

Ofcom Broadcast Bulletin

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Introduction

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

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

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

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

Standards cases

Notice of Sanction

Channel S Global Limited

Channel S Plus Limited

Channel S World Limited

Political advertisement for the Liberal Democrats, various times between 18 to 22 April 2008

On 10 December 2008, Ofcom published its decision to impose a statutory sanction on the licensees Channel S Global Limited, Channel S Plus Limited and Channel S World Limited in respect of their respective services Channel S, ATN and Channel S NTV. The sanction was for a breach of Section 4 of the Television Advertising Standards Code (“the TV Advertising Code”) which states:

“No advertisement:

- (a) may be inserted by or on behalf of any body whose objects are wholly or mainly of a political nature;*
- (b) may be directed towards any political end.”*

Ofcom found that these rules were breached as follows. During the election period for the London Mayoral and Assembly elections held on 1 May 2008, an advertisement was repeatedly broadcast on Channel S, ATN and Channel S NTV. This advertisement directly promoted candidates for the Liberal Democratic Party, including that party’s mayoral candidate, Brian Paddick. The advertisement was broadcast a total of 44 times on the three services between 18 and 22 April 2008.

For the reasons set out in the adjudication Ofcom imposed a financial penalty of **£15,000** on Channel S World Limited; **£13,000** on Channel S Plus Limited; and **£12,000** on Channel S Global Limited (payable to HM Paymaster General).

In addition Ofcom directed Channel S World Limited, Channel S Plus Limited and Channel S Global Limited to broadcast a statement of Ofcom’s findings on each of their respective services Channel S NTV, ATN and Channel S, in a form and at a time or times to be determined by Ofcom on two specified occasions.

The full adjudication is available at:

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

In Breach

N*E*R*D Special

MTV Hits, 5 October 2008, 17:30

Introduction

MTV Hits is a music channel available on satellite and cable platforms. *N*E*R*D Special* was a recording of a thirty minute live performance by the urban band, N*E*R*D.

One viewer complained that the programme contained the repeated use of strong and racist language in the early evening on a Sunday afternoon. On reviewing a recording of the material provided by MTV Networks Europe ("MTVNE"), which complies the channel, Ofcom noted that the programme contained several examples of the following strong language: "fuck", "mother fucker" and "nigger".

Prior to being formally approached by Ofcom for comments, MTVNE contacted Ofcom to state that MTVNE believed that the broadcast of the programme breached the Code, and that it was taking immediate action to improve compliance and disciplinary action against the employee involved.

Ofcom wrote to MTVNE, asking it to respond formally under the following Code Rules: 1.14 (the most offensive language must not be broadcast before the watershed), and 2.3 (material that may cause offence must be justified by the context).

Response

MTVNE unreservedly apologised for the transmission of the programme, which had been incorrectly classified for broadcast pre-watershed. It said the established compliance system had not been followed and this resulted in the programme being scheduled inappropriately. MTVNE recognised that the material was not suitable for transmission at the time in question. It expressed regret that the breach in standards had occurred despite the recent bolstering of MTVNE's compliance procedures in the wake of a recent finding of the Ofcom Content Standards Committee against various MTV channels controlled and complied by MTVNE ("the MTV Sanction")¹.

MTVNE outlined the steps it took when it became aware of the programme being broadcast:

- the programme was immediately pulled from the schedule and reclassified for broadcast only after 22:00;
- MTVNE alerted Ofcom as soon as practicable;
- an on-air apology was broadcast on MTV Hits in the same timeslot the following week; and
- a full investigation was launched into the incident. Following disciplinary proceedings, the member of staff responsible for the breach in compliance procedures left the organisation.

¹ A number of Licensees controlled by MTVNE were fined a total of £255,000. See Decision of Ofcom's Content Sanctions Committee dated 4 June 2008 (http://www.ofcom.org.uk/tv/obb/ocsc_adjud/mtv.pdf)

This was in addition to the comprehensive compliance review that MTVNE had already put in place in response to the MTV Sanction.

MTVNE said the incident occurred as the result of “one person’s negligence in not following the defined process”. MTVNE said it understood that it had more to do to improve compliance still further and was reviewing some of its compliance processes again to ensure they are as robust as possible.

Decision

Ofcom’s research² confirms that most viewers find “fuck” and its derivatives some of the most offensive language. The same research indicates that the use of the term “nigger” to be very offensive, although it might be deemed less offensive when used by a Black person, as was the case in this instance. Even though the child audience for the programme is small, all broadcasters must observe the watershed.

Ofcom welcomes the fact that MTVNE admitted the compliance error on being notified by Ofcom of the complaint and tightened up compliance procedures still further as a result. The repeated use of the most offensive words language before the watershed in this instance was, however, a clear breach of Rule 1.14.

In general, offensive material can be broadcast, so long as it is justified by the context. Given factors such as the time of broadcast, the effect that the material might have had on viewers who may have come across the material unaware, and the lack of any warning to viewers, Ofcom considered that the broadcast of this offensive material in the early evening was not justified by the context. It was therefore a breach of generally accepted standards and Rule 2.3 was also breached.

Ofcom views these breaches of the Code very seriously, especially in light of the recent MTV Sanction. However, given the swift and comprehensive action MTVNE took in the wake of these breaches, coupled with the overall bolstering of compliance procedures already in train, Ofcom does not consider it appropriate, on this occasion, to take further regulatory action. However, Ofcom is putting MTVNE on notice of its concerns about its compliance abilities in the wake of this decision.

Breach of Rules 1.14 and 2.3

² “Language and Sexual Imagery in Broadcasting: A Contextual Investigation”, September 2005

In Breach

Casualty

*BBC1, 13 September 2008, 20:20 to 21:10; and
14 September 2008, 20:00 to 21:00*

Introduction

Casualty is a long-running hospital drama set in the fictional city of Holby. Five viewers complained to Ofcom that the first episode in the new series transmitted on Saturday 13 September 2008 contained images of a “disturbing”, “violent”, “extremely graphic”, “shocking” and “disgusting” nature that were unsuitable for the time of transmission. These included scenes of extreme injury and trauma where a nurse was impaled on a stake and a young woman hit by an ambulance and flung violently into the windscreen of an oncoming car.

Two of the complainants stated that their children (a four year old and a 16-year old) were upset by what they saw on screen; and another was a nurse who found the material unexpected and very distressing. Another complaint was that the announcement before the first episode (“*An explosive two-parter to kick-off the new series now on BBC1. Unbreakable, unmissable, this is Casualty*”) gave insufficient warning as to the nature of the programme’s content. In addition, a viewer complained that the second part of the programme, transmitted on Sunday 14 September, contained disturbing scenes that were unsuitable for transmission pre-watershed.

13 September 2008, 20:20 to 21:10, “Farmead Menace – Part One”

In the last fifteen minutes or so of this episode, whilst pursuing an injured patient on a building site, a nurse, who is an established character in the series, falls over and becomes impaled on a spike. She remains conscious and in great distress in several scenes which follow showing her terrible situation: the spike has passed through her back and emerged through her abdomen. She is shown clutching the spike with her hands on her stomach while blood oozes from the wound. The patient, a young woman, who witnessed the accident, cold-heartedly uses the nurse’s mobile phone to film her suffering rather than call an ambulance. The patient then runs from the scene and is hit by an ambulance travelling at high speed. In a computer generated special effect, the viewer sees the girl flung through the air and smash into the windscreen of an oncoming car. She is then shown lying badly injured on the road.

14 September 2008, 20:00 to 21:00, “Farmead Menace - Part Two”

When this programme started at 20:00, directly after an edition of *The Antiques Roadshow*, it showed, pre-titles, a ‘teaser’ of the previous night’s programme which included brief clips of the nurse impaled on the stake and the accident involving the young woman. The programme itself featured riot scenes on a local estate where a group of young people aggressively taunted police and attacked cars and ambulances. In addition, there were a number of brief night time shots of the nurse impaled on the stake which were filmed in relative darkness.

Ofcom asked the BBC to comment with reference to Rules 1.3 (appropriate scheduling), 1.4 (television broadcasters must observe the watershed), and 2.3 (in

applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context).

Response

The BBC did not consider that either of these programmes breached the Code. It responded that *Casualty* depicts many of the grittier aspects of life in the medical world: violence and physical trauma inevitably feature significantly and the programme's audience expects it to reflect contemporary issues.

It continued that the writing, filming and editing of the scenes complained of, including the impaling and the patient hit by the ambulance, were undertaken with the pre-watershed scheduling of the programmes in mind and discussed with a senior BBC executive. It said that: the shot of the nurse falling onto the spike was very brief and did not go beyond the acceptable limits for the portrayal of serious injury, the scene in which the patient was hit by the ambulance was also kept very brief, and the depiction of violence in the scenes of rioting on the estate were limited, and in its view, not gratuitous.

The BBC believed the elements of the broadcasts which have given rise to complaints should be considered in the overall context of *Casualty* as a series, and not simply in terms of the expectations it has established among viewers about the nature and extent of its depiction of injury and violence.

Decision

Ofcom recognises that *Casualty* is a well-established programme that may contain images and storylines that some in the audience will find challenging. Given that it is a hospital drama, the programme will frequently broadcast scenes of injuries and medical procedures. However, the programme is transmitted before the watershed and it is important that such material is appropriately limited.

13 September 2008, 20:20 to 21:10, "Farthead Menace – Part One"

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them, and that appropriate scheduling should be judged according to such factors as the likely number and age range of children in the audience, taking into account school-time, weekends and holidays. Ofcom was concerned by the graphic nature of the repeated scenes of the nurse impaled on the stake who was obviously in great distress, and by the aggressive impact of the accident scene filmed from the perspective of the inside of the car that the young woman was flung into at high speed. Taken together, these two incidents occurred in the last ten minutes of the drama resulting in a sustained and concentrated run of distressing and shocking scenes.

Ofcom noted, and would expect that, children would be watching the television as part of a family group at this time on a Saturday evening. Audience data indicates that 397,000 children¹ were watching this broadcast. Whilst the BBC has stated that it is inevitable that violence and trauma will feature significantly in *Casualty* and that it reviewed this material for pre-watershed transmission, two of the complainants stated that their children were distressed by what they saw on screen. In Ofcom's view the explicit images of extreme trauma, distress and injury of the impaled nurse, and the computer generated images of the ambulance accident (as explained in the

¹ Total for children aged 4 to 15

Introduction), went beyond audience expectations regarding children in the audience who were not sufficiently protected from this material.

Ofcom noted that this broadcast straddled the 21:00 watershed, ending at 21:10. The start time of this programme was early enough for children to begin watching a pre-watershed programme that contained elements, in the last fifteen minutes or so in particular, that were in Ofcom's opinion of a post-watershed programme. (It is during this period that the graphic images of the impaled nurse and of the accident involving the young woman hit by the ambulance were broadcast). Rule 1.4 requires broadcasters to observe the watershed. This means that programmes which straddle the watershed should not normally show graphic and/or significantly stronger material after 21:00 that is unsuitable for an audience inherited from before the watershed. In these circumstances, and irrespective of the climactic effect broadcaster's are trying to build up to, broadcasters must consider the need to protect adequately children who start watching such programmes before the watershed. This is because children and their parents may be unprepared for significantly stronger material at the end of a programme they had started to watch together as a family some time before 21:00.

In addition, Rule 2.3 requires that in applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. In addition, in considering the context of material that is transmitted, Ofcom will take into account the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information; and the effect of the material on viewers who may come across it unawares. One of the complainants, a nurse, said that she was "unprepared" for such graphic scenes before the watershed and was therefore greatly distressed by them. Ofcom considered that important aspects of the programme's potentially traumatic and on-going distressing content were not adequately conveyed to the audience in the information provided before the programme i.e. "*An explosive two-parter to kick-off the new series now on BBC1. Unbreakable, un-missable, this is Casualty*". The audience was therefore not appropriately informed of what to expect in a programme whose transmission began 40 minutes before the watershed. Taking all the relevant contextual factors into account – including the fact that this was broadcast on BBC1, and the graphic nature of the images of the nurse and the ambulance accident – the broadcast of this material was not in Ofcom's view justified by the context. It was therefore in breach of Rule 2.3.

Ofcom concluded that this edition of the programme was in breach of Rules 1.3, 1.4, and 2.3 of the Code.

14 September 2008, 20:00 to 21:00, "Farmed Menace - Part Two"

Ofcom was concerned that the two images that were particularly strong in the previous night's episode of *Casualty* (the nurse impaled on the spike and the computer generated image of the patient hit by the ambulance) were repeated in a pre-titles 'teaser' at the beginning of the second episode, albeit in the form of very brief clips. Many viewers watching this programme at 20:00, directly after an edition of *The Antiques Roadshow*, would have come across this distressing material unawares and there would have been little or no editorial context to justify its inclusion. In addition, audience research indicated that 367,000 children were watching at this time. This is of concern to Ofcom given the programme's start time one hour before the watershed.

Ofcom considered that this pre-titles 'teaser' was inappropriately scheduled at 20:00 having regard to the likely expectations of a family audience for BBC1 on a Sunday night. It was therefore in breach of Rule 1.3 and 1.4 of the Code.

However, Ofcom did not consider that the riot scenes complained of in this episode went beyond viewer expectations. It noted that little actual violence was shown. The violence featured was appropriately limited and editorially justified bearing in mind that a serious riot was a significant element in the plot. In this episode, the additional shots of the nurse impaled on the stake which were interspersed throughout the programme were extremely brief and filmed in relative darkness. These factors softened their impact compared to those in the previous night's episode. There was therefore no breach of Rule 2.3 in this episode.

As highlighted to the BBC by Ofcom in its Finding regarding another episode of *Casualty* published in Bulletin 99 on 17 December 2007², the 21:00 watershed acts as a guideline to all broadcasters and viewers about the nature of material likely to offend. Broadcasters must comply with the requirements of the Code that material must be appropriately scheduled and that the images of the effects of violence (which includes those of significant trauma and injury) must be appropriately limited and justified by the context. In addition, broadcasters should take care in scheduling programmes which straddle family viewing time and the watershed. In particular if appropriate information is not given to viewers, especially those viewing with children, then significantly stronger material at the end of such programmes is capable of causing unjustified distress and offence.

