 2007, the programme makers emailed Gentoo's Chief Executive, advising him of the upcoming programme and inviting him to be interviewed. The email set out the intended areas of questioning for the interview, including following questions about the amount of information given to residents prior to the stock transfer and the recompense offered to owner-occupiers:

“We are compiling a report about Gentoo’s management of social housing and renewal which we are intending to broadcast 7 November 2007. We have spoken to people with varying experience of living in areas managed by Gentoo – some positive and some critical... This letter is to invite you to take part in the programme by recorded interview for inclusion in the final report. If you agree to be interviewed, we would like to ask you questions in the areas set out below:

Some local residents have told us that they have concerns about the **lack of information** they received regarding the large scale demolition plans **at the time of the council stock transfer**. We would also like to **address issues surrounding the type and amount of information given to the local residents at the time and subsequently**.

Owner-occupiers on estates which are being demolished have told us that the effects on them have been very difficult. We would like to discuss any measures taken by Gentoo to assist them. Some of the owner occupiers have said that although Gentoo have **offered to buy their homes they have not been happy with the level of financial recompense offered** due to the difficulty of finding a similar quality home.”

(Emphasis added by Ofcom)

Ofcom noted that this email was sent two weeks prior to the stated date for broadcast of 7 November 2007, and one week prior to the intended date for the recording of the interview with the Chief Executive of Gentoo. Ofcom noted that the original date for broadcast was later pushed back to 14 November 2007, and the programme maker’s confirmed this to Gentoo on 6 November 2007.

Ofcom also noted that the email of 24 October 2007 was expanded upon, following further requests for information from Gentoo and its solicitors, and a decision by Gentoo not to take part in an interview.

Taking all the correspondence between the parties into account, it is Ofcom’s view that the initial email of 24 October 2007 provided sufficient information to Gentoo for it to be able to understand the two significant allegations to be made in the programme and illustrated by the inclusion of contributions from Mr Atkinson, Mr and Mrs McLoughlin and Ms Smiles. Also, in Ofcom’s view, Gentoo could have reasonably been expected to prepare for the interview within the time allowed and given the information provided.

In the circumstances, Ofcom found no unfairness to Gentoo in relation to Head (a) (i), (ii) or (iii). Ofcom has not upheld these parts of the complaint.

- iv) Ofcom considered the complaint that the programme alleged that Gentoo had failed adequately to secure empty properties on its estates which put youngsters (tempted by the opportunity to steal valuables) at risk of serious harm. Gentoo said this was unfair as it had not been given an appropriate opportunity to respond to the allegation.

Ofcom noted that this complaint was in relation to the following part of the programme:

Commentary *“Part of the estate has been demolished by Gentoo but the vandals appear to be beating them to it. This boy is risking his life to steal roofing lead.”...*

Alex Maskell *“Every time you turn your back the thieves are there. You complain to Gentoo, by the time you phone the police they are gone. But there again I can’t make statements about everybody coming around here. I would spend more time in Sunderland magistrates court than I spend in the house.”*

Ofcom noted that the resident (above) had commented that he had complained to Gentoo about the thieves on the estate. However, Ofcom also noted, from the remainder of the resident’s comment, that he acknowledged that it was the police and the court system that were the appropriate bodies to deal with this sort of problem.

Ofcom considered that this part of the programme was designed to highlight the difficulties faced by those residents, living on demolished estate sites. In Ofcom’s opinion, viewers were likely to have understood from this segment that the presence of vandals and petty thieves was a problem that is common to sites of this kind i.e. in the process of demolition. Ofcom acknowledged that the resident referred to complaining to Gentoo, however in Ofcom’s view the programme did not allege that the vandalism represented a failure on the part of Gentoo, rather the programme recognised the problems associated with the demolition process. It was not therefore incumbent on the programme makers to provide Gentoo with an opportunity to respond on this issue.

As discussed at head a) i), ii) and iii) Ofcom considered that Gentoo had been given an appropriate opportunity to respond to the allegation that it was responsible for a protracted demolition process by not offering an appropriate price for Mr and Mrs McLoughlin’s house.

Accordingly, Ofcom has not upheld this part of Gentoo’s complaint.

- v) Ofcom next considered the complaint that the programme had alleged that Gentoo was not trusted. Gentoo said this was unfair as it had not been given an appropriate opportunity to respond to this allegation.

Ofcom noted that this complaint was in relation to the following line of commentary in the programme:

Commentary *“The challenge for Gentoo is now not just to rebuild homes but for some, to rebuild trust”*

Ofcom noted that this line of commentary came towards the end of the programme.

Before this, the programme had featured residents who felt their lives were worse-off, since the housing stock transfer to Gentoo. For example, some residents who had voted “yes” to the stock transfer to Gentoo (because they felt this option promised them an improved life), felt misled and disillusioned following the transfer, because in their opinion, they were not better-off.

The programme had also shown other residents who were clearly very happy with the work of Gentoo:

Angela Stephenson *“All, the electrical was done, had walls knocked out, cupboards knocked out. They skimmed the whole kitchen and the ceilings, did all the rewiring, just opened it right up, it looks much better.”*

Jackie Waites *“Oh it’s lovely. Yeah, you can walk along the street now and be proud that you live where you live because you haven’t got doors falling off the hinges. I mean the back door had a big hole where the last tenant had put a hole in for the dog’s head to go through.”*

In Ofcom’s view, the line of commentary that *“The challenge for Gentoo is now not just to rebuild homes but for some, to rebuild trust”* summarised the fact that *“some”* residents (including some of those featured in the programme) had lost faith in Gentoo as a result of their own experiences of the company’s work while others had not. In Ofcom’s view, this was not an allegation which required an opportunity to respond, but rather an observation on the situation, illustrated by contributions from residents featured in the programme (where these contributions illustrated allegations made about Gentoo the issue of opportunity to respond has been considered above, at Head a (i), (ii), (iii)).