Saturday 13 September 2008: Breach of Rules 1.3, 1.4 and 2.3

Sunday 14 September 2008 (pre-titles teaser): Breach of Rules 1.3 and 1.4

² Broadcast Bulletin 99 can be found at http://www.ofcom.org.uk/tv/obb/prog_cb/obb99/issue99.pdf

In Breach

Axe Men

Five, 19 September 2008, 20:00

Introduction

Axe Men is a factual programme which looks at the high risk, day-to-day work of different logging companies in the north west of the USA. One viewer complained to Ofcom that the programme contained various forms of bad language, including “mother fucker”.

After viewing the broadcast, Ofcom noted that the programme did not include the word “mother fucker”. However, it did include one use of the expletive “*fuck*”. Ofcom asked Five to respond under Rule 1.14 (the most offensive language must not be broadcast before the watershed) of the Code.

Response

Five accepted that the programme contained one use of “*fuck*”, stated that this expletive was included as a result of human error and apologised. In response to this mistake, Five has taken various additional steps to improve its compliance concerning strong language.

Decision

Rule 1.14 prohibits the broadcast of the most offensive language before the watershed. Ofcom research on offensive language¹ identified that “*fuck*” and its derivatives were considered by viewers to be very offensive. Ofcom notes that broadcast of the word on this occasion resulted from human error and that Five has made changes to improve its compliance as a result. However, the broadcast of such language before the 21:00 watershed is a breach of Rule 1.14.

Breach of Rule 1.14

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

Not In Breach

We Are Most Amused

ITV1, 15 November 2008, 20:35

Introduction

We Are Most Amused was a special comedy gala performance held to mark the sixtieth birthday of the Prince of Wales. The show included many of the UK's leading comedians.

Ofcom received 540 complaints concerning a sketch, included in the programme, featuring Rowan Atkinson. In the sketch, Rowan Atkinson played a Christian clergyman delivering a comedic version of a biblical miracle story – the Wedding Feast at Cana.

The complainants considered the sketch to be offensive and blasphemous, and some complainants questioned whether a similar sketch would be permissible if the subject had been one of the world's other religions, such as Islam. There was evidence that some of the complaints were part of an orchestrated campaign.

Playing the clergyman, Rowan Atkinson delivered the sketch as if reciting from the bible to a congregation. He described Jesus turning water into wine at the wedding feast at Cana, and said:

“And when the steward of the feast did taste of the water from the pots, it had become wine. And he knew not whence it had come. But the servants did know, and they applauded loudly in the kitchen. And they said unto the Lord: ‘How the hell did you do that?’ And inquired of him: ‘Do you do children’s parties?’ And the Lord said: ‘No.’ But the servants did press him, saying: ‘Go on, give us another one’”.

Further on in the sketch, Ofcom noted there were the following passages:

“...and he did place a large red cloth over the carrot and then removed it. And lo, he held in his hand a white rabbit. And all were amazed, and said: ‘This guy is really good; he should turn professional’. And there came unto him a woman called Mary...and Jesus said unto her: ‘Put on a tutu and lie down in this box’. And took he forth a saw and cleft her in twain”.

“...And he did go unto Jerusalem, and he did his full act before the Scribes, and the Pharisees, and the Romans. But alas, it did not please them in their hearts. In fact they absolutely crucified him”.

Ofcom considered these complaints under Rule 2.3 (material that may cause offence must be justified by the context).

Decision

Many complainants accused ITV of blasphemy. Ofcom is not required to determine whether the ITV committed blasphemy, but whether, in this case, the provisions of its Code had been breached.

Comedy has a long tradition of tackling challenging and sensitive subjects, such as religion. It is important and necessary, in line with freedom of expression, that broadcasters can explore such matters. Therefore broadcasters are free to include treatments, comedic or otherwise, of any religion, as long as they comply with the Code.

In dealing with such material, broadcasters must ensure that they apply “generally accepted standards” by ensuring that members of the public are given adequate protection from offensive material. Ofcom considers that the context of this programme was clear and justified the broadcast of this item.

In particular, this was a comedy sketch, by a performer well-known for his depictions of clergymen in comedic situations. The sketch was an absurd interpretation of a well-known biblical miracle story, and was not intended as a serious interpretation of Christian belief, nor would it be realistic to make such an inference. It superimposed onto the original story, the concept of how some people might react today, if Jesus were to appear in modern society. In making an analogy between miracles and magic, the comedian used the well-known comic device of placing theological figures in a contemporary and everyday human situation. The overall tone of the sketch was affectionate and not abusive of the Christian religion.

Ofcom considered that the approach would have been well understood by the vast majority of the audience and would not have gone beyond what would normally be expected in a programme of this type. Therefore, the programme was not in breach of Rule 2.3.

Not in Breach

Fairness and Privacy Cases

Partly Upheld

Complaint by Harbottle and Lewis LLP on behalf of Dr Roger Mugford

Insight: Bad Dog, UTV, 19 November 2007

Summary: Ofcom has upheld part of this complaint of unfair treatment in the broadcast of the programme, which was brought on behalf of Dr Roger Mugford by Harbottle and Lewis LLP Solicitors.

On 19 November 2007, UTV broadcast an edition of its current affairs programme, *Insight*, which examined the law in Northern Ireland regarding dangerous dogs and, in particular, the perceived risk to the public posed by pit bull terriers and pit bull type dogs. The programme reported the concerns of the police, the Ulster Society for the Protection of Animals (“the USPCA”) and local dog wardens that some expert witnesses called to testify in court were prepared to mislead the court as to a dog’s breed, to prevent it being put down.

Dr Mugford, an animal psychologist, was suspected by the USPCA of being one such witness. He was subject to a covert operation by the USPCA to test his expert opinion. Dr Mugford was secretly filmed by a USPCA undercover agent, discussing and examining a dog that the USPCA believed to be a pedigree pit bull terrier bred specifically for fighting. He was filmed concluding that the dog was not a “pit bull” despite having said to the undercover agent that “if it was England I would say he’s a pit bull”. Dr Mugford’s examination of the dog was also openly recorded on his own video camera for potential use in court and footage from this was included in the programme. At a later date, Dr Mugford was interviewed for the programme and was asked to respond to comments he had made while being secretly filmed. He was unaware at the time of interview that he had been secretly filmed. Footage of both this interview and secretly recorded film was included in the programme.

Dr Mugford complained that: he was portrayed unfairly in that the programme made allegations of either wrongdoing or incompetence; the programme included unfairly edited footage of the secretly recorded material; he was not given an appropriate and timely opportunity to respond; and that the inclusion of the secretly recorded footage was not necessary or in the public interest.

Ofcom found that:

- The programme made significant and serious allegations about Dr Mugford that amounted to allegations of wrongdoing and incompetence. He should therefore have been given an “appropriate and timely” opportunity to respond to them. The programme makers’ failure to do so resulted in unfairness to Dr Mugford in the programme as broadcast.
- The editing of the secretly recorded footage of Dr Mugford taken by a USPCA undercover agent, and the footage of Dr Mugford’s own openly filmed physical examination, fairly represented the broad thrust of Dr Mugford’s assessments of the dog. Therefore, the editing of the programme did not result in unfairness to Dr Mugford.
- The inclusion in the broadcast programme of the secretly recorded USPCA material did not, in itself, result in unfairness to Dr Mugford.

Introduction

On 19 November 2007, UTV broadcast an edition of its current affairs programme, *Insight*. This particular edition of the programme examined the law in Northern Ireland relating to dangerous dogs. It focussed on the perceived risk to the public posed by pit bull terriers and pit bull type dogs. The programme explained that under the dangerous dogs legislation in Northern Ireland, a dog suspected of being a pit bull terrier or pit bull type may be taken by the authorities and destroyed, unless it can be shown that the dog is not, in fact, of these breeds. The position in England and Wales is that any dog suspected of being a pit bull terrier or a pit bull type may be exempted from being destroyed at the discretion of the court. Exemptions may be applied only if conditions are met, for example, if the dog is neutered, tattooed, micro chipped and kept on a lead and muzzled in public. In Northern Ireland, however, no such exemptions exist and all dogs found to be of these types must be destroyed.

The programme reported the concerns of the police, the Ulster Society for the Protection of Animals ("the USPCA") and local dog wardens that some expert witnesses called to testify in court were prepared to mislead the court as to a dog's breed so as to prevent it being destroyed. Dr Mugford (an animal psychologist with a reputation as an expert on the behaviour of dogs and the better management of aggressive and dangerous ones) was suspected by the USPCA of being one such expert. The programme reported an undercover operation by the USPCA to test the credibility of Dr Mugford's expert opinion.

On 10 August 2007, Dr Mugford was contacted by a Mr Paddy Hill. Mr Hill was an undercover agent for the Society. He claimed that his dog, "Nipper", had been seized by the USPCA on the suspicion that it was a pit bull terrier or pit bull type. The dog had actually been seized by the USPCA in a separate operation. It had previously been smuggled into Northern Ireland from a fighting dog farm in Finland¹, that it was claimed bred American Pit Bull Terriers. Mr Hill and Dr Mugford arranged to meet to discuss Nipper in more detail.

On the 13 August 2007, Dr Mugford met Mr Hill in a restaurant before driving to the USPCA kennels where Nipper was being held. Unknown to Dr Mugford, Mr Hill secretly recorded their meeting in the restaurant, where they discussed the dog, and their visit to the kennels, where Dr Mugford undertook a physical examination of Nipper. Following this, Dr Mugford used his own video equipment to film his opinions of the dog for the supposed purpose of the tape being used as evidence in court.

In the footage secretly filmed by Mr Hill, Dr Mugford was filmed in the restaurant inspecting a photograph of Nipper and saying that the dog looked "*a bit typey*", and at the kennels he stated in the undercover footage "*if it was England I would say he's a pit bull*". In his openly video recorded footage Dr Mugford concluded that the dog was not a "*pit bull*"

On 30 August 2007, Dr Mugford was interviewed by the programme's reporter, Mr Chris Moore, when leaving court after an adjournment in an unconnected case. During this interview, Mr Moore asked Dr Mugford to comment on his dealings with Mr Hill and his overall assessment that Nipper was not a pit bull terrier. Dr Mugford was unaware at the time of this interview that he had been secretly filmed by Mr Hill or that Mr Hill had been working undercover for the USPCA.

¹ In Finland pit bull terriers are a legal dog breed, however dog-fighting itself is illegal.

The programme was broadcast on the eve of a debate on the dangerous dog legislation in the Northern Ireland Assembly. As well as featuring interviews with Mr Stephen Philpott, the Chief Executive Officer of the USPCA; victims of an attack by a pit bull; and local authority representatives; the programme also included parts of the secretly recorded film of Dr Mugford shot by Mr Hill at their meeting on 13 August 2008, and footage of Mr Moore's interview with him outside the courthouse on 30 August 2008.

Ofcom's Fairness Committee (its most senior decision making body with regard to fairness and privacy complaints) met to consider Harbottle and Lewis's complaint of unfair treatment made on Dr Mugford's behalf.

The Complaint

Harbottle and Lewis's case made on behalf of Dr Mugford

In summary, Harbottle & Lewis complained that Dr Mugford was treated unfairly in the programme as broadcast. In particular, it complained that:

- a) Dr Mugford was portrayed unfairly in the programme.
 - i) The programme made serious allegations about Dr Mugford, which amounted to allegations of either wrongdoing or incompetence. Although the programme did not make such allegations expressly, Harbottle and Lewis argued that taking the evidence put forward in the programme as a whole, a viewer would have concluded that Dr Mugford:
 - was willing to give evidence in Court proceedings to the effect that a dog was not a pit bull terrier, when, in fact, he had reasonable grounds to believe that the dog was a pit bull terrier and therefore illegal;
 - advanced conclusions about the pedigree and safety of dogs which were not supported by evidence and which were dismissed as laughable by USPCA experts who the programme promoted as trusted; and
 - was either incompetent or deceitful and, on either view, had no credibility as an expert in breed identification.
 - ii) The editing of the programme was such that Dr Mugford's position was not presented fairly. In summary, Harbottle and Lewis said that:
 - The untransmitted examination footage from the broadcaster showed that during the physical examination of Nipper, Dr Mugford clearly cited the reasons upon which he based his conclusion that Nipper was not a pit bull (for example that he had the wrong shape of feet and head and that he had a short nose). Dr Mugford also stated in the untransmitted examination footage that he had measured Nipper against the accepted American Dog Breeders Association ("the ADBA") standard and that Nipper's measurements were not consistent with a dog of a pit bull breed. As a result of these omissions, the programme unfairly suggested that Dr Mugford's conclusions were lacking in any evidential basis and were "laughable". Had his reasons for reaching his conclusion that Nipper was not a pit bull been included in the programme, this would have

demonstrated that self-evidently, the conclusions were well-founded and honestly-held.

- The programme also omitted any parts of the untransmitted (secretly recorded) footage in which Dr Mugford sought assurances that Mr Hill was not involved in dog fighting or where Mr Hill deliberately misled Dr Mugford regarding the dog's provenance and paperwork. The omission from the programme of all material which supported Dr Mugford's position caused substantial unfairness to him.
- b) Dr Mugford was not given an opportunity to respond to the allegations contained in the programme.
- Harbottle and Lewis argued that none of the matters in (a) were put to Dr Mugford prior to broadcast of the programme. Had he been given such an opportunity to respond, he would have denied the allegations made and given detailed grounds of rebuttal. Although Dr Mugford was interviewed (on 30 August 2007) as he left court after an unconnected case, he said that this interview in no way constituted proper notice of the allegations to be made about him. It took place without any notice and failed completely to outline the allegations to be made, and allowed no subsequent opportunity for a response.
- c) The undercover USPCA footage used in the programme was neither necessary nor in the public interest.
- Harbottle and Lewis said that the highly intrusive nature of surreptitious filming should impose upon the broadcaster a high standard of care that those who are made subject to such covert techniques are given a proper opportunity to know the case that will be made against them as a result of the surreptitious filming, and have an opportunity to respond. During the meeting which was shown in the undercover footage Dr Mugford was provided with misleading and inaccurate information on which he relied.

UTV's case

UTV responded to the complaint of unfair treatment made by Harbottle and Lewis on Dr Mugford's behalf.

- a) In summary, UTV responded to the specific head of complaint that Dr Mugford was unfairly portrayed in the programme.
- i) UTV said that the programme made no comment on Dr Mugford's competence, either explicitly or implicitly. The programme was concerned with pit bulls and pit bull types: the danger of these dogs, and the importance of their identification; all of which were integral to the story.
- UTV said that it was justified, considering Dr Mugford's secretly recorded comments about Mr Hill's dog Nipper, to question the evidence he was likely to give if this matter had gone to court. UTV said that although Dr Mugford did not state or imply it on air, it believed that Dr Mugford was willing to give evidence in court that a dog was not a pit bull terrier when he had reasonable grounds to believe that it was. UTV said that Dr Mugford stated in the undercover USPCA footage that he would have described Nipper as a pit bull if it was in England. However, when Paddy

Hill pointed out what was said on the passport (i.e. a “*Boxer cross Labrador*”), Dr Mugford said “*Yes, perfect - that will work*”. UTV said that this comment could only have been intended as a reference to a court appearance. Dr Mugford went on to say that “*I think it’s going to be quite difficult to defend*”. UTV stated that the context of these comments makes it clear that the purpose of the examination of Nipper was explicitly intended to be for court proceedings.

- UTV said that the programme contained no content that would lead the viewer to conclude that Dr Mugford advanced conclusions about the pedigree and safety of dogs which were not supported by evidence. UTV stated that the word “laughable” was directed very specifically at Dr Mugford’s comment on the “*massive weight loss*” of Nipper and nothing else. Mr Philpott of the USPCA responded to Dr Mugford’s comment that Nipper had lost weight since being in the care of the Society. He stated in the programme that the dog had actually put on weight since it was taken into USPCA care because the dog had come from a fighting dog farm in Finland where it had been kept in top fighting condition, that is “*lean and mean*”. UTV said that it was Mr Philpott who used the word “laughable”. It was his choice of word and one based on his own, accurate knowledge of the dog’s background in Finland. It did not dismiss Dr Mugford’s conclusions about the pedigree and safety of dogs.
- UTV said that the programme made no comment on Dr Mugford’s competence. However, UTV said that Dr Mugford had offered seven different and at times conflicting accounts as to the breed of dog he believed Nipper to be.

ii) In summary and in response to the complaint that the editing of the programme did not present Dr Mugford’s position fairly, UTV said that:

- The untransmitted USPCA undercover footage did not show a detailed physical examination of Nipper. The footage did show however Dr Mugford taking comprehensive measurements of the dimensions of the dog. At no point did Dr Mugford analyse the anatomical make-up of the dog. UTV said that the description of wrong shaped feet, head etc featured in Dr Mugford’s own video recording of his examination of Nipper, which was intended for potential use in court. UTV said that it doubted the analysis of the dog presented by Dr Mugford in his recording and it believed that Dr Mugford had set out to prove the dog was not a pit bull after stating that “*if it was in England I would say he’s a pit bull*”. Therefore, UTV stated that Dr Mugford’s examination of Nipper and his recording of it could not be treated as credible.

UTV said that the Dr Mugford’s use of the ADBA standards to compare measurements of dogs had been called into question by Mr Philpott of the USPCA. UTV said that Mr Philpott argued that the ABDA standards applied to pedigree dogs only, whereas the courts dealt with cross-breeds and therefore pit-bull “type” dogs. UTV also stated that the ADBA itself published concerns that its standards were being improperly used as a dog identifier rather than as a description of pedigree dogs. Therefore, according to UTV, Dr Mugford’s submission to Ofcom did not present a true picture of the ADBA standards.

UTV said that the recording produced by Dr Mugford, of him examining Nipper in the USPCA kennels, when seen in full did not show “well-founded and honestly held” opinion. UTV said that it was apparent from the recording of the examination of Nipper that Dr Mugford was defending a dog that he would characterise as a pit bull terrier if in England. UTV said that Dr Mugford’s examination was designed to save Nipper from being classed as a pit bull in Northern Ireland, and therefore from destruction, rather than to establish the true breed of dog.

- UTV said that the only section of the untransmitted secretly recorded USPCA footage that referred to Dr Mugford checking with Mr Hill that he was not involved in dog-fighting was in an exchange lasting four seconds:

Dr Mugford: “Have you anything to do with illegal dog fighting?
Mr Hill: No, no.
Dr Mugford: Right, good.”

UTV said that although Dr Mugford had asked Mr Hill about his possible dog fighting connections, the questioning was cursory and would have added nothing to the programme. UTV stated that the issue of what was omitted from the untransmitted USPCA footage where Mr Hill misled Dr Mugford was irrelevant. The entire undercover operation, by definition, was one in which Dr Mugford was misled by the USPCA. UTV said that it was understandable that Dr Mugford felt that he had been misled by Mr Hill. However, UTV said that it believed that the programme was not substantially unfair to Dr Mugford. At no point during the programme could viewers have believed the investigation was anything other than a USPCA undercover operation. The secretly recorded footage was clearly marked as such and Mr Philpott set out the background to the USPCA undercover operation during his contribution to the programme.

UTV said that there was a significant public interest in the issue covered by the programme. The covert filming was the only way to illustrate the doubts over some expert witness evidence. UTV said that no substantial unfairness was caused to Dr Mugford as a result of any editorial omission. The undercover USPCA footage which was used in the programme fairly reflected the exchanges between Mr Hill and Dr Mugford.

- b) In summary, UTV responded to the complaint that Dr Mugford was not given an opportunity to respond to the allegations contained within the programme.

The programme makers gave Dr Mugford the opportunity to respond to the content of the programme that directly concerned him. The broadcaster said that Dr Mugford was approached by the programme’s reporter, Mr Moore, during a court adjournment in Antrim on 30 August 2007. Mr Moore explained that he worked for *Insight* and that he was making a programme looking at the issue of the law on dangerous dogs. Dr Mugford was asked for an interview outside the court building. Dr Mugford told Mr Moore that he could not talk about the ongoing case being heard in Antrim and Mr Moore assured him he wanted to talk in more general terms. Dr Mugford agreed to the interview, which lasted for approximately 34 minutes. UTV said that Dr Mugford - who is experienced at dealing with the media - at no stage voiced any objections to the line of questioning, nor did he raise any issues about the amount of notice given for the interview.

UTV said that it believed that Dr Mugford was given the opportunity to deal with the elements of the programme relevant to his contribution, specifically, the exchanges captured in the secret filming between Dr Mugford and Mr Hill. UTV said that it was fully aware of its obligations under Section 7.11 of Ofcom's Broadcasting Code ("the Code"). This states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond. UTV emphasised that the Code stated "normally" – in other words, not always. On this occasion, UTV decided on editorial grounds and after careful consideration, not to offer Dr Mugford the normal "appropriate and timely" opportunity to respond to the allegations in the programme. The broadcaster said that it had taken the view that if Dr Mugford had been alerted to the existence of the USPCA undercover footage, he would have refused to give UTV an interview and that the programme's investigation would have been frustrated. For the same reason, UTV said that it did not want to give Dr Mugford advance warning of the exchanges between himself and Mr Hill contained in the recording. UTV said that it strongly believed that these exchanges demonstrated that Dr Mugford was prepared to mislead the courts. It took the view that Dr Mugford would also be prepared to mislead the programme's reporter if he had advance notice of the programme content relevant to him. UTV maintained that the interview was not a 'doorstep' as it was pre-arranged, albeit with only 15-20 minutes notice. UTV believed that it was justified in its editorial approach.

UTV said that Dr Mugford contacted the programme by telephone on 13 November 2007 (almost three months after the initial interview held on 30 August 2007) and asked that Mr Moore return his call. Mr Moore made every effort to contact Dr Mugford on the day in question, recorded two conversations with him, and made notes and recordings of at least six other attempts to contact him. Mr Moore confirmed to UTV that his conversations with Dr Mugford were brief and that nothing was discussed about the programme as Dr Mugford was travelling at the time and could not hold a conversation.

- c) In summary, UTV responded to the complaint that the undercover footage used in the programme was neither necessary nor in the public interest.

UTV said that the use of the undercover USPCA footage in the programme was both necessary and in the public interest. There had been significant media coverage and widespread public concern following numerous attacks by dangerous dogs in both Northern Ireland and the UK in general. UTV said that Rule 7.14 of the Code stated that broadcasters must not obtain or seek information through misrepresentation or deception. Firstly, UTV reiterated that it did not instigate or have any involvement in the undercover filming which was recorded entirely by the USPCA. It said that when UTV was made aware of the material, it believed that the footage was of genuine public interest and showed a genuine discrepancy between Dr Mugford's initial view of Nipper's breed and the view he was prepared to give in evidence to a court. UTV believed that this material could not have been obtained in any other way.

Harbottle and Lewis's additional comments made on Dr Mugford's behalf

In summary and in response to UTV's statement, Harbottle and Lewis commented as follows:

Harbottle and Lewis made no further relevant comments in relation to head a) (including subsections i) and ii)).

- b) In summary, Harbottle and Lewis responded to UTV's statement in response to the complaint that Dr Mugford was not given an appropriate and timely opportunity to respond.

Harbottle and Lewis said that UTV had admitted that it had decided not to offer Dr Mugford the normal appropriate and timely opportunity to respond "on editorial grounds". Harbottle and Lewis said that it did not consider that the broadcaster's own editorial imperatives gave rise to any ground whatsoever to depart from Practice 7.11 of the Code.

Harbottle and Lewis said that Dr Mugford accepted the account of the telephone contact between himself and Mr Moore (the programme's reporter). However, UTV made no attempt to put the serious allegations to Dr Mugford prior to 13 November 2007 and even when Dr Mugford contacted the programme, Mr Moore still did not set out the nature of the allegations to be made or offer Dr Mugford an opportunity to respond to them. Furthermore, neither UTV nor Mr Moore attempted to contact Dr Mugford between 13 and 19 November 2007, when the programme was broadcast.

- c) In summary, Harbottle and Lewis responded to UTV's statement in response to the complaint that the undercover footage used in the programme was neither necessary nor in the public interest.

Harbottle and Lewis said that it appeared to it that UTV purported to shelter behind a "sting operation" conducted by the USPCA and to distance itself entirely from ensuring the methods used in the information gathering process were fair and complied with the Code. Harbottle and Lewis said that it was clearly the broadcaster's responsibility alone to ensure compliance with the Code. Harbottle and Lewis stated that even if the USPCA was able to demonstrate some public interest in carrying out its investigation, it was an entirely different proposition to demonstrating that there is public interest in the subsequent television broadcast of such an investigation. It also said that the broadcaster (where the broadcaster has not gathered the information itself) should have an even higher regard for ensuring that the material is put to the subject of the allegations and that the subject is given a reasonable opportunity to respond in advance. UTV had aligned itself with the USPCA and accepted, without question, the veracity of all information which derived from that source.

UTV's additional comments

In summary and in response to Harbottle and Lewis's comments made on behalf of Dr Mugford, UTV commented as follows:

UTV made no further relevant comments in relation to heads a) (including subsections i) and ii)) and c) of the complaint.

- c) In summary, UTV responded to Harbottle and Lewis's comments relating to the complaint that Dr Mugford was not given an appropriate and timely opportunity to respond.

UTV said that it accepted that Dr Mugford was not given an appropriate and timely opportunity to respond. UTV said that it had already stated in its initial response to Ofcom its approach towards Dr Mugford and why he was not given, in advance, full details of the allegations being made against him in the

programme. UTV pointed out that Practice 7.11 of the Code includes the wording “should normally be given” the appropriate timing and opportunity, and in its initial submission, UTV said that it had indicated why it believed it had editorial justification not to afford Dr Mugford the usual advance notice.

UTV said that the key purpose of the interview was to establish the reason for Dr Mugford’s using the sentence “*if it was in England I would say he’s a pit bull*”. At no time in the 34 minute interview did Dr Mugford plausibly explain his comment. Dr Mugford had every opportunity to respond in the period between the interview (when he was aware of the allegations) and the broadcast of the 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 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.

Harbottle and Lewis’s complaint on behalf of Dr Mugford was considered by Ofcom’s Fairness Committee (“the Committee”), its most senior decision making body in matters of Fairness and Privacy. In reaching its decision, the Committee carefully considered all the material provided by both parties, including a recording of the programme as broadcast (and the transcript of it); and the written submissions from both parties (which included a large amount of supporting documentation). It also considered unedited footage of the interview with Dr Mugford and of the footage surreptitiously recorded by the USPCA, and transcripts of these.

The Committee found the following:

- a) The Committee looked at whether or not Dr Mugford was portrayed unfairly in the programme.
 - i) The Committee first considered the complaint that the programme made serious allegations about Dr Mugford, which amounted to allegations of either wrongdoing or incompetence. In particular, that he was portrayed as willing to give evidence to a court that a dog was not a pit bull terrier when he had reasonable grounds to believe otherwise; as advancing conclusions about dog pedigree not supported by evidence; and as incompetent; or deceitful. The Committee considered these elements of the complaint together in relation to the complaint of unfair portrayal.

In considering this head of complaint, the Committee took into account Practice 7.9 which states that broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

The Committee first considered the background to the programme and to its investigation of Dr Mugford. It noted that the programme’s stated purpose

was to examine the application of the legislation relating to dangerous dogs in Northern Ireland, in the light of public concern that had arisen out of the reporting of a number of high profile incidents of attacks by pit bull terriers and pit bull terrier type dogs.

The Committee noted that UTV had said that during the making of the programme the producers learned that conflicting expert testimony was routinely provided in court by experts, about dog breed identification. UTV said that it had been told by the police, the USPCA, and local council dog wardens that they suspected that some experts were “prepared to provide whatever testimony was required to save a dog from the mandatory death sentence”.