In the circumstances, Ofcom found no unfairness to Gentoo in this respect.

In relation to Head (a), Ofcom found that where allegations had been made in *Inside Out* about Gentoo, the company had been given a timely and appropriate opportunity to respond to them. Ofcom has therefore not upheld Head (a) of Gentoo’s complaint.

- b) Ofcom next considered the complaint that the programme makers had failed to fairly represent the position of Gentoo or its CEO Mr Walls in the programme *Inside Out*.

Gentoo had complained that the edited version of its statement which appeared in the programme failed to reflect its reasons for not participating and would have misled viewers into believing that Gentoo had been given at least three weeks’ notice of the issues.

In considering this complaint Ofcom took account of Practice 7.6 which states that:

“When a programme is edited, contributions should be represented fairly.”

Ofcom noted the relevant section of the programme which stated:

“Three weeks ago we asked Gentoo to respond to some of the issues we’ve raised tonight, however, they declined to be interviewed. They said we hadn’t given them details of the allegations and they told us ‘after viewing this programme we will respond in full on our website to the BBC’s allegations’”.

Ofcom first considered the pre-broadcast correspondence, Ofcom noted that on 24 October 2007 the programme makers wrote to Gentoo's CEO, Mr Walls, informing him of the upcoming broadcast and inviting him to be interviewed. In Ofcom's view this letter also provided key information to Gentoo about the issues to be examined in the programme. Ofcom noted that Mr Walls declined the invitation of an interview.

Ofcom noted that the letter of 24 October 2007 advised Gentoo that the intended date for broadcast of the programme was 7 November 2007. This date for broadcast was later changed to 14 November 2008 (i.e. three weeks after the letter of 24 October 2007)

Having considered the pre-broadcast correspondence between the parties, Ofcom took the view that the programme's statement that "*Three weeks ago we asked Gentoo to respond to some of the issues we've raised tonight, however, they declined to be interviewed*" did not result in unfairness to the complainant as, in the event, Gentoo had been provided with key information about the issues to be examined in the programme three weeks prior to broadcast and Mr Walls had declined the programme maker's invitation to an interview.

Ofcom next turned to the second part of the programme commentary. Ofcom noted that Gentoo had provided a statement for broadcast to the programme makers on 13 November 2007. It read:

"Having originally invited questions from this programme back in April we are disappointed that the BBC has declined to put the detail of any of the allegations in this programme to us, thereby denying us any chance to respond. This is unfair. After seeing this programme, we will respond in full on our website to the BBC's allegations."

Ofcom noted that when providing this statement, Gentoo wrote to the programme makers:

"Our client's statement for broadcast is a succinct response on the points you have told us will be raised in the programme. The statement for broadcast should therefore be included in full. This is entirely reasonable both in view of the wide-ranging subject areas that you have identified in correspondence and in the context of a 30 minute current affairs programme of which our client is the focus."

It should be noted that there is no obligation under the Code for programme makers or broadcasters to include in full any individual or organisation's statement or response to allegations made in a programme. The responsibility of the programme maker and broadcaster is to ensure that their programme does not result in unfairness. The way in which this is achieved in the programme as broadcast is an editorial decision made by the programme maker and broadcaster.

In this case, Ofcom considered that the presentation of Gentoo's response in the programme as broadcast had fairly represented the company's reasons for not taking part in the programme and any edits made to Gentoo's own statement for broadcast, by the programme makers, did not significantly alter its meaning in a way which resulted in unfairness to it.

Accordingly, Ofcom did not uphold Gentoo's complaint that the programme makers had failed to fairly represent its position in the programme.

Ofcom next considered the complaint in relation to Mr Walls. Gentoo complained that the programme gave the impression that Mr Walls' refusal, to give an interview, was unjustified, uncooperative and evasive and resulted in unfairness to Gentoo in the programme as broadcast.

Ofcom noted that this part of the complaint was in relation to the following line of commentary in the programme:

"We invited Mr Walls to take part in the programme. He declined."

Ofcom noted that this commentary followed a segment in the programme relating to comments allegedly made by Mr Walls which had upset a former owner of a Gentoo estate. Ofcom also noted that earlier in the programme it had been explained to viewers that Mr Walls was the CEO of Gentoo.

In Ofcom's view, the statement that Mr Walls had declined to take part in the programme had been presented in a simple and straightforward way after a section of the programme specifically relating to him. Further, Ofcom considered that viewers would have understood that Mr Walls was the CEO of Gentoo, and therefore could reasonably have been expected to have made a link between the statement made about Mr Walls declining to take part and the fuller reasons for Gentoo's decision not to be interviewed for the programme, as given later in the programme. Ofcom therefore found the programme's presentation of Mr Walls' decision not to take part, did not result in unfairness to Gentoo in the programme as broadcast.

Accordingly Ofcom found no unfairness in relation to the way in which the programme had presented the position of either Gentoo or its CEO Mr Walls in the programme *Inside Out*. Ofcom has not upheld this part of Gentoo's complaint.

- c) Ofcom next considered the complaint that the *Mike Parr Breakfast Show* had given listeners the false impression that Gentoo had declined to participate in the *Inside Out* programme, because it believed it had not been given sufficient time to respond. Gentoo said this was clearly unfair as at no point did Gentoo give the programme makers such a reason for not participating. Gentoo said its objection to an interview rested solely on not having been given enough information to respond to the allegations.