It was during this research that the programme makers became aware of Dr Mugford, and that the USPCA suspected him of being prepared to help owners of dogs that were of banned breeds, even if this meant deliberately presenting misleading evidence in court. The Committee noted that this lay behind the USPCA’s decision to film Dr Mugford secretly, and UTV’s decision to include him in the programme.

Against this background, the Committee then considered what allegations were made about Dr Mugford. The Committee took the view that the programme made a number that questioned his credibility as an expert in dog breed identification, noting that at the outset of the programme, the commentary said:

“Tonight we confront an expert, or expert type...and with the use of secret filming, we expose the farce behind the whole pit-bull controversy and the dangerous dog law.”

The Committee noted that later in the programme, Dr Mugford was shown (in material surreptitiously filmed by the USPCA) talking to Mr Hill about the dog Nipper. In his discussions with Mr Hill, Dr Mugford was shown saying that the dog looked “a bit typey” (that is, pit bull type) when he was shown its photograph. Later, when both Dr Mugford and Mr Hill were in the USPCA kennels, Dr Mugford was shown saying:

“I think its going to be quite difficult to defend, but under the circumstances we have to because if it was in England I would say he’s a pit bull.”

Immediately after this quote, the Committee noted that part of the interview with Dr Mugford outside the courthouse was shown, in which he was asked directly by the programme’s reporter, Mr Moore, about what he had said to Mr Hill:

Mr Moore: *“Did you at any time say to Mr Hill then that, that if this was in England this would be a pit bull?”*

Dr Mugford: *“Oh no, no need, no need. The same would apply here. I see, do see pit bulls in England and do give evidence that they’re pit bulls but Mr Hill’s dog is not a pit bull.”*

The commentary then stated “Not a pit bull. Let’s check that again” and played back the secretly recorded footage of Dr Hill saying that this case would be difficult to defend and that if it was in England he would say that the dog was a pit bull.

Following on from this, the Committee noted a further exchange in the programme between Dr Mugford and Mr Hill at the kennels. This included the following conversation about the dog's identity:

Dr Mugford: *"Oh he's actually very thin skinned..."*
Mr Hill: *Do we stick to the...what's in the pet passport?*
Dr Mugford: *What's the pet passport say?*
Mr Hill: *Boxer cross Labrador.*
Dr Mugford: *Yes, perfect. Yeah that's alright. That'll work...it's a mongrel."*

In the Committee's view, the commentary made clear the programme's intention to "confront" Dr Mugford, who was described as an "expert type" and part of the "farce" of the existing dangerous dogs legislation. Further, in the Committee's view the footage of Dr Mugford himself and comments by him including those quoted above ("*In England I would say he's a pitbull*" and "*That'll work... it's a mongrel*") gave a clear implication that Dr Mugford was trying to circumvent the legislation, and that he would be prepared to mislead a court, in order to prevent Nipper being destroyed.

The secretly recorded USPCA footage of Dr Mugford was preceded in the programme by comments from Mr Philpott (CEO of the USPCA). He said that the USPCA had obtained access to the dog, Nipper, who was "*a five star blue chip pit-bull terrier...from one of the best fighting blood lines in the world*". He also stated that they had the paperwork to substantiate that the dog was a pit bull terrier.

The Committee noted that part of the video footage Dr Mugford had prepared for court use in which he stated that the dog had "*...experienced substantial and recent weight loss...*" was also included in the programme. This was followed by Mr Philpott commenting that:

"well that's just laughable because the dog had actually put weight on since it came into our care because the dog had come from a training fighting camp in Finland where it was being kept in peak, tip top fighting condition which you know is lean and mean...I was at a loss to understand how Dr Mugford in one look at the dog knew that it had lost weight because he hadn't seen the dog before".

Taking all of the above into account, the Committee took the view that the programme made significant allegations about Dr Mugford on the basis of the USPCA's footage.

The Committee then considered whether this resulted in unfairness to Dr Mugford. It considered this against Practice 7.11 of the Code. This states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond. (See Head b) below).

- ii) The Committee next considered the complaint that the editing of the programme was unfair to Dr Mugford in that it omitted footage of his examination of Nipper and footage of him seeking assurances from Mr Hill that he was not involved in dog fighting.

In considering this element of the complaint, the Committee had regard to Practice 7.6 of the Code which states that when a programme is edited, contributions should be represented fairly and Practice 7.9 of the Code (already provided in head a) above).

The Committee examined in detail all the unedited, surreptitiously recorded footage taken by Mr Hill for the USPCA. It compared this with the footage included in the programme as broadcast, and the transcripts of both recordings.

The Committee noted that the programme had included footage of Dr Mugford's examination of Nipper that was filmed at the kennels and that was intended to be used in defence of the dog in any future court proceedings. In this footage, Dr Mugford was shown with Nipper stating that:

"A very sweet natured dog. I'm certain that this dog is not a pit bull...Sorry to inform that it is, had experienced substantial and recent weight loss...massive weight loss. The dog was seized as a pit bull...Look at this very, very thin skin. This is the sort of skin you get on a whippet".

The Committee noted that the programme did not include Dr Mugford's brief exchange with Mr Hill about dog fighting which was recorded. In the unedited, secretly recorded footage, Dr Mugford asked Mr Hill:

Dr Mugford: "Have you anything to do with illegal dog fighting?"

Mr Hill: No, no.

Dr Mugford: Right, good."

The Committee took into account the footage of Dr Mugford that was broadcast in the programme. It considered this in the context of the full untransmitted footage (further quoted above at head a) i). The Committee concluded that the editing of the secretly recorded USPCA footage of Dr Mugford examining and discussing the dog, and the footage of Dr Mugford's openly filmed examination of Nipper for court purposes, fairly represented the broad thrust of Dr Mugford's assessments of the dog. Therefore, the Committee considered that the editing of the programme did not result in unfairness to Dr Mugford.

- b) The Committee then went on to consider the complaint that Dr Mugford was not given an appropriate or timely opportunity to respond to the allegations made in the programme.

In considering this head of complaint, the Committee had regard to Practice 7.11 of the Code which states that "if a programme alleges wrongdoing or incompetence or makes other serious allegations, those concerned should normally be given an appropriate and timely opportunity to respond". The guidance that accompanies Practice 7.11 of the Code, also states that "an individual needs to be given sufficient information concerning the arguments and evidence included in the programme to enable them to respond properly". It goes on to explain that "the programme should fairly represent the substance of any response but it is not normally necessary, in the interests of fairness, to reproduce it in its entirety".

For the reasons already given in head a) above, the Committee considered that a serious allegation was made about Dr Mugford in the programme that he was

willing to mislead a court as to the true breed of a dog in order to save it from being destroyed. Therefore an “appropriate and timely” opportunity to respond to the allegation should normally be given.

The Committee noted Dr Mugford was first approached by the programme makers on 30 August 2007 in the Courthouse in Antrim, during an adjournment in an unrelated case that he was involved in. This approach was made by the programme’s reporter, Mr Moore. He had explained who he was, and that he was making a programme about the law relating to dangerous dogs. Mr Moore had asked Dr Mugford for an interview outside the courthouse and assured him that he wanted to talk in “more general terms”, not about the ongoing case in which Dr Mugford was involved. It was on these terms that Dr Mugford agreed to the interview. The broadcasters said that the interview took place some 15-20 minutes after this approach. The Committee noted that no mention was made at this stage of Dr Mugford having been secretly filmed by the USPCA; nor that specific allegations were to be put to him about his conversations with Mr Hill and his examination of Nipper.

The interview outside the courthouse lasted around 34 minutes. Approximately half way through, Mr Moore referred to Mr Hill and to the examination of Nipper at the USPCA kennels. It was during this part of the interview that Mr Moore first made Dr Mugford aware that his judgement in the matter relating to Mr Hill and Nipper was being called into question. It was clear from the submissions that Dr Mugford was unaware either of the fact that he had been the subject of surreptitious filming by the USPCA, or that Mr Hill had been working undercover. Further, Dr Mugford was not informed about the way his interview contribution would be used in the programme.

Since the Committee considered that the allegations made about Dr Mugford were significant in nature, he should therefore have been afforded an “appropriate and timely opportunity to respond”. It was clear in the circumstances that Dr Mugford had not been given such an opportunity. The programme makers had approached Dr Mugford at the courthouse without prior warning, whilst he was attending a hearing on a different case. The allegations that were to be made about him were not communicated to him before his interview took place, either in writing or verbally. He was not informed explicitly (either prior to his interview or during it) about the basis of those allegations - that he had been the focus of an undercover USPCA operation and had been secretly filmed by one of its agents. The Committee again noted the guidance to the Code which states that an “individual or organisation needs to be given sufficient information concerning the arguments and evidence to be included in the programme to enable them to respond”. In the Committee’s view, the programme makers failed to give Dr Mugford “sufficient information”.

The Committee observed that UTV had acknowledged that - when considering whether or not to give Dr Mugford an appropriate and timely opportunity to respond -an editorial decision was taken by the programme makers not to do so. The broadcaster stated that the programme makers believed that if they had alerted Dr Mugford beforehand about the secretly recorded USPCA footage he would have declined to be interviewed. The broadcaster said the programme makers strongly believed that Dr Mugford would be prepared to mislead them if he had advance notice of the allegations, and so would have frustrated their investigation.

However, in the Committee's view, no additional evidence had been provided to Ofcom to support the assertion that Dr Mugford would have behaved in this way if he had been given the usual appropriate and timely opportunity to respond - for example in a letter setting out the allegations to be made about him in the broadcast.

In all the circumstances, therefore, the Committee found that the programme makers' failure to give Dr Mugford an appropriate and timely opportunity to respond to the allegations resulted in unfairness to him in the programme as broadcast.

- c) Finally, the Committee considered the complaint that the undercover USPCA footage used in the programme was neither necessary nor in the public interest.

In reaching a decision on this head of complaint, the Committee had regard to Practice 7.14 of the Code which states that it may be warranted for broadcasters and programme makers to use material obtained through misrepresentation and deception (which includes surreptitious filming and recording) without consent if it is in the public interest and cannot reasonably be obtained by other means.

The Committee noted that the surreptitiously recorded footage of Dr Mugford had been taken by Mr Hill. He had been employed to work undercover by the USPCA. The USPCA had carried out the surreptitious filming of Dr Mugford because it suspected that he had been prepared to mislead the court as to the true breed identity of a dog (to prevent it being destroyed) without consideration of the potential consequences of its release into the community. The Committee noted also that in the months before the broadcast of the programme there had been growing public concern about dangerous dogs as there had been a number of high profile dog attacks involving pit bulls or pit bull type dogs. The programme was also to be broadcast on the eve of a debate by the Northern Ireland Assembly on the legislation relating to dangerous dogs.

The USPCA's surreptitiously recorded material had been obtained by deception. The Committee however considered that its broadcast had been important to the story being told in the programme. This outlined that the police, the USPCA, and local authorities believed that there were "experts" in dog breed identification who were prepared to mislead a court as to the breed of a particular dog, in order to prevent its destruction. In the Committee's view the programme's investigation of these concerns (which were based in large part on the USPCA's footage) was of significant public interest.

Accordingly, the Committee found that the inclusion in the broadcast programme of the surreptitiously recorded material taken by the USPCA did not, in itself, result in unfairness to Dr Mugford. (The issue of providing an appropriate and timely opportunity to respond to the material included in the programme is dealt with above at head b)).

The Committee therefore found that part of the complaint of unfair treatment was upheld, (at head b) and the related complaint at head a) i)). The broadcaster was found in breach of Rule 7.1 of the Code.

On this occasion the Fairness Committee directed UTV to broadcast a summary of the finding of unfair treatment.

Not Upheld

Complaint by Ms Elwen Rowlands

Wales This Week, ITV1 (Wales), 19 March 2007

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Ms Elwen Rowlands.

The programme examined the planning processes of Anglesey Council. It looked at the role of the Radical Independents, junior partners in the Council's ruling coalition, in approving planning applications against the local development plan and officer recommendations. In the context of an auditor's report criticising the high number of planning applications approved against plan, the programme raised questions about the involvement of the Radical Independents in approving a planning application by Ms Elwen Rowlands. In particular the programme suggested that Councillor Hefin Thomas influenced the decision of the Planning Committee by misrepresenting Ms Rowlands' personal circumstances.

Ofcom found as follows:

- The programme had not unfairly represented the circumstances surrounding Ms Rowlands' planning application.
- Ms Rowlands did not have a legitimate expectation of privacy in relation to her surname, age, occupation and details about her property as this information was already in the public domain and therefore her privacy was not infringed.

Introduction

On 19 March 2007, ITV1 (Wales) broadcast an edition of its current affairs programme, *Wales This Week*. This edition of the programme included the sixth in a series of reports looking at the planning process at Anglesey Council ("the Council").

The report considered the role of the Radical Independents, junior partners in the Council's ruling coalition, in granting planning permissions. The programme reported that the Council's external auditors, PricewaterhouseCoopers ("PwC") had raised concerns about the number of 'departure' applications on Anglesey. 'Departures' are applications approved by councillors in spite of the fact that they contravene the Council's local development plan.

In particular, the report included a section on the approval of Ms Elwen Rowlands' planning application. Her application was initially rejected by Council officers but councillors 'called in' the decision for review and approved it at the Planning Committee ("the Committee"). The report referred to Ms Rowlands' father, Councillor John Rowlands, and said that he was a member of the Radical Independents at the time of the programme.

The report included extracts from an interview with Mr Barrie Durkin who was described as a "campaigner" and "ex-community councillor". Mr Durkin commented on the way Radical Independent Councillor Hefin Thomas had represented Ms Rowlands' personal circumstances at the Committee. He said that Councillor Thomas had described her as a young girl who was starting her career after completing university. The programme reported Ms Rowlands' age, occupation and that she owned a property in Cardiff:

Presenter *“We’ve discovered that Councillor Rowlands’ daughter is 33 years old and a successful script editor working on TV programmes like Dr Who. She and her husband already own a property in this Cardiff suburb.”*

Councillor Thomas’ response to the suggestion that he had acted improperly was included in the programme, as was a short statement from Ms Rowlands that her application was handled in accordance with Council procedures.