In considering this complaint Ofcom took account of Practice 7.6, (set out in full above).

Ofcom noted that the complaint related to the following line of commentary:

"...three weeks ago we asked Gentoo to respond to some of the issues we've been talking about but the company declined to be interviewed saying we'd not given them sufficient time to answer our questions."

Ofcom noted that the programme had indicated to viewers that Gentoo's reasons for not taking part in the *Inside Out* programme, had been because it believed it had not been given "sufficient time to answer the questions". Ofcom noted that this was not the reason cited by Gentoo in its own statement for broadcast.

Ofcom considered whether unfairness resulted from the reference to “*sufficient time to answer the questions*” instead of the reason given by Gentoo i.e. that it was not given sufficient detail of allegations.

Ofcom noted from the pre-broadcast correspondence between the programme makers and Gentoo that the company had expressed dissatisfaction with being given, at the time, two weeks’ notice of the allegations. In its email to the programme makers of 30 October 2007, Harbottle (the solicitors acting on behalf of Gentoo) wrote:

“The first formal approach to our client regarding the programme was made by the producers of *Inside Out* by email to Mr Peter Walls, the Chief Executive of our client, on 24 October 2007, **some two weeks before the programme was due to be broadcast. We consider it wholly unacceptable that you approached our client in respect of a programme which is almost entirely devoted to it so late in the day...**Please explain why this did not occur.”

In Ofcom’s view, the correspondence clearly indicated that Gentoo had believed that two weeks’ notice of the allegations had been insufficient for it to be able to respond. Ofcom noted, however, that the programme stated that Gentoo said “*three weeks*” was not “*sufficient time answer our questions*”.

Taking account of all the information available to it, Ofcom took the view, that while the programme had not reflected Gentoo’s stated reasons for not taking part, as expressed in its statement for broadcast, this did not result in unfairness to it. Ofcom considered that listeners were likely to have understood from the programme that Gentoo did not wish to take part because it believed that it had not been given a proper opportunity to respond. In Ofcom’s view, while the replacement of ‘inadequate detail of allegations’ ‘with insufficient time’ did not reflect the wording of Gentoo’s statement for broadcast this did not result in unfairness as the wording in the programme would not have materially affected the listener’s understanding of Gentoo or its decision not to take part.

Therefore, in relation to the broadcast of the *Mike Parr Breakfast Show*, Ofcom found it did not result in unfairness to Gentoo and has not upheld this part of the complaint.

- d) Finally Ofcom considered Gentoo’s complaint that it was treated unfairly in the broadcast of *Look North* in that the programme made no reference to Gentoo’s position or its reasons for not participating. Gentoo said this was despite the programme being a substantial item in its own right and containing the gist of the complaints against Gentoo.

In considering this complaint Ofcom took account of Practice 7.9:

“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; and, anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.”

Ofcom also took account of Practice 7.11 (as set out above).

Ofcom noted that this programme was a lunch time news piece about that evening's *Inside Out* programme. It lasted one minute and 36 seconds and gave a short summary of the issues to be raised in the *Inside Out* programme. In Ofcom's opinion, the programme had clearly signalled to viewers, both in the introduction and final sign-off, that it was simply a snapshot of a programme to be aired later that night and not a comprehensive piece in itself.

With news stories such as this, Ofcom had regard to the time constraints on programme makers to create an informative piece within a very short amount of time. While acknowledging these constraints, it should be noted that even short programmes of this type must not result in unfairness to an individual or organisation. As noted above, Ofcom takes the view that provided this obligation is met, the way in which it is achieved, is a decision to be made by programme makers and broadcasters.

Ofcom noted that this programme included criticism by home-owners that Gentoo had left them stranded in demolition sites by not offering them a fair price for their property. Ofcom also noted that it did not contain any reference to Gentoo's reasons for not taking part in the *Inside Out* programme. However, in Ofcom's view the programme provided information about Gentoo's position at the end of the programme:

Reporter *"Gentoo say that most homeowners have moved out and they're doing their best to make attractive offers to the remaining ones. So far, Gentoo has built 365 new homes.*

Presenter *"We'll find out more on tonight's Inside Out with Chris Jackson on BBC1 at 7.30.*

Ofcom considered that the decision by the programme makers not to refer to Gentoo's wider reasons for not participating in the *Inside Out* programme was an editorial decision, which in this case did not result in unfairness. Ofcom noted that in broadcasting the programme which contained extracts from the *Inside Out* programme that were critical of Gentoo, the programme makers took care to clearly signal the programme's nature and purpose (i.e. it was made clear to viewers that it was a short-piece about an upcoming programme) and included information about Gentoo's position that was relevant to the criticisms aired in the bulletin.

In relation to the broadcast of *Look North*, Ofcom therefore found no unfairness to Gentoo, and has not upheld this part of the complaint.

Accordingly Ofcom has not upheld Gentoo's complaint of unfair treatment in relation to the broadcasts of *Inside Out*, *The Mike Parr Breakfast Show* and *Look North*.

Other Programmes Not in Breach/Resolved

16 July – 6 August 2008

Programme	Trans Date	Channel	Category	No of complaints
8 Out of 10 Cats	20/07/2008	Channel 4	Generally Accepted Standards	1
8 Out of 10 Cats	18/07/2008	Channel 4	Generally Accepted Standards	5
A Shot at Love 2 with Tila Tequila	08/06/2008	MTV	Violence	1
A Touch of Frost	25/07/2008	ITV1	Animal Welfare	1
Adam at Breakfast	15/07/2008	Rock FM	Generally Accepted Standards	1
Addicted to Boob Jobs	21/07/2008	BBC Three	Due Impartiality/Bias	1
Adil Ray	26/06/2008	BBC Asian Network	Religious Offence	1
Airwolf: The Hunted	02/05/2008	DMAX	Advertising	1
Alan Brazil's Sports Breakfast	30/06/2008	Talksport	Generally Accepted Standards	1
Alan Carr's Celebrity Ding Dong	31/07/2008	E4	Generally Accepted Standards	1
Alex Dyke	-	Isle of Wight Radio	Generally Accepted Standards	1
Allan Lake	30/06/2008	Kerrang Radio	Crime (incite/encourage)	1
Annie Mac	29/06/2008	BBC Radio 1	Crime (incite/encourage)	1
Awesomely Ridiculous Celebrity Moments	07/07/2008	TMF	Offensive Language	1
Back at the Barnyard	26/07/2008	Nicktoons	Offensive Language	1
BBC HD trailer	-	BBC	Inaccuracy/Misleading	1
BBC News	16/07/2008	BBC1	Other	2
BBC News	16/07/2008	BBC1	Sex/Nudity	1
BBC News	11/07/2008	BBC1	Violence	1
Behind Bedroom Doors	27/05/2008	Movies 24	U18 - Coverage of Sexual/other	1
Big Brother	-	Channel 4	Generally Accepted Standards	1
Big Brother 9	30/07/2008	Channel 4	Offensive Language	1
Big Brother 9	31/07/2008	Channel 4	Crime (incite/encourage)	1
Big Brother 9	30/07/2008	Channel 4	Crime (incite/encourage)	2
Big Brother 9	31/07/2008	Channel 4	Generally Accepted Standards	2
Big Brother 9	05/08/2008	Channel 4	Generally Accepted Standards	1
Big Brother 9	02/08/2008	Channel 4	Generally Accepted Standards	2

Big Brother 9	01/08/2008	Channel 4	Generally Accepted Standards	1
Big Brother 9	04/08/2008	E4 (Interactive)	Generally Accepted Standards	1
Big Brother 9	21/07/2008	Channel 4	Offensive Language	1
Big Brother 9	21/07/2008	Channel 4	Sex/Nudity	4
Big Brother 9	24/07/2008	Channel 4	Generally Accepted Standards	1
Big Brother 9	27/07/2008	Channel 4	Generally Accepted Standards	1
Big Brother 9	19/07/2008	Channel 4	Crime (incite/encourage)	1
Big Brother 9	09/07/2008	Channel 4	Generally Accepted Standards	1
Big Brother 9	10/07/2008	Channel 4	Generally Accepted Standards	1
Big Brother 9	22/07/2008	Channel 4	Generally Accepted Standards	1
Big Brother 9	17/07/2008	Channel 4	Harm/Food	20
Big Brother 9	22/07/2008	Channel 4	Dangerous Behaviour	1
Big Brother 9	22/07/2008	Channel 4	Sex/Nudity	1
Big Brother 9	27/07/2008	Channel 4	Dangerous Behaviour	1
Big Brother 9	14/07/2008	Channel 4	Generally Accepted Standards	3
Big Brother 9	15/07/2008	Channel 4	Generally Accepted Standards	2
Big Brother 9	16/07/2008	E4	Generally Accepted Standards	1
Big Brother 9 (trailer)	22/07/2008	Channel 4	Offensive Language	1
Big Brother Live	12/07/2008	E4	Generally Accepted Standards	1
Big Brother's Big Mouth	09/07/2008	E4	Violence	1
Big Brother's Big Mouth	23/07/2008	E4	Generally Accepted Standards	1
Big Brother's Little Brother	03/07/2008	E4	Sex/Nudity	1
Bonekickers	08/07/2008	BBC1	Religious Offence	24
Bones (trailer)	-	Sky One	Violence	1
Bowtime with Andy Townsend & Mike Parry	25/07/2008	talkSPORT	Other	1
Britain's Missing Top Model	08/07/2008	BBC Three	Generally Accepted Standards	1
Britain's Missing Top Model	01/07/2008	BBC Three	Generally Accepted Standards	1
Burn Up	25/07/2008	BBC2	Generally Accepted Standards	1
C4 promo	-	Channel 4	Inaccuracy/Misleading	1
CCTV Cities	07/07/2008	Five	Due Impartiality/Bias	1
Camilla's Family Affair: Revealed	08/07/2008	Five	Sex/Nudity	2