Ms Rowlands did not appear in the report nor was she named in it. She was referred to as *“Councillor Rowlands’ daughter”*. A still image of Ms Rowlands’ father with a voiceover which identified him as Councillor John Rowlands, and indicated that he was a member of the Radical Independents group on the Council, was included in the report.

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

The Complaint

Ms Rowlands’ case

- a) In summary, Ms Rowlands complained that she was treated unfairly in the programme as broadcast in that the programme was unfair and misleading because:
 - i) It incorrectly implied that Ms Rowlands was granted planning permission which should have been rejected; that the Committee’s decision was unjustly influenced because it was misled about Ms Rowlands’ age and background; and, that the permission was granted as a result of collusion on the part of local councillors.
 - ii) It failed to make clear the basis on which Mr Durkin was qualified to make allegations about the grant of planning permission to Ms Rowlands. For example, Ms Rowlands said that the report did not indicate whether he had attended any of the Committee meetings or had had any involvement in the planning approval process.
 - iii) It failed to note pertinent information about the councillors present at, or the conduct of, the two meetings during which Ms Rowlands’ planning application was discussed and decided upon. For example, Ms Rowlands said that Councillor Thomas was not a member of the Committee in May 2005 when the application was approved after a ‘cooling off’ period; 15 people voted at the May 2005 Committee when the application was approved of which only two were Radical Independents; and that councillors other the Radical Independents were involved in approving departure applications.
 - iv) The programme’s producer ignored a letter from Ms Rowlands’ solicitor setting out the correct position with regard to the issue of the planning permission granted to Ms Rowlands.
- b) In summary, Ms Rowlands complained that her privacy was unwarrantably infringed in the programme as broadcast in that:

Private information about Ms Rowlands (her surname, age, employment and details about her property) was revealed in the programme without her consent.

Ms Rowlands stated that the inclusion of this private information resulted in her being identifiable.

ITV's case

By way of background, ITV said that this edition of *Wales This Week* was one programme in a series of reports on the controversy surrounding planning processes in Wales. The programmes focused in particular on the involvement of the Radical Independents, junior partners in the Council's ruling coalition, in planning decisions on Anglesey. ITV said that a critical report on the number of departure applications on Anglesey was published three months before the broadcast of the programme by the Council's external auditors, PwC. The broadcaster highlighted that the report stipulated that councillors should not favour individual or local interests over the interests of the wider community and should avoid any situation where they might appear to have done so. It also highlighted that the report stated that planning decisions should be made on the basis of material considerations and made clear that councillors should not predetermine planning decisions, be influenced by political considerations or appear to favour individuals or groups. The high number of departures reduced transparency and called the fairness of the Council into question.

In summary ITV responded to Ms Rowlands' complaint as follows:

ITV responded to the complaint of unfairness as follows:

- a) ITV denied that the programme incorrectly implied that Ms Rowlands was granted planning permission which should have been rejected. It argued that the Council's Code of Conduct made it clear that Councillors should avoid situations which gave the perception that they or their family or friends had received an advantage that other council tax payers might not enjoy. ITV indicated that Ms Rowlands' application would have been rejected by the planning officers, because it went against the Council's own policy. It argued that the intervention and persistent advocacy of Councillor Thomas and other Radical Independents was crucial to the approval of the application.

ITV also denied that the programme unfairly suggested that the Committee was misled about Ms Rowlands' age and background. It said that the minutes of the 6 April 2005 meeting, when the decision on this departure application was made, recorded that when Councillor Thomas spoke in favour of granting Ms Rowlands' application he said:

"... this was a local young lady whose family home was within 40 yards of the site. On completion of her studies, and embarking on her career, she wished to return to the area with her husband".

The broadcaster argued that it was not unreasonable for Mr Durkin to have made a comment in the programme to the effect that he had not understood this description to mean that the applicant was a 33 year old successful career woman. It was legitimate that he would interpret the comment to mean that she was a young adult just embarking on her career after completing her education who wanted to live near her parents.

ITV also said that to ensure fairness the programme makers had put this matter to Councillor Thomas, whose response was included in the programme. The broadcaster stated that the programme makers wrote to Councillor John Arthur Jones, leader of the Radical Independents, setting out the information that would

appear in the programme before it was broadcast. The letter was also copied to Ms Rowlands' father, but he did not respond.

ITV said that Mr Durkin was qualified to comment on the subject of planning on Anglesey. The broadcaster said that he was a council tax payer and former community councillor who had established himself as a well-known campaigner about planning issues in the area and that he had seen the auditor's report on departure applications. ITV argued that there was no unfairness in the fact that Mr Durkin contributed to the programme.

ITV responded to the complaint that the programme failed to note pertinent information about the councillors at the two meetings during which Ms Rowlands' planning application was discussed and decided upon. ITV indicated that the programme did not say that Councillor Thomas was a member of the Committee when Ms Rowlands' application was being voted on for the second time after the cooling off period. The broadcaster said that the programme had correctly reported that Councillor Thomas brought the application to the first Committee meeting and that he spoke strongly in its support, as did the other two Radical Independents at the meeting.

ITV said that since the application was passed by a majority vote of only eight to seven it appeared that the votes of these three Radical Independents were pivotal. ITV added that the programme had made it clear that Councillor Rowlands had declared an interest in the application. The broadcaster also said that it was incorrect to suggest that the programme stated that the Radical Independents were the only party responsible for granting departure applications. It observed that it had described the party as the "*junior partners in the Island's ruling coalition*" and stated that the party had *been "responsible for a fifth of all departure applications"*. ITV argued that data provided by the Council, showed that the four people who became members of the Radical Independents had called in 16% of the departure applications between June 2004 and June 2006 and that 22% of the applications they called in were granted.

ITV said that it was not clear what information from the letter sent to it by Ms Rowlands' solicitor prior to the broadcast that should have been included in the programme. Furthermore ITV said that it did not accept Ms Rowlands' account of the telephone conversation she had had with the programme's producer as set out in her solicitor's letter.

- b) In summary the broadcaster responded to Ms Rowlands' complaint that her privacy was unwarrantably infringed in the programme as broadcast as follows:

ITV asserted that there was no infringement of privacy. The broadcaster argued that the personal details reported in the programme, namely Ms Rowlands' name, details about her property and the fact that her parents were Councillor and Mrs Rowlands, were already in the public domain in connection with the departure application. ITV said that all details broadcast were essential to the report. The broadcaster further stated that if there had been any infringement of privacy, this would have been warranted, as the subject matter was in the public interest.

Ms Rowlands' comments in response to ITV's statement

Ms Rowlands said in response to ITV's comments on the background of the programme that the matter was of limited interest outside Anglesey and was not a matter of controversy as the broadcaster asserted. As evidence, she said that the

issue was not covered by other major Welsh media outlets. She suggested that the issue should be addressed in the context of the high rate of departure decisions across rural Wales rather than in isolation.

Ms Rowlands then responded to ITV's statement on her complaint.

In relation to the fairness complaint Ms Rowlands responded as follows:

- a) Ms Rowlands disputed ITV's claim that Mr Durkin's comments were a "reasonable understanding" of what happened at the Committee. She argued that while ITV attempted to excuse Mr Durkin's comments with its claim that his understanding was based on the minutes of the meeting, this explanation did not provide sufficient justification for their inclusion.

Ms Rowlands stated that the audio recording of the Committee meeting and the simultaneous English translation accurately represented her age, education, employment and background. The minutes of the meeting were inaccurate, as they implied that Councillor Thomas suggested she had recently completed education and started work.

Ms Rowlands argued that Mr Durkin's comments indicated that he was familiar with the simultaneous translation on the audio recording. In support of this point she referred to Mr Durkin's reference in the programme to the description of her as a "*young girl*". She noted that references to her as "merch ifanc" throughout the Committee meeting were translated on the audio recording as both a "lady" and a "girl" but the word "girl" was not used in the minutes. Ms Rowlands said that this term was used in everyday Welsh by those of an older generation to refer to women up to 30 years old. She pointed out that she was 30 years old at the time of the Committee meeting.

Ms Rowlands argued that if the producer had included Mr Durkin's account of the Committee without previously listening to the audio recording it demonstrated a failure to check material facts. She did not accept that ITV had written to Councillor John Arthur Jones and sent a copy of the letter to her father in advance of the programme as sufficient evidence of thorough fact-checking. If, however, the producer had listened to the recording before making the programme, this should be seen as "a deliberate attempt to deceive the audience." She said that Mr Durkin's comments appeared to have been included to act as evidence that Councillor Thomas had misled the Committee and as a pretext to reveal personal information about her.

Ms Rowlands argued that while Mr Durkin may have been entitled to offer his views as a Council tax payer, more should have been done to appropriately place his comments in context and give balance to the report. Ms Rowlands questioned whether Mr Durkin was present at the Committee and suggested the programme gave the impression that he was.

By omitting information about the nature and tone of Mr Durkin's campaign against the Radical Independents group and the substantial local concern about his actions, Ms Rowlands argued ITV was weakening its own credibility by championing Mr Durkin and allying itself to his "malicious" campaign.

Ms Rowlands also indicated that members of the Radical Independents had refused to take part in recorded interviews for the programme for fear of their views being misrepresented.

Ms Rowlands maintained that the programme failed to explain to its viewers that the planning decision was reached after full discussion and two votes by the Committee. She stated that ITV's response did not explain: how the programme could logically present the three Radical Independent Councillors as solely responsible for the decision made by a committee of 15; why the fact that councillors from other parties also spoke in support of the application was not reported; and why the programme did not include the valid arguments in favour of the permission.

Ms Rowlands argued that the exclusive focus on the Radical Independent councillors unfairly implied disproportionate responsibility for the areas of concern detailed in the auditor's report on departure planning. She stated that ITV's assertion that the programme focused on the Radical Independent Councillors "in particular" was incorrect as they were the exclusive focus of the report.

Ms Rowlands asserted that there was no evidence that the auditor's criticisms referred exclusively to the Radical Independents. She argued that the controversy around the Radical Independents was due entirely to the programme's coverage and Mr Durkin's campaign. Ms Rowlands noted that the Ombudsman, the Council's Executive, the majority of local residents and other councillors (except Councillor Rogers who supported Mr Durkin) did not support the view that the Radical Independents were at fault.

Ms Rowlands said that the voting figures quoted in her complaint referred to the period from January to October 2006, in line with the auditor's report. ITV's response referred to the figures for the period from June 2004 – June 2006 and indicated that the Radical Independents were responsible for 16% of the departure applications over this time. Ms Rowlands argued this did not demonstrate that they were responsible for a fifth of all departure applications as reported in the programme. She further stated that individual councillors could not be criticised for the success rate of their applications since this only demonstrated the acceptability of their applications to the cross-party committee.

Ms Rowlands asserted that following the letter from Ms Rowland's solicitor to the producer of 9 March 2007, the producer should have checked the facts about her education and represented them accurately in the programme. He should have also made clear that the planning application was made and granted without any malpractice or nepotism.

- b) In summary Ms Rowlands responded to ITV's statement on her privacy complaint as follows:

Ms Rowlands argued that Mr Durkin's account of the Committee was used as a pretext to expose personal details about her. As Mr Durkin's account was incorrect there was no justification for the infringement of privacy. In particular, Ms Rowlands questioned why ITV felt it was warranted to broadcast that she formerly worked on the TV drama series, *Doctor Who*.

ITV's second statement in response to the complaint

ITV maintained that the public interest in departure applications in Anglesey following the auditor's report justified highlighting both the circumstances around Ms Rowlands' successful application and the fact that she enjoyed the benefit of being strongly supported by her father's fellow party members. The programme did not

imply that the application should have been rejected. The Council's subsequent change of planning policy and the Ombudsman's thorough consideration of the complaint against Councillor Thomas proved that this was a matter that warranted serious investigation.

In summary ITV responded to Ms Rowlands' comments on its statement in response to the fairness complaint as follows:

- a) ITV argued that the inclusion of comments from Councillor Thomas about the way he described Ms Rowlands at the Committee and her own statement that planning processes were properly observed meant that the views of all those concerned were properly reflected in the programme. The broadcaster also asserted that it was legitimate for the programme-makers to rely on the summary of events as recorded in the minutes. ITV said that the fact that what happened at the meeting was under dispute was made clear in the programme.

ITV made reference to other comments reported to have been made by Councillor Thomas at the meeting, notably "We're talking about being able to buy an affordable house for their own, first time house, on land that is theirs". The broadcaster argued this was evidence that it was not simply the use of the Welsh term "young girl" in reference to Ms Rowlands that may have given the Committee the impression that she was just starting out.

ITV maintained that Mr Durkin was entitled to comment on the Committee's decision as he had knowledge of the subject and was a Council tax payer.

ITV maintained that the reasons for highlighting the activities of the Radical Independents had been made clear in its first statement.

ITV stated that it had nothing further to add under this head of the complaint.

- b) In summary ITV responded to the complainant's comments on its statement in response to the privacy complaint as follows:

ITV said that the reference to *Doctor Who* was made "to demonstrate that the complainant's career was established and successful".

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.

Ms Rowlands' complaint was considered by Ofcom's Executive Fairness Group ("the Group"). In reaching its decision, the Group carefully considered all the relevant material provided by both parties. This included: a recording of the programme as broadcast, a copy of the programme transcript and both parties' submissions.

- a) In considering the complaint of unfairness, Ofcom looked at the individual sub-heads of the complaint in turn.

Ofcom had particular regard to whether the programme makers' actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Ofcom Broadcasting Code ("the Code"), and whether they had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to an individual or organisation (as outlined in Practice 7.9 of the Code).

Ofcom considered the first head of complaint in two stages.

- i) Ofcom first considered the complaint that Ms Rowlands was treated unfairly in the programme as broadcast as it incorrectly implied that she was granted planning permission which should have been rejected and that it was the result of collusion between local councillors.

Ofcom noted that the programme raised questions about the conduct of the Radical Independents in relation to Council planning matters. These questions were raised in the context of a critical PwC report on the high number of planning decisions that went against officer recommendations on Anglesey.