Can't Read, Can't Write	21/07/2008	Channel 4	Offensive Language	1
Cars, Cops and Criminals	23/07/2008	BBC1	Dangerous Behaviour	1
Cartridge World sponsorship	-	ITV4	Inaccuracy/Misleading	3
Casual Action	25/06/2008	Sumo TV	Sex/Nudity	1
Casualty	12/07/2008	BBC1	Information/Warnings	1
Catch-Up promotion	06/07/2008	Channel 4	Inaccuracy/Misleading	1
Cathouse	10/07/2008	Five	Sex/Nudity	1
Channel 4 News	29/02/2008	Channel 4	Generally Accepted Standards	3
Channel 4 News	28/02/2008	Channel 4	Generally Accepted Standards	5
Channel U	22/05/2008	360	Generally Accepted Standards	1
Charlie's Angels: Full Throttle	06/07/2008	Five	Sex/Nudity	1
Charlie's Angels: Full Throttle	06/07/2008	Five	Violence	1
Chris Moyles Show	22/05/2008	BBC Radio 1	Generally Accepted Standards	3
Chris Moyles Show	23/07/2008	BBC Radio 1	Generally Accepted Standards	1
Clarissa	28/07/2008	TCM	Offensive Language	1
Commercial Breakdown with Jimmy Carr	06/07/2008	BBC1	Generally Accepted Standards	1
Commercial Breakdown with Jimmy Carr	13/07/2008	BBC1	Religious Offence	3
Commercial Breakdown with Jimmy Carr	-	BBC1	Commercial References	1
Commercial Breakdown with Jimmy Carr	13/07/2008	BBC1	Generally Accepted Standards	2
Competitions	23/05/2008	PEAK 107FM	Competitions	1
Cor, Blimey!	12/07/2008	BBC2	Generally Accepted Standards	1
Coronation Street	16/07/2008	ITV1	Dangerous Behaviour	6
Coronation Street	16/07/2008	ITV1	Generally Accepted Standards	1
Coronation Street	11/07/2008	ITV1	Substance Abuse	2
Coronation Street	09/07/2008	ITV1	Substance Abuse	1
Coronation Street	21/07/2008	ITV1	Offensive Language	1
Coronation Street	21/07/2008	ITV1	Generally Accepted Standards	4
Coronation Street	16/07/2008	ITV1	Dangerous Behaviour	2
Coronation Street	18/07/2008	ITV1	Generally Accepted Standards	1
Coronation Street	16/07/2008	ITV1	Violence	2

Coronation Street	30/07/2008	ITV1	Substance Abuse	4
Coupling (trailer)	29/06/2008	Paramount Comedy	Sex/Nudity	1
Crash Scene Investigators	08/07/2008	ITV1	Generally Accepted Standards	1
Cricket on Five	14/07/2008	Five	Generally Accepted Standards	1
Daily Cooks Challenge	30/07/2008	ITV1	Generally Accepted Standards	1
Daily Cooks Challenge	11/07/2008	ITV1	Generally Accepted Standards	1
Dangerous Jobs for Girls (Trailer)	25/07/2008	Channel 4	Generally Accepted Standards	1
Dave	22/06/2008	ITV3	Advertising	1
Dead Body Squad	26/06/2008	Crime Investigation Network	Generally Accepted Standards	1
Deal Or No Deal	-	Channel 4	Inaccuracy/Misleading	1
Deal or No Deal	08/07/2008	Channel 4	Generally Accepted Standards	1
Digimon	17/07/2008	Animax	Violence	1
Disarming Britain (trailer)	27/06/2008	Channel 4	Violence	1
Disarming Britain (trailer)	19/06/2008	Channel 4	Violence	3
Disarming Britain (trailer)	22/06/2008	Channel 4	Violence	2
Disarming Britain (trailer)	26/06/2008	Channel 4	Violence	1
Disarming Britain (trailer)	23/06/2008	Channel 4	Violence	1
Dispatches: The Job That Can Stop Cancer	21/07/2008	Channel 4	Due Impartiality/Bias	1
Dispatches: The Job That Can Stop Cancer	21/07/2008	Channel 4	Inaccuracy/Misleading	1
Doc Martin	08/07/2008	ITV1	Due Impartiality/Bias	1
Doctors	07/07/2008	BBC1	Violence	1
Doctors	16/07/2008	BBC1	Sex/Nudity	1
Dog Borstal	10/06/2008	BBC3	Offensive Language	1
Dora the Explorer	31/05/2008	TMF	Generally Accepted Standards	1
Dr Alice Roberts, Don't Die Young	29/07/2008	BBC2	Sex/Nudity	2
EastEnders	15/07/2008	BBC1	Generally Accepted Standards	1
EastEnders	18/07/2008	BBC1	Generally Accepted Standards	1
EastEnders	17/07/2008	BBC1	Generally Accepted Standards	2
EastEnders	14/07/2008	BBC1	Sex/Nudity	1
EastEnders	11/07/2008	BBC1	Generally Accepted Standards	1
EastEnders	10/07/2008	BBC1	Sex/Nudity	1

EastEnders	18/07/2008	BBC1	Crime (incite/encourage)	1
EastEnders	22/07/2008	BBC1	Generally Accepted Standards	1
EastEnders	25/07/2008	BBC1	Violence	1
Emmerdale	14/07/2008	ITV1	Offensive Language	1
Explorer	26/05/2008	TV8	Generally Accepted Standards	1
F1: British Grand Prix Live	06/07/2008	ITV1	Generally Accepted Standards	2
F1 Grand Prix	-	ITV1	Due Impartiality/Bias	1
F1: Hungarian Grand Prix Live	03/08/2008	ITV1	Due Impartiality/Bias	2
Fallout	03/07/2008	Channel 4	Generally Accepted Standards	1
Fear Factor UK	28/06/2008	Living	Offensive Language	1
Fifth Gear Shortcuts	26/07/2008	Five	Crime (incite/encourage)	1
Film4 Summer Festival promo	15/07/2008	Channel 4	Offensive Language	1
Foxy Bingo Sponsorship of	08/07/2008	ITV2	Other	1
Gala Bingo (Sky 841)	04/04/2008	Gala Bingo	Competitions	1
The Jeremy Kyle Show	-	-	-	-
GMTV	19/06/2008	ITV1	Inaccuracy/Misleading	1
GMTV	22/07/2008	ITV1	Inaccuracy/Misleading	1
George Galloway	19/07/2008	Talksport	Generally Accepted Standards	3
George Galloway	27/06/2008	Talksport	Generally Accepted Standards	1
George Gently	13/07/2008	BBC1	Violence	1
George Gently	13/07/2008	BBC1	Offensive Language	1
Ghost Hunt	20/07/2008	Zone Reality	Offensive Language	1
Ghost Whisperer (trailer)	22/07/2008	Living TV	Generally Accepted Standards	1
Gladiators	06/07/2008	Sky One	Generally Accepted Standards	3
Golf	10/07/2008	BBC2	Generally Accepted Standards	1
Good Bid Good Buy	04/07/2008	ITV1	Generally Accepted Standards	1
Good Morning Sports Fans	04/07/2008	Sky Sports 1	Undue Prominence	1
Gordon Ramsay's F Word	29/07/2008	Channel 4	Religious Offence	1
Gordon Ramsay's F Word	29/07/2008	Channel 4	Generally Accepted Standards	1
Gordon Ramsay's F Word	08/07/2008	Channel 4	Dangerous Behaviour	1
Gordon Ramsay's F Word	08/07/2008	Channel 4	Inaccuracy/Misleading	5

Gordon Ramsay's F Word	08/07/2008	Channel 4	Religious Offence	1
Gordon Ramsay's F Word	08/07/2008	Channel 4	Offensive Language	2
Gorilla Murders (trailer)	21/07/2008	Sky One	Violence	1
Granada Reports	22/07/2008	ITV1 Granada	Offensive Language	1
HappyHourGirls	17/03/2008	HappyHourGirls	Sex/Nudity	1
Hawksbee and Jacob	07/07/2008	Talksport	Generally Accepted Standards	1
Heir Hunters	29/07/2008	BBC1	Offensive Language	1
Holby City	22/07/2008	BBC1	Offensive Language	1
Holby City (trailer)	23/07/2008	BBC1	Sex/Nudity	1
Holiday Driving Hell: Tonight	14/07/2008	ITV1	Dangerous Behaviour	1
Hollyoaks	16/07/2008	E4	Inaccuracy/Misleading	1
Hollyoaks	24/07/2008	Channel 4	Generally Accepted Standards	1
Hollyoaks	10/07/2008	Channel 4	Generally Accepted Standards	1
Hollyoaks	17/07/2008	Channel 4	Suicide/Self Harm	1
Hollyoaks		Channel 4	Substance Abuse	1
Home and Away	14/07/2008	Five	Sex/Nudity	1
House of Saddam	30/07/2008	BBC2	Offensive Language	1
Hugh's Chicken Run	19/01/2008	Channel 4	Offensive Language	1
I'm a Celebrity...Get Me Out of Here	22/11/2007	ITV1	Offensive Language	24
I'm a Celebrity...Get Me Out of Here!	29/11/2007	ITV1	Offensive Language	1
ITV News	21/07/2008	ITV1	Generally Accepted Standards	1
ITV News	09/07/2008	ITV1	Inaccuracy/Misleading	6
ITV News	27/07/2008	ITV1	Due Impartiality/Bias	1
Inside Out	16/06/2008	Playboy TV	Sex/Nudity	1
JK Rowling: a Year in the Life	30/12/2007	ITV1	Offensive Language	1
Jackass: The Movie	19/07/2008	Channel 4	Generally Accepted Standards	1
James O'Brien	07/07/2008	LBC 97.3FM	Due Impartiality/Bias	1
Jews	02/07/2008	BBC4	Generally Accepted Standards	1
John Gaunt SHow	04/07/2008	Talksport	Competitions	1
Jon Gaunt	03/07/2008	Talksport	Due Impartiality/Bias	1
Jon Gaunt	28/07/2008	Talksport	Sex/Nudity	2
Jonathan Ross	12/07/2008	BBC Radio 2	Offensive Language	1
Katie & Peter: The Next Chapter	26/06/2008	ITV2	Offensive Language	1
Kia Motors sponsorship of CSI	-	Five	Generally Accepted Standards	1
Kill Bill: Vol.1	04/07/2008	BBC1	Crime (incite/encourage)	1
Lab Rats	10/07/2008	BBC2	Generally Accepted Standards	1

LBC 97.3 FM	07/07/2008	LBC	Due Impartiality/Bias	1
Les Dennis's Home Video Heroes		Challenge TV	Animal Welfare	1
London Tonight	28/07/2008	ITV1	Sex/Nudity	1
Loose Women	14/07/2008	ITV1	Sex/Nudity	1
Loose Women	08/07/2008	ITV1	Inaccuracy/Misleading	1
Loose Women	08/07/2008	ITV1	Generally Accepted Standards	1
Loose Women	11/07/2008	ITV1	Sex/Nudity	1
Maltesers sponsorship of Loose Women	07/07/2008	ITV1	Generally Accepted Standards	1
Marco's Great British Feast	09/07/2008	ITV1	Competitions	1
Marco's Great British Feast	-	ITV1	Inaccuracy/Misleading	1
Martin and Su's Breakfast Show	10/07/2008	Essex FM	Generally Accepted Standards	1
Match of the Day Live: Euro 2008	16/06/2008	BBC1	Generally Accepted Standards	1
Maximum Programme	26/07/2008	Nepali Television	Sponsorship	1
Midsomer Murders	20/07/2008	ITV1	Generally Accepted Standards	1
Midsomer Murders	01/11/2007	ITV1	Offensive Language	3
Midsomer Murders	29/04/2008	ITV1	Offensive Language	1
Midsomer Murders	21/04/2008	ITV1	Offensive Language	1
Midsomer Murders	30/10/2007	ITV1	Offensive Language	1
Midsomer Murders	22/11/2007	ITV1	Offensive Language	1
Midsomer Murders	20/07/2008	ITV1	Generally Accepted Standards	10
Midsomer Murders	20/07/2008	ITV1	Violence	1
Mike Graham	29/06/2008	Talksport	Due Impartiality/Bias	1
Mike Mendoza	20/07/2008	Talksport	Generally Accepted Standards	1
Milkshake	11/07/2008	Five	Generally Accepted Standards	1
Mock the Week	24/07/2008	BBC2	Generally Accepted Standards	1
Mock the Week	24/07/2008	BBC2	Religious Offence	1
Nash Bridges	06/07/2008	F/X Channel	Offensive Language	1
New You've Been Framed	12/07/2008	ITV1	Animal Welfare	1
News	01/05/2008	BBC1 Scotland	Generally Accepted Standards	1
News	25/07/2008	BBC / Sky News	Crime (incite/encourage)	1
News at Ten	14/07/2008	ITV1	Dangerous Behaviour	1
News at Ten	10/07/2008	ITV1	Due Impartiality/Bias	1
New Tricks	07/07/2008	BBC1	Generally Accepted Standards	1
Newsbeat	08/07/2008	BBC Radio 1	Sex/Nudity	2
Nick Ferrari	03/07/2008	LBC 97.3FM	Crime	1