The relevant section of the programme focused on the conduct of Councillor Thomas in relation to a separate planning application of his own. The programme then questioned Councillor Thomas' involvement in the approval of Ms Rowlands' planning application. It noted that Ms Rowlands' father had declared an interest in the application but stated that the other Radical Independents had "*strongly supported*" its approval. In particular, the programme looked at how Councillor Thomas had presented Ms Rowlands' personal circumstances to the Committee. It included comments from Councillor Thomas in response to the suggestion that he had acted inappropriately.

Ofcom also noted that the programme included a statement from Ms Rowlands refuting the suggestion that her application was granted as the result of misconduct. The statement was read out and simultaneously shown on screen:

Presenter "*Councillor Rowlands' daughter gave us a statement. She said her planning permission...*

Voiceover "*...was granted on the basis of a properly submitted and properly considered application. Any suggestion otherwise is incorrect.*"

Ofcom considered that, in light of the concerns about planning processes on Anglesey highlighted in the PwC report, the programme addressed legitimate questions about the approval of Ms Rowlands' application and Councillor Thomas' involvement in the decision. The programme's inclusion of Mr Durkin's criticism of Councillor Thomas was balanced by Councillor Thomas' response to the allegation that he had acted inappropriately and Ms Rowlands' statement that her application was properly granted. Ofcom found that this did not result in unfairness to Ms Rowlands as the programme included different points of view on a point of contention.

Ofcom then considered the complaint that the programme incorrectly implied that the Committee's decision was unjustly influenced because it was misled about Ms Rowlands' age and background.

Ofcom noted that the following excerpt from an interview with Mr Durkin was included:

"This was an application for a young lady, a young girl in fact he said who was leaving college and about to take up employment which she could do from home and she wanted to come back to the island to live close by to where her parents live. "

The presenter then stated:

"We've discovered that Councillor Rowlands' daughter is 33 years old and a successful script editor working on TV programmes like Dr Who. She and her husband already own a property in this Cardiff suburb."

Ofcom considered that the programme implied that Councillor Thomas had misrepresented Ms Rowlands' age and background to the Committee and noted that this was a significant allegation to which Councillor Thomas was given an opportunity to respond and the programme included the following comments:

Presenter *"We wrote to Hefin Thomas about his support for this application but he didn't answer our letter. We caught up with him last week in Llangefni.*

Cllr Thomas *I said that she'd done her studies, she's started a career and she wanted to work from home. Get your facts right.*

Presenter *You think you've done nothing wrong then?*

Cllr Thomas *Nothing wrong at all.*

Presenter *What's your reaction to the PWC report that says that departures are virtually a scandal on Anglesey? What's your response to that?*

Cllr Thomas *Have a look at the report - it doesn't say that.*

Presenter *So you think you've done nothing wrong at all?*

Cllr Thomas *Nothing at all."*

As noted above, the programme also included Ms Rowlands' statement which asserted that her planning permission was properly granted.

Ofcom considered that the programme's suggestion that Councillor Thomas had misled the Committee was balanced by Councillor Thomas' response and Ms Rowlands' own statement that her planning application was properly granted and therefore, did not result in unfairness to Ms Rowlands.

- ii) Ofcom next considered Ms Rowlands' complaint that the programme was unfair to her as it did not make clear the basis on which Mr Durkin was qualified to make allegations about the way her application was approved.

Ofcom noted that Mr Durkin was described in the programme as a "*campaigner*" and was labelled on screen as an "*ex Community Councillor*". As outlined above at (i), Mr Durkin's view that Councillor Thomas misrepresented Ms Rowlands at the Committee as a young girl just starting out on her career, was shown alongside Councillor Thomas' denial that he had acted improperly and Ms Rowlands' statement about her application.

Ofcom noted that the selection and presentation of material is a matter of editorial discretion as long as it does not result in unfairness. Ofcom found that the programme makers presented a range of views about the application and the inclusion of Mr Durkin's contribution was balanced by those from Councillor Thomas and Ms Rowlands and therefore did not result in unfairness to Ms Rowlands.

- iii) Ofcom next considered Ms Rowlands' complaint that the programme was unfair to her as it did not note key information about the Committee meetings at which the planning permission was granted and that it did not make clear that parties other than the Radical Independents were also involved in departure planning on Anglesey.

Ofcom noted that the programme reported that there was controversy around the involvement of the Radical Independents in the approval of Ms Rowlands' planning application. It also noted that the programme stated that the Radical Independents were "*responsible for a fifth of all the departure applications*" on Anglesey. Ofcom therefore considered that the programme did not suggest that the Radical Independents were the only councillors involved in granting departure applications.

Ofcom noted that the programme did not state that Councillor Thomas was not a member of the Committee when the application was finally approved after a 'cooling off' period in May 2005. It also noted that the programme did not say that only two Radical Independents voted when the application was granted at this meeting by a unanimous vote.

However, Ofcom noted that the selection and presentation of material is a matter of editorial discretion as long as it does not result in unfairness. The programme makers chose to focus on Councillor Thomas' conduct at the April 2005 Committee when the application was first considered. It was not incumbent on the programme makers to include information about the May 2005 meeting provided no unfairness resulted to Ms Rowlands as a result of the omission. Ofcom noted that the programme included Councillor Thomas' response to the allegations about his conduct at the meeting and Ms Rowland's statement. Ofcom found that, in these circumstances, there was no unfairness to Ms Rowlands in the programme's portrayal of the controversy around the way that her application was approved at the April 2005 meeting

- iv) Ofcom then turned to Ms Rowlands' complaint that the programme makers ignored a letter from her solicitor which set out the correct position on the approval of her application.

Ofcom reviewed the letter from Ms Rowlands' solicitor to the programme producer which was received by fax on 12 March 2007, a week before the programme was broadcast. Ofcom noted that the letter set out that: Ms Rowlands and her mother were considering making complaints about earlier editions of *Wales This Week*; she did not want any of her comments made during a telephone conversation with the producer on 1 March 2007 to be broadcast; her father had declared an interest in the application; and she considered that disclosure of information about her financial arrangements would breach her privacy. A short statement asserting that her planning application was properly granted was enclosed with the letter.

Ofcom considered whether any material facts from the letter were omitted from the programme which were relevant to the issues raised. Ofcom noted that the programme focused on whether Councillor Thomas had acted appropriately in relation to the approval of Ms Rowlands' planning application. Ofcom further noted that part of Ms Rowlands' statement was quoted in the programme and simultaneously shown on screen:

Presenter *"Councillor Rowlands' daughter gave us a statement. She said her planning permission..."*

Voiceover *...was granted on the basis of a properly submitted and properly considered application. Any suggestion otherwise is incorrect."*

In Ofcom's view, the programme included the substantive part of Ms Rowlands' statement and it also noted, as set out in the letter, that her father declared an interest in the application. Therefore Ofcom found that there was no further information in the letter which was material to the issues raised in the programme that the programme-makers could have been expected to have included and, as a result, there was no unfairness to Ms Rowlands.

- b) Ofcom next considered the complaint that Ms Rowlands' privacy was unwarrantably infringed in the programme as broadcast, because it included her surname, age, employment and details about her property.

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

Ofcom also considered the complaint with reference to Practice 8.3 which states that when people are caught up in events which are covered by the news they still have a right to privacy in both the making and the broadcast of a programme, unless it is warranted to infringe it. This applies both to the time when these events are taking place and to any later programmes that revisit those events.

In considering this complaint, Ofcom was first required to consider whether Ms Rowlands had a legitimate expectation of privacy in relation to the material that was broadcast.

As discussed above at a)i), Ofcom noted that the programme included the following statement about Ms Rowlands:

Presenter: *“We've discovered that Councillor Rowlands' daughter is 33 years old and a successful script editor working on TV programmes like Dr Who.”*

Ofcom considered that this information about Ms Rowlands was already in the public domain: her surname would have been listed in connection with her planning application and as such, was available to the public; a person's age is in the public domain and is frequently and legitimately used by broadcast and print journalists to describe someone; and Ms Rowlands' name and job title would be listed on the credits of the programmes she worked on and available on the internet. For these reasons, Ofcom found that Ms Rowlands did not have a legitimate expectation of privacy in relation to her surname, age and employment details.

Ofcom recognised that there is an expectation that a broadcaster should not disclose the location of a person's home or family unless it is warranted (as outlined in Practice 8.2 of the Code).

In relation to information about her property, Ofcom noted that the programme referred to *“planning permission for a new house”* and showed images of a field on screen. The programme also stated *“she and her husband already own a property in this Cardiff suburb”* and a still image of a suburban street was shown.

Ofcom noted that it was clear from the programme that Ms Rowlands' plot of land was on Anglesey. However its specific location was not disclosed and, in Ofcom's view, only those already familiar with the plot of land or the information in the public domain in connection with the planning application would have been able to identify it from the footage broadcast in the programme.

Ofcom also noted that the programme stated that Ms Rowlands owned a house in a suburb of Cardiff but that her property was not shown. The programme included a generic shot of a suburban street to illustrate that she already owned a property. It did not show a specific house, house number, house name or street name and no mention of the location of Ms Rowlands' house was made other than that it was in a Cardiff suburb. In Ofcom's view the location of Ms Rowlands' property was not identifiable from the footage as broadcast.

In these circumstances Ofcom considered that the Ms Rowlands did not have a legitimate expectation of privacy with regard to information broadcast about her property.

Having found that Ms Rowlands did not have a legitimate expectation of privacy in relation to her surname, age, employment details and information about her property, Ofcom found that Ms Rowlands privacy was not infringed in the programme as broadcast. It was not therefore necessary for Ofcom to further consider whether any infringement of privacy was warranted.

Accordingly Ofcom has not upheld Ms Rowlands' complaint of unfair treatment or unwarranted infringement of privacy in either the making or broadcast of the programme.

Not Upheld

Complaint by Mrs Ionwen Rowlands

Wales This Week, ITV1 (Wales), 22 January 2007

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Mrs Ionwen Rowlands.

The programme examined the planning processes of Anglesey Council. In particular, it questioned whether councillors were abiding by the Council's Code of Practice when considering applications from friends or family of members of the same political party. It stated that Mrs Ionwen Rowlands had signed a nomination paper for Councillor Hefin Thomas before he became a member of the Radical Independents, the same political group her husband belonged to. Mrs Rowlands' signature was shown on screen. The programme questioned whether Councillor Thomas should have declared this interest when Mrs Rowlands' daughter's planning application came under consideration by the Planning Committee ("the Committee").

Ofcom found as follows:

- The programme had not made any allegations against Mrs Rowlands.
- Mrs Rowlands did not have a legitimate expectation of privacy in relation to the broadcast of her signature on a public document and therefore her privacy was not infringed.

Introduction

On 22 January 2007, ITV1 (Wales) broadcast an edition of its current affairs programme, *Wales This Week*. This edition of the programme included the fifth in a series of reports looking at the planning process at Anglesey Council ("the Council").

The programme looked at whether councillors were abiding by the Council's code of practice when considering planning applications from friends or the family members of other councillors. This issue was examined in the context of a report by the Council's external auditors, PricewaterhouseCoopers (PwC), which stipulated that councillors should not favour individual or local interests over the interests of the wider community and should avoid any situation where they might appear to have done so.

In particular, the programme raised questions about Councillor Hefin Thomas' involvement in the approval of a planning application submitted by the complainant's daughter, Ms Elwen Rowlands. The programme stated that the complainant, Mrs Ionwen Rowlands, had signed Councillor Thomas' nomination to the Council and that subsequently he sat on the Committee which granted planning permission for Ms Rowlands' application. The programme included the view of local campaigner, Mr Barrie Durkin, that Councillor Thomas should have declared an interest in the application.

Mrs Rowlands is the wife of Councillor John Rowlands, who was the Chairman of the Council at the time of broadcast. Mrs Rowlands did not appear in the programme but an image of her signature was shown on screen and she was referred to as "Councillor Rowlands' wife".

Mrs Rowlands complained to Ofcom that she was treated unfairly and that her privacy was unwarrantably infringed in the programme as broadcast.

The Complaint

Mrs Rowlands' case

In summary, Mrs Rowlands complained that she was treated unfairly in the programme as broadcast in that:

- a) The programme insinuated that because she had nominated Councillor Thomas to the Council she had influenced both his view and that of the other thirteen members of the Committee when it made the decision regarding her daughter's planning application. Mrs Rowlands complained that the programme-makers had been selective in their reporting of the facts in order to further this impression.

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

- b) In order to illustrate the fact that she had nominated Councillor Hefin Thomas the programme showed her signature on screen.

ITV's case

By way of background ITV said that the high success rate on Anglesey of applications that, like Ms Rowlands' application, went against the local Development Plan and officers' recommendations, ie "departure applications", was a matter of public concern. ITV said that Anglesey had one of the highest, and increasing, departure rates in Wales.

ITV said that a report in December 2006 by the Council's external auditors, PricewaterhouseCoopers ("PwC"), questioned the impact of the high level of departure applications on the value for money of the Council's planning service. The report stipulated that councillors should not favour individual or local interests over the interests of the wider community and should avoid any situation where they appeared to have done so. PwC recommended that the Monitoring Officer should review the situation during the first six months of 2006 and, if necessary, should consider other options, including changing the constitution to bar departures or referring them to the National Assembly for decision.

ITV explained that *Wales This Week* had been investigating the Radical Independents, which formed during the period in which Ms Rowlands' application was approved, since early 2006. ITV said that Councillor Rowlands joined in April 2005, alongside Councillor Thomas, Councillor John Arthur Jones and Councillor David Lewis-Roberts. ITV said that the group was responsible for a considerable number of successful departure applications and that all four members had been involved in controversial planning matters. Their involvement in the approval of Ms Rowlands' application had been covered in three editions of *Wales This Week*.

With regard to Ms Rowlands' planning application, ITV said that Councillor Rowlands transferred the land in question, which lies within an Area of Outstanding Natural Beauty, to his daughter in November 2004. ITV said that obtaining planning permission for new properties within such areas was often difficult as local authorities are required to conserve and enhance these areas through countryside management and planning controls.

ITV said that Ms Rowlands' planning application was initially rejected by officers. However, Councillor Thomas called for the rejected application to be considered by the Committee, where it was approved by eight votes to seven in April 2005. ITV said that the support of Councillors Thomas, Jones and Lewis-Roberts was a key factor in securing the permission and that without their votes the application would have failed. ITV explained that at the time of this meeting, the councillors in question belonged to different political groups.

After a cooling-off period, the planning application was unanimously given final approval at the May 2005 Committee meeting. At this time, the Radical Independents had formed and were junior partners on the ruling coalition. As the opposition groups had walked out at the start of the meeting over a row about representation, only ruling coalition members were present when the vote was passed. Both Councillor Thomas and Councillor Lewis-Roberts spoke in support of the confirmation.

- a) In summary ITV said in response to Mrs Rowlands' complaint of unfairness that the programme had not insinuated that she had influenced the planning decision. The programme had also made it clear that Councillor Rowlands had declared an interest in Ms Rowlands' application.

ITV said that the programme looked at the ethics of Councillors supporting applications from the friends and family of fellow party members in the light of the PwC findings. The programme included the view of Councillor Jones and the committee that it was legitimate for them to support such applications. The programme correctly stated that Mrs Rowlands had signed Councillor Thomas' nomination papers when he and her husband were members of different political groups. The programme reported Mr Durkin's criticism of Councillor Thomas for not declaring an interest in Ms Rowlands' application, due to the apparent personal connection between the families. ITV argued that this was a criticism of Councillor Thomas not Mrs Rowlands and noted that it had given Councillor Thomas an opportunity to respond to this criticism. Councillor Rowlands was also given the opportunity to be interviewed for the programme but declined to do so.

- b) In summary ITV said, in response to Mrs Rowlands' complaint that her privacy was unwarrantably infringed in the broadcast, that her signature was given as part of a civic process and that the document on which it appeared was a public document. The broadcaster argued that in light of these circumstances there was no expectation of privacy in relation to the inclusion of this signature in the programme.

Mrs Rowlands' comments in response to ITV's statement

- a) In summary Mrs Rowlands said in response to ITV's statement on her fairness complaint that the programme assigned disproportionate responsibility to the Radical Independents for the issues around departure applications highlighted in the PwC report.

Mrs Rowlands said that her daughter applied for permission to build on the land in question in 2005, after it was given to her by her parents. In his capacity as local councillor, her father declared an interest and played no part in the approval of the application. Mrs Rowlands said that the permission was properly granted on the basis of precedent and valid social and aesthetic factors, as was reflected in the audio recording of the relevant planning meetings. She said that the programme omitted these facts in order to further the impression that the

planning application was granted as a result of collusion between Ms Rowlands' parents and the other Radical Independents.

Mrs Rowlands said that the programme implied that her family had more than a political allegiance with Councillor Thomas and that she had signed his nomination papers in return for his support for the application. By referring to the increased value of the land following the successful planning application, the programme implied the arrangement was designed for financial gain and that she had lied when she denied any personal connection with Councillor Thomas to others in the community. She said that Councillor Thomas was not a friend of the family and that she had signed his nomination form in her capacity as a prominent member of the community. Councillor Thomas was therefore not required to declare an interest in relation to her daughter's planning application.

Mrs Rowlands also said that the programme was unfair because it omitted facts about the way that the permission was granted. Despite calling the application "controversial", the programme omitted to state that the Community Council did not object to the application. It also omitted to state the fact that Councillor Thomas had proposed the application at the April 2005 meeting in his capacity as a local councillor for the area in which the plot was located, as dictated by the procedural rules. Mrs Rowlands said that the decision was made democratically, after a full debate by the fifteen people sitting on the cross-party Committee, and that only three voting members of this group were future Radical Independents.

In relation to the party representation at the meeting in May 2005 when the application was confirmed, Mrs Rowlands said that out of the eight people voting after the opposition walk-out, only two were Radical Independents. According to Ms Rowlands, the programme should have stated that despite attending the meeting, Councillor Thomas did not vote on the application.

Mrs Rowlands said that the programme unfairly based its allegations on Mr Durkin's, views but that he was a highly prejudiced source and had a history of making unfounded allegations against councillors.

Mrs Rowlands stated that the programme makers had failed to give her daughter an opportunity to respond to the insinuations made against her.

- b) Mrs Rowlands responded in relation to her privacy complaint that showing her signature simply served to identify and embarrass her by insinuating wrongdoing. She said that did not expect her signature to be broadcast on television when she signed the nomination paper. She added that the nomination papers were kept securely in the council offices and were available on request to the public for a limited time.

ITV's second statement in response to the complaint

- a) In summary ITV said in response to Mrs Rowlands comments on the fairness complaint that the programme did not imply that Mrs Rowlands was knowingly party to subterfuge, that she had been dishonest or that she expected to benefit financially from Councillor Thomas' strong support for her daughter's application. ITV said that, having clearly stated that Councillor Rowlands had declared an interest in the planning decision, the programme had reported an apparent connection between Councillor Thomas and Mrs Rowlands. It also included local resident and campaigner Mr Durkin's view that in light of this connection, Councillor Thomas should have declared an interest in the application.

ITV said that because the programme had not made an allegation against Mrs Rowlands, the programme makers were not required to offer her an opportunity to respond. However, it noted that prior to the broadcast the programme makers had twice written to the four Radical Independents (including Councillor Rowlands) and that these letters had asked for their views on Councillor Thomas' decision not to declare an interest in Ms Rowlands' departure application.

ITV disputed Mrs Rowlands' suggestion that the Radical Independents were not heavily involved in a number of controversial planning issues. It argued that the three Radical Independent votes in favour of Ms Rowlands' application were crucial in securing the approval, as the vote was carried by eight to seven at the April 2005 meeting.

With regard to the inclusion of Mr Durkin, ITV acknowledged that he was a fierce critic in relation to certain local planning issues but argued that this did not invalidate his view that Councillor Thomas should have declared an interest in Ms Rowlands' application.

- b) In relation to Mrs Rowlands comments regarding the privacy complaint, ITV reiterated its argument that there was no reasonable expectation of privacy in relation to a signature in general, particularly when the signature had been made on a public document. ITV also said that the programme had not disclosed the location of Mrs Rowlands' home and noted that this issue did not form part of the original complaint.

Decision

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

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

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

- a) Ofcom first considered the complaint that Mrs Rowlands was treated unfairly in the programme as broadcast. Mrs Rowlands complained that the programme insinuated that she had influenced the decision to grant her daughter's planning application by nominating Councillor Thomas to the Council and that this impression was furthered through selective reporting of the facts.

Ofcom had particular regard to whether the programme makers ensured that the programme as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Ofcom Broadcasting Code ("the Code"), and whether they had taken reasonable care to satisfy themselves that material facts had not been

presented, disregarded or omitted in a way that was unfair to an individual or organisation (as outlined in Practice 7.9 of the Code).

Ofcom noted that the relevant section of the programme examined Councillor Thomas' involvement in planning decisions on Anglesey and focused in particular on his support for Ms Rowlands application

Ofcom noted that the programme raised questions about whether it was right for councillors to support planning applications from friends and family of members of the same party. In this context the programme explored the relationship between Councillor Thomas and the Rowlands family and questioned whether he should have declared an interest in Ms Rowlands' planning application.

Ofcom noted that the commentary said with reference to Mrs Rowlands:

"One of [Ms Rowlands'] planning application's strongest supporters was Councillor Hefin Thomas. His nomination papers for the 2004 council elections were signed by Councillor Rowlands' wife at a time when the two men were members of different political groups. Critics are concerned."

The programme then showed Mr Durkin stating that Councillor Thomas should have declared an interest in the application. Mrs Rowlands was not referred to by name or pictured in the programme.

Ofcom noted that Mrs Rowlands did not dispute that she was a signatory on Councillor Thomas' nomination form and that she signed the form prior to the formation of the Radical Independents. It also noted that this was referred to as background to the programme's investigation of Councillor Thomas' relationship with the Rowlands and its consideration of whether he should have declared an interest in the application. Mrs Rowlands was only mentioned in the programme in connection with her signature. In Ofcom's view, the programme did not criticise Mrs Rowlands or imply that she had signed the form to advance her daughter's application or unduly influence the process in any way.

Furthermore Ofcom noted that the selection and presentation of material is a matter of editorial discretion as long as it does not result in unfairness. The relevant section of the programme focused on Councillor Thomas' behaviour. Councillor Thomas' potential link with the Rowlands, his decision not to declare an interest in the application and his denial that he attended the April 2005 planning meeting, were mentioned in this context. As no allegations were made in respect of Mrs Rowlands' conduct, Ofcom found that there was no unfairness to her in the programme's presentation of material facts in relation to the planning application.

- b) Ofcom next considered Mrs Rowlands' complaint that her privacy was unwarrantably infringed in the programme as broadcast, because the image of her signature was shown on screen.

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

In considering this complaint, Ofcom first considered whether Mrs Rowlands had a legitimate expectation of privacy in relation to the material that was broadcast and complained of, namely footage showing her signature.

Ofcom noted that a nomination paper is a public document, which records that the signatories support a political candidate's intention to stand for election. The information disclosed, namely Mrs Rowlands' signature, was a matter of public record. The broadcast of the footage did not reveal any information of a private nature as copies of the document were available to the public on request.

Through signing the nomination paper, Mrs Rowlands had placed her signature in the public domain. In these circumstances, Ofcom found that Mrs Rowlands did not have a legitimate expectation of privacy in relation to the broadcast of the image of her signature on the nomination form.

Having found that Mrs Rowlands did not have a legitimate expectation of privacy, Ofcom therefore found that Mrs Rowlands' privacy was not infringed in the programme as broadcast. It was not therefore necessary for Ofcom to further to consider whether any infringement of privacy was warranted.

Accordingly Ofcom has not upheld Mrs Rowlands' complaint of unfair treatment or unwarranted infringement of privacy in either the making or broadcast of the programme.

Other Programmes Not in Breach/Resolved

Up to 30 December 2008

| Programme | Transmission Date | Channel | Category | Number of Complaints |
|--|-------------------|------------------|------------------------------|----------------------|
| 118 118 Sponsorship of The Simpsons | 21/10/2008 | Channel 4 | Sponsorship | 1 |
| 4 Stands Up | 20/11/2008 | BBC Radio 4 | Generally Accepted Standards | 2 |
| 4 Stands Up | 20/11/2008 | BBC Radio 4 | Offensive Language | 1 |
| 4 Stands Up | 20/11/2008 | BBC Radio 4 | Sex/Nudity | 1 |
| 8 Out of 10 Cats | 20/11/2008 | Channel 4 | Animal Welfare | 2 |
| 8 Out of 10 Cats | 13/11/2008 | Channel 4 | Sex/Nudity | 1 |
| 8 Out of 10 Cats | 20/11/2008 | Channel 4 | Generally Accepted Standards | 1 |
| All Star Family Fortunes Christmas Special | 27/12/2008 | ITV1 | Generally Accepted Standards | 1 |
| Antiques Roadshow | 16/11/2008 | BBC1 | Inaccuracy/Misleading | 3 |
| BBC Breakfast | 17/11/2008 | BBC1 | Generally Accepted Standards | 1 |
| BBC Breakfast | 12/11/2008 | BBC1 | Violence | 1 |
| BBC News | 16/12/2008 | BBC1 | Generally Accepted Standards | 1 |
| BBC News | 17/12/2008 | BBC1 | Generally Accepted Standards | 1 |
| BBC News (trailer) | 25/11/2008 | BBC2 | Generally Accepted Standards | 1 |
| BBC Wales Sports Personality of the Year | 07/12/2008 | BBC2 Wales | Due Impartiality/Bias | 1 |
| Balls of Steel | 17/12/2008 | Channel 4 | Generally Accepted Standards | 1 |
| Balls of Steel | 12/11/2008 | Channel 4 | Generally Accepted Standards | 1 |
| Bear Eats: Born Survivor | 22/11/2008 | Channel 4 | Generally Accepted Standards | 5 |
| Bitter Sweets: Tonight | 28/11/2008 | ITV1 | Generally Accepted Standards | 1 |
| Bowtime with Jason Cundy & Mike Parry | 27/11/2008 | Talksport | Crime (incite/encourage) | 1 |
| Britannia High | 16/11/2008 | ITV1 | Generally Accepted Standards | 1 |
| Chris Moyles Show | 31/10/2008 | BBC Radio 1 | Generally Accepted Standards | 1 |
| Chris Moyles Show | 07/11/2008 | BBC Radio 1 | Generally Accepted Standards | 1 |
| Chris Moyles Show | 13/11/2008 | BBC Radio 1 | Generally Accepted Standards | 1 |
| Chris Moyles Show | 05/11/2008 | BBC Radio 1 | Sex/Nudity | 1 |
| Close Encounters of the Third Kind | 13/12/2008 | Channel 4 | Offensive Language | 2 |
| Continuity announcement | 14/11/2008 | Five | Generally Accepted Standards | 3 |
| Coronation Street | 17/12/2008 | ITV1 | Substance Abuse | 1 |
| Coronation Street | 17/11/2008 | ITV1 | Crime (incite/encourage) | 7 |
| Coronation Street | 25/12/2008 | ITV1 | Generally Accepted Standards | 1 |
| Coronation Street | 28/11/2008 | ITV1 | Dangerous Behaviour | 1 |
| Dana: The 8 Year Old Anorexic | 02/10/2008 | Channel 4 | U18's in Programmes | 1 |
| Dana: The 8 Year Old Anorexic | 02/10/2008 | Channel 4 | Harm/Food | 1 |
| Danny Baker & Zoe Ball | 22/11/2008 | BBC Radio 2 | Generally Accepted Standards | 1 |
| Demons (trailer) | 22/11/2008 | ITV1 | Generally Accepted Standards | 9 |
| Embarrassing Teenage Bodies | 29/10/2008 | Channel 4 | Sex/Nudity | 2 |
| Emmerdale | 26/11/2008 | ITV1 | Generally Accepted Standards | 1 |
| Fighting Talk | 15/11/2008 | BBC Radio 5 Live | Generally Accepted Standards | 1 |
| Five News | 18/11/2008 | Five | Offensive Language | 1 |
| Five News | 18/11/2008 | Five | Inaccuracy/Misleading | 1 |