			(incite/encourage)	
Novelty Hits	30/06/2008	Smash Hits	Offensive Language	1
Panorama: Young Gunmen	30/06/2008	BBC1	Violence	1
Panorama Special: Racing's Dirty Secrets	30/07/2008	BBC1	Offensive Language	1
Pepper Pig	11/07/2008	Nick Jr	Dangerous Behaviour	1
Personal Services Required	02/07/2008	Channel 4	Generally Accepted Standards	6
Personal Services Required	09/07/2008	Channel 4	Generally Accepted Standards	1
Personal Services Required	16/07/2008	Channel 4	Generally Accepted Standards	2
Pete Price	13/06/2008	City Talk	Generally Accepted Standards	1
Petits Filous sponsorship of Mikshake	-	Five	Inaccuracy/Misleading	4
Pop Hits	15/07/2008	Bedroom TV	Offensive Language	1
Police, Camera, Action		ITV	Crime (incite/encourage)	1
Police, Camera, Action!	21/07/2008	ITV1	Inaccuracy/Misleading	26
Police, Camera, Action!	21/07/2008	ITV1	Crime (incite/encourage)	3
Porn: A Family Business	21/07/2008	TMF	Sex/Nudity	1
Programme trailer	17/07/2008	Five	Violence	1
Pulp Fiction	13/07/2008	BBC2	Violence	1
Quiz Call	06/07/2008	Five	Use of Premium Rate Numbers	1
Quiz Call	02/08/2008	Five	Competitions	1
Radhaa Ki Betiyaan Kuch Kar Dikhayengi	20/07/2008	NDTV Imagine	Offensive Language	1
Reporting Scotland	14/05/2008	BBC1 Scotland	Generally Accepted Standards	1
Reporting Scotland	13/05/2008	BBC1 Scotland	Generally Accepted Standards	1
Reporting Scotland	01/05/2008	BBC1 Scotland	Generally Accepted Standards	2
Richard & Judy	10/07/2008	Channel 4	Sex/Nudity	8
Richard & Judy	23/07/2008	Channel 4	Commercial References	1
Richard & Judy	28/07/2008	Channel 4	Generally Accepted Standards	1
Richard & Judy	25/07/2008	Channel 4	Generally Accepted Standards	1

Rogue Restaurants	31/07/2008	BBC1	Generally Accepted Standards	1
Rokker Radio	15/06/2008	BBC Three Counties Radio	Generally Accepted Standards	1
Rosemary & Thyme	19/02/2008	ITV1	Offensive Language	3
Rosemary & Thyme	13/03/2008	ITV1	Offensive Language	1
Safety Catch	15/07/2008	BBC Radio 4	Generally Accepted Standards	1
Send in the Dogs	15/07/2008	ITV1	Animal Welfare	2
Send in the Dogs	15/07/2008	ITV1	Violence	6
Send in the Dogs	15/07/2008	ITV1	Inaccuracy/Misleading	1
Sharia TV	15/07/2008	Channel 4	Generally Accepted Standards	1
Shipwrecked: Battle of the Islands	-	Channel 4	Animal Welfare	1
Sky News	-	Sky News	Due Impartiality/Bias	1
Sky News	17/06/2008	Sky News	Generally Accepted Standards	1
Sky Sports News	22/06/2007	Sky Sports News	Generally Accepted Standards	1
Smirnoff sponsorship of UV Suncare Report	29/06/2008	ITV1	Sponsorship	1
Sofia's Diary	16/05/2008	Fiver	Offensive Language	1
Space Party	01/08/2008	Sumo TV	Sex/Nudity	1
Spongebob Squarepants	30/04/2008	Nicktoons	Generally Accepted Standards	1
Sponsor credits	15/06/2008	ITV3	Generally Accepted Standards	1
Sponsorship of ITV Weather		ITV1	Sponsorship	1
Stand-Up On 7	06/07/2008	BBC7	Offensive Language	1
Sunday Night Show with Iain Lee	06/07/2008	Virgin Radio	Use of Premium Rate Numbers	1
Superstars	12/07/2008	Five	Dangerous Behaviour	1
Superstars	11/07/2008	Five	Commercial References	1
Sverige Pussas och Kramas, avsnitt 6	10/05/2008	Kanal 5	Generally Accepted Standards	1
Sverige Pussas och Kramas	07/05/2008	Kanal 5	Generally Accepted Standards	1
T4	21/06/2008	Channel 4	Generally Accepted Standards	1
Tease Me	19/07/2008	Bang Babes	Generally Accepted Standards	1
TV's 50 Hardest Men	06/07/2008	Sky One	Generally Accepted Standards	1
The Big Breakfast	23/07/2008	Westside Radio	Generally Accepted Standards	1
The Bush and Troy Show	21/07/2008	GWR 96.3FM Bristol	Generally Accepted Standards	1