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|--|------------|---------------|------------------------------|----|
| Five News | 21/11/2008 | Five | Generally Accepted Standards | 1 |
| Flog It! | 20/11/2008 | BBC2 | Violence | 1 |
| Fonejacker | 12/11/2008 | E4 | Generally Accepted Standards | 5 |
| Fonejacker | 20/11/2008 | Channel 4 | Generally Accepted Standards | 1 |
| Friday Night With Jonathan Ross | 17/10/2008 | BBC1 | Generally Accepted Standards | 1 |
| Friday Night with Jonathan Ross | 19/09/2008 | BBC1 | Dangerous Behaviour | 1 |
| Full Pott | 24/10/2008 | Kanal 5 | Generally Accepted Standards | 1 |
| GWR | 25/10/2008 | GWR | Generally Accepted Standards | 1 |
| GWR Breakfast with Roop and Tom | 13/11/2008 | GWR FM (Bath) | Crime (incite/encourage) | 1 |
| Ghosthunting With Girls Aloud | 27/12/2008 | ITV2 | Exorcism/Occult/Paranormal | 1 |
| Going for Gold | 21/11/2008 | Five | Sex/Nudity | 1 |
| Gordon Ramsay: Cookalong Live | 24/10/2008 | Channel 4 | Generally Accepted Standards | 2 |
| Gordon Ramsay: Cookalong Live | 24/10/2008 | Channel 4 | Offensive Language | 6 |
| Gordon Ramsay: Cookalong Live | 31/10/2008 | Channel 4 | Sex/Nudity | 17 |
| Gordon Ramsay: Cookalong Live | 01/11/2008 | Channel 4 | Offensive Language | 1 |
| Gordon Ramsay: Cookalong Live | 01/11/2008 | Channel 4 | Sex/Nudity | 1 |
| Gordon Ramsay: Cookalong Live | 31/10/2008 | Channel 4 | Generally Accepted Standards | 1 |
| Gordon Ramsay: Cookalong Live (trailer) | 29/10/2008 | Channel 4 | Sex/Nudity | 1 |
| Gordon Ramsay: Cookalong Live | 21/11/2008 | Channel 4 | Sex/Nudity | 1 |
| Harry Hill's TV Burp | 29/11/2008 | ITV1 | Generally Accepted Standards | 6 |
| Harry Hill's TV Burp | 15/11/2008 | ITV1 | Generally Accepted Standards | 5 |
| Harry Hill's TV Burp | 22/11/2008 | ITV1 | Generally Accepted Standards | 4 |
| Harveys Sponsorship of Coronation Street | 10/12/2008 | ITV1 | Religious Offence | 1 |
| Home and Away | 09/12/2008 | Five | Offensive Language | 1 |
| How To Look Good Naked | 02/12/2008 | Channel 4 | Sex/Nudity | 1 |
| Hujjara | 03/10/2008 | KBC | Commercial References | 1 |
| I'm A Celebrity, Get Me Out Of Here! | 20/11/2008 | ITV1 | Animal Welfare | 11 |
| I'm A Celebrity, Get Me Out Of Here! | 20/11/2008 | ITV1 | Generally Accepted Standards | 1 |
| I'm A Celebrity, Get Me Out Of Here! | 21/11/2008 | ITV1 | Use of Premium Rate Numbers | 1 |
| I'm A Celebrity, Get Me Out of Here! | 22/11/2008 | ITV1 | Generally Accepted Standards | 1 |
| I'm A Celebrity, Get Me Out of Here! | 17/11/2008 | ITV1 | Animal Welfare | 1 |
| I'm A Celebrity, Get Me Out of Here! | 24/11/2008 | ITV1 | Generally Accepted Standards | 1 |
| I'm A Celebrity, Get Me Out of Here! | 26/11/2008 | ITV1 | Generally Accepted Standards | 1 |
| I'm A Celebrity, Get Me Out of Here! | 30/11/2008 | ITV1 | Generally Accepted Standards | 5 |
| I'm A Celebrity, Get Me Out of Here! | 02/12/2008 | ITV1 | Generally Accepted Standards | 2 |

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| I'm A Celebrity, Get Me Out of Here! | 16/11/2008 | ITV1 | Animal Welfare | 8 |
| I'm A Celebrity, Get Me Out of Here! | 03/12/2008 | ITV1 | Animal Welfare | 2 |
| I'm A Celebrity, Get Me Out of Here! | 01/12/2008 | ITV1 | Generally Accepted Standards | 4 |
| ITV News | 10/11/2008 | ITV1 | Inaccuracy/Misleading | 1 |
| ITV News (trailer) | 18/11/2008 | ITV1 | Generally Accepted Standards | 1 |
| Ian Collins | 22/11/2008 | Talksport | Animal Welfare | 1 |
| Katy Brand's Big Ass Show | 16/11/2008 | ITV2 | Generally Accepted Standards | 14 |
| Katy Brand's Big Ass Show | 16/11/2008 | ITV2 | Violence | 1 |
| Little Britain USA | 10/10/2008 | BBC1 | Generally Accepted Standards | 2 |
| Little Britain USA | 26/10/2008 | BBC1 | Generally Accepted Standards | 1 |
| Little Britain USA | 31/10/2008 | BBC1 | Generally Accepted Standards | 2 |
| Little Britain USA | 24/10/2008 | BBC1 | Religious Offence | 1 |
| Little Britain USA | 02/11/2008 | BBC1 | Generally Accepted Standards | 1 |
| Loose Women | 25/11/2008 | ITV1 | Generally Accepted Standards | 1 |
| Loose Women | 05/12/2008 | ITV1 | Generally Accepted Standards | 1 |
| Miss Naked Beauty | 11/11/2008 | Channel 4 | Due Impartiality/Bias | 2 |
| Miss Naked Beauty | 11/11/2008 | Channel 4 | Sex/Nudity | 1 |
| Mum and Me | 14/11/2008 | BBC2(Scotland) | Generally Accepted Standards | 1 |
| Nature Shock | 23/12/2008 | Five | Animal Welfare | 2 |
| News | 28/11/2008 | BBC News 24 | Generally Accepted Standards | 1 |
| News | 19/11/2008 | BBC News 24 | Generally Accepted Standards | 1 |
| News | 05/12/2008 | 3TR FM | Inaccuracy/Misleading | 1 |
| News at Ten | 18/11/2008 | ITV1 | Commercial References | 1 |
| News at Ten | 19/11/2008 | ITV1 | Generally Accepted Standards | 3 |
| Now That's What I Call 1983 | 21/11/2008 | ITV1 | Generally Accepted Standards | 1 |
| Open Country | 22/11/2008 | BBC Radio 4 | Animal Welfare | 1 |
| Outnumbered | 22/11/2008 | BBC1 | Offensive Language | 1 |
| Patrick Lally | 27/10/2008 | Salford City Radio 94.4FM | Generally Accepted Standards | 1 |
| Peter Jarrod | 30/11/2008 | Absolute Radio | Generally Accepted Standards | 1 |
| Peter Kay's Britain's Got an Extra Pop Factor | 19/12/2008 | Channel 4 | Generally Accepted Standards | 1 |
| Peter Kay's Britain's Got the Pop Factor | 14/12/2008 | Channel 4 | Offensive Language | 2 |
| Promo | 09/12/2008 | Movies24+ | Violence | 1 |
| Promotion | 24/11/2008 | LBC 97.3FM | Commercial References | 1 |
| QI | 21/11/2008 | BBC2 | Generally Accepted Standards | 1 |
| QI | 21/11/2008 | BBC2 | Offensive Language | 1 |
| Quiz Call | 13/12/2008 | Five | Competitions | 1 |
| Real Football Phone-In | 17/10/2008 | Real Radio Scotland | Generally Accepted Standards | 1 |
| Real Football Phone-In | 25/10/2008 | Real Radio Scotland | Generally Accepted Standards | 3 |
| Red Eye | 28/11/2008 | Fox News | Offensive Language | 1 |
| Rich Kid, Poor Kid | 13/11/2008 | Channel 4 | Generally Accepted Standards | 4 |
| Road Wars | 20/12/2008 | Sky One | Generally Accepted Standards | 1 |
| Russell Brand's Ponderland | 30/10/2008 | Channel 4 | Generally Accepted Standards | 12 |
| Russell Brand's Ponderland | 20/11/2008 | Channel 4 | Religious Offence | 3 |
| Russell Brand's Ponderland | 20/11/2008 | Channel 4 | Generally Accepted Standards | 1 |
| Saving Africa's Witch Children | 12/11/2008 | Channel 4 | Due Impartiality/Bias | 1 |
| Saving Africa's Witch Children | 12/11/2008 | Channel 4 | Religious Offence | 1 |

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| Saving Africa's Witch Children (trailer) | 12/11/2008 | Channel 4 | Generally Accepted Standards | 1 |
| Soccer AM | 13/12/2008 | Sky One | Generally Accepted Standards | 1 |
| Soccer Sunday | 09/11/2008 | ITV1 Wales | Offensive Language | 1 |
| Special Forces Heroes: Terror in the Skies | 18/11/2008 | Five | Violence | 1 |
| Spooks | 01/12/2008 | BBC1 | Violence | 1 |
| Strictly Come Dancing - It Takes Two | 19/11/2008 | BBC2 | Generally Accepted Standards | 1 |
| Strictly Come Dancing - It Takes Two | 17/11/2008 | BBC2 | Generally Accepted Standards | 1 |
| Stupid | 09/11/2008 | BBC2 | Offensive Language | 1 |
| Take That Come to Town (trailer) | 23/11/2008 | ITV1 | Dangerous Behaviour | 2 |
| The British Comedy Awards | 06/12/2008 | ITV1 | Generally Accepted Standards | 51 |
| The British Comedy Awards | 06/12/2008 | ITV1 | Offensive Language | 7 |
| The British Comedy Awards | 06/12/2008 | ITV1 | Sex/Nudity | 1 |
| The Commander - Abduction | 10/11/2008 | ITV1 | Generally Accepted Standards | 3 |
| The Commander - Abduction | 10/11/2008 | ITV1 | Offensive Language | 2 |
| The Commander - Abduction | 10/11/2008 | ITV1 | Advertising | 1 |
| The Fear Factor: Tonight | 21/11/2008 | ITV1 | Animal Welfare | 1 |
| The Friday Night Christmas Project | 18/12/2008 | Channel 4 | Religious Offence | 3 |
| The Gadget Show | 22/12/2008 | Five | Dangerous Behaviour | 1 |
| The Home Show | 19/11/2008 | Channel 4 | Inaccuracy/Misleading | 1 |
| The Home Show | 19/11/2008 | Channel 4 | Offensive Language | 1 |
| The Home Show | 03/12/2008 | Channel 4 | Offensive Language | 1 |
| The Jeremy Kyle Show | 18/11/2008 | ITV2 | Generally Accepted Standards | 1 |
| The Jeremy Kyle Show | 19/11/2008 | ITV1 | Generally Accepted Standards | 1 |
| The News Quiz | 22/11/2008 | BBC Radio 4 | Generally Accepted Standards | 1 |
| The Now Show | 28/11/2008 | BBC Radio 4 | Generally Accepted Standards | 1 |
| The ONE Show | 09/12/2008 | BBC1 | Violence | 1 |
| The Peter Serafinowicz Show | 25/12/2008 | BBC2 | Generally Accepted Standards | 1 |
| The Pregnant Man | 21/12/2008 | More4 | Inaccuracy/Misleading | 1 |
| The Pregnant Man | 11/12/2008 | Channel 4 | Generally Accepted Standards | 1 |
| The Royal Variety Performance 2008 | 17/12/2008 | BBC1 | Generally Accepted Standards | 1 |
| The Secret Family of Jesus | 22/12/2008 | Channel 4 | Religious Offence | 1 |
| The Sex Chamber | 13/11/2008 | Five | Violence | 3 |
| The Simpsons | 28/12/2008 | Sky One | Offensive Language | 1 |
| The Simpsons | 17/11/2008 | Channel 4 | Violence | 1 |
| The Wright Stuff | 07/03/2008 | Five | Generally Accepted Standards | 1 |
| The X Factor | 13/12/2008 | ITV1 | Generally Accepted Standards | 15 |
| The X Factor | n/a | ITV1 | Commercial References | 1 |
| The X Factor | 06/12/2008 | ITV1 | Offensive Language | 1 |
| The X Factor | 22/11/2008 | ITV1 | Violence | 1 |
| This Morning | 21/11/2008 | ITV1 | Animal Welfare | 1 |
| This Morning | 18/11/2008 | ITV1 | Animal Welfare | 1 |
| Thornbury FM | n/a | Thornbury FM | Other | 1 |
| Thought For The Day | 17/12/2008 | BBC Radio 4 | Crime (incite/encourage) | 1 |
| Top 100 Attractive People | 01/12/2008 | ITV2+1 | Offensive Language | 1 |
| Top Gear | 26/11/2008 | BBC2 | Dangerous Behaviour | 1 |
| Top Gear | 23/11/2008 | BBC2 | Dangerous Behaviour | 1 |
| Top Gear | 16/11/2008 | BBC2 | Sex/Nudity | 1 |
| Trail for Virgin On Demand service | 13/11/2008 | Bravo | Generally Accepted Standards | 1 |

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|--------------------|------------|------|------------------------------|---|
| Twins | 25/11/2008 | ITV2 | Offensive Language | 1 |
| UTV Live | 23/10/2008 | UTV | Due Impartiality/Bias | 1 |
| Unbreakable | 17/11/2008 | Five | Animal Welfare | 3 |
| Wallander | 06/12/2008 | BBC4 | Animal Welfare | 1 |
| We Are Most Amused | 15/11/2008 | ITV1 | Generally Accepted Standards | 3 |