The Charlotte Church Show	24/07/2008	Channel 4	Offensive Language	6
The Charlotte Church Show (trailer)	10/07/2008	Channel 4	Sex/Nudity	2
The Colbert Report	23/07/2008	FX	Generally Accepted Standards	1
The Graham Dene Breakfast Show	09/07/2008	Smooth FM	Competitions	2
The Holy Qur'an Beverages	14/07/2008	The Islam Channel	Inaccuracy/Misleading	1
The Hotel Inspector	10/07/2008	Five	Offensive Language	4
The Ice Pirates	18/07/2008	TCM2	Violence	1
The Jeremy Kyle Show	18/07/2008	ITV1	Generally Accepted Standards	1
The Kevin Bishop Show	25/07/2008	Channel 4	Generally Accepted Standards	32
The Kevin Bishop Show	01/08/2008	Channel 4	Religious Offence	6
The Man With 20 Kids	07/07/2008	BBC1	U18's in Programmes	3
The Man With 20 Kids	07/07/2008	BBC1	Dangerous Behaviour	1
The Morning Line	05/07/2008	Channel 4	Animal Welfare	1
The Nine O'Clock Show	18/07/2008	BBC Three Counties Radio	Sex/Nudity	1
The Now Show	27/06/2008	BBC Radio 4	Generally Accepted Standards	1
The Now Show	28/06/2008	BBC Radio 4	Generally Accepted Standards	1
The Now Show	11/07/2008	BBC Radio 4	Generally Accepted Standards	1
The ONE Show	10/07/2008	BBC1	Generally Accepted Standards	1
The Perfect War	02/07/2008	ITV4	Due Impartiality/Bias	1
The Qur'an	14/07/2008	Channel 4	Due Impartiality/Bias	1
The Qur'an	14/07/2008	Channel 4	Violence	7
The Qur'an	14/07/2008	Channel 4	Inaccuracy/Misleading	1
The Qur'an	14/07/2008	Channel 4	Generally Accepted Standards	1
The Qur'an	14/07/2008	Channel 4	Religious Offence	1
The Sarah Connor Chronicles (trailer)	14/07/2008	Bravo	Violence	1
The Seven Wonders of The Muslim World	14/07/2008	Channel 4	Religious Offence	1
The Simpsons	07/07/2008	Channel 4	Crime (incite/encourage)	1
The Simpsons	14/07/2008	Channel 4	Offensive Language	1
The Simpsons	16/07/2008	Channel 4	Offensive Language	1
The Steve Wilkos Show	10/07/2008	Living	Generally Accepted Standards	1

The Sunday Night Project	20/07/2008	Channel 4	Generally Accepted Standards	1
The Sunday Night Project	13/07/2008	Channel 4	Generally Accepted Standards	2
The Sunday Night Project (trailer)	-	Channel 4	Violence	1
The World of Andy Goldstein	12/07/2008	Talksport	Generally Accepted Standards	1
The Wright Stuff	28/07/2008	Five	Due Impartiality/Bias	1
The Wright Stuff	29/04/2008	Five	Due Impartiality/Bias	1
The Wright Stuff	28/04/2008	Five	Due Impartiality/Bias	1
The Wright Stuff	16/07/2008	Five	Generally Accepted Standards	1
Those Were the Days	21/07/2008	ITV3	Inaccuracy/Misleading	1
Tom's Big Feast	24/01/2008	ITV1 Westcountry	Offensive Language	1
Toonattik	26/07/2008	ITV1	Offensive Language	1
Top Gear	20/07/2008	BBC2	Generally Accepted Standards	3
Top Gear	20/07/2008	BBC2	Dangerous Behaviour	1
Top Gear	20/07/2008	BBC2	Offensive Language	1
Top Gear	20/07/2008	BBC2	Crime (incite/encourage)	1
Top Gear	27/07/2008	BBC2	Generally Accepted Standards	1
Touch Me, I'm Karen Taylor	12/07/2008	BBC Three	Sex/Nudity	1
Tour de France 2008 Preview	05/07/2008	ITV4	Animal Welfare	1
Tour de France: Greatest Moments	23/07/2008	ITV4	Generally Accepted Standards	1
Trial and Retribution III	18/06/2008	ITV3	Inaccuracy/Misleading	1
Tribal Wives	09/07/2008	BBC2	Generally Accepted Standards	1
Trinny and Susannah Undress the Nation	04/12/2007	ITV1	Offensive Language	5
Trinny and Susannah Undress the Nation	18/12/2007	ITV1	Offensive Language	6
Trisha Goddard	22/07/2008	Five	Generally Accepted Standards	1
Virtual Rush Trailer	30/06/2008	Rush HD	Inaccuracy/Misleading	1
Vision for Israel	18/04/2008	Revelation	Commercial References	1
Wake Up To Wogan	02/07/2008	BBC Radio 2	Generally Accepted Standards	1
Weakest Link	12/01/2008	BBC1	Offensive Language	4
Weakest Link Special	05/07/2008	BBC1	Offensive Language	6
Whacked Out Sports	12/02/2008	Five US	Violence	3

Windmill of the Gods	08/06/2008	True Movies 2	Advertising	1
Would I Lie to You?	25/07/2008	BBC1	Offensive Language	1
Would I Lie to You?	18/07/2008	BBC1	Offensive Language	1
Would I Lie to You?	11/07/2008	BBC1	Generally Accepted Standards	3

