

# **Ofcom Broadcast Bulletin**

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<sup>1</sup> The complaints relating to this finding were found “Not in Breach”, except one, which was “Resolved”.

## 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](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.

## In Breach

### Full Pott

*Kanal 5, 4 December 2008, 09:30 and 18 December 2008, 09:30*

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#### Introduction

Kanal 5 is a Swedish language channel operated by SBS Broadcasting Networks Limited (“SBS”). SBS holds Ofcom licences for nine channels which it operates. The SBS compliance department based in London manages compliance for all these licences centrally.

*Full Pott* is a live call TV quiz show running various competitions which viewers are invited to try to solve by calling or texting a premium rate service (“PRS”) number.

#### *Full Pott – 4 December 2008*

The potential competition prizes in this episode were stated on air as being in a range between 1,000 and 10,000 Krona.

A viewer was concerned that because the exact amounts awarded to successful contestants were not revealed to the audience, potential entrants were unable to estimate their chances of winning the maximum prize.

#### *Full Pott – 18 December 2008*

This episode included a competition in which viewers were shown a word search grid containing the names of several animals. The name of each animal appeared twice in the grid. Viewers could win a prize for guessing one of these names. In addition, one of the animal names had been pre-selected by the broadcaster and put in a separate envelope. There was another prize available for the viewer who was able to guess the animal name in the envelope.

Viewers could enter by telephone or text message and the cost of entry was 9.90 Krona per call or 10 Krona per text message plus additional network operator fees<sup>1</sup>.

The prizes available increased at various points during the competition. At the outset of the competition there was no prize for guessing an animal that appeared twice in the grid but was not the animal name in the envelope. However, later in the competition a prize of 1,000 Krona was introduced for this, which increased to 2,000 Krona and then 5,000 Krona. The prize for correctly guessing the animal name in the envelope started at 5,000 Krona and was later increased to 7,000 Krona.

When the competition had been running for 25 minutes, the presenter opened the envelope to check for herself what the pre-selected animal was, although she did not disclose the answer to the viewers. Forty-two minutes into the competition, the presenter said “*Have you got an animal that... isn't 'giraffe', 'tiger', 'mouse', 'hare' or 'hound'?*” When the last contestant of the competition was told on-air that her guess was incorrect, the presenter announced that the pre-selected answer, in the envelope, was “*giraffe*”. The contestant said “*I thought you had mentioned giraffe earlier in the show*”, which the presenter denied.

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<sup>1</sup> 10 Krona is approximately 85 pence.

A viewer was concerned that because the presenter had said that “*giraffe*” was not the pre-selected animal when in fact it was, viewers were misled and could not possibly have identified “*giraffe*” as the correct answer.

SBS was asked to comment on both of the editions of *Full Pott* described above in relation to Code Rule 2.11 - “Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known.”

## **Response**

### *Full Pott* – 4 December 2008

SBS responded that the then executive producer of the production company “decided on his own that there was no need to announce or otherwise publicise the amount that the winners of any game won on air because the way that the game was conducted complied with the relevant Ofcom rules” and he also believed that it “added to the viewers’ interest and enjoyment of the programme”.

SBS said that the prizes were described accurately; viewers knew that there was a prize range and what the minimum and maximum prizes were. It said that the allocation of prizes was random and at the discretion of the on-air producer, and that this was made clear, so viewers could not have been misled. It added that there was “no guarantee nor assurance that anything other than the minimum prize would be awarded” and that if “only the minimum [prize] was ever awarded then [it] did not believe that this would have led to breach of Rule 2.11”.

SBS added that even if it had broadcast on air what each successful contestant had won, it did not believe that it could have assisted potential contestants. It said that on-air producers were “advised by the executive producer to award prizes within the stated prize range fairly and proportionately and use their discretion sensibly. Therefore the instructions given were that prizes should be awarded evenly across the prize range”. It said “in this game mode the fact that one winner had won ‘X’ amount had no correlation or impact on what the next winner could win. The game mode was not of the type where there was X percentage chance of winning the top prize. There was a prize range and viewers can only have entered the game accepting that they may only win the minimum amount”.

SBS said that it did not believe that it had breached any Code rules, but to minimise viewer dissatisfaction it had asked the production company not to repeat this prize strategy in future.

### *Full Pott* – 18 December 2008

SBS responded that the presenter inadvertently gave the correct answer (“*giraffe*”) on one occasion when informing viewers of the answers that had already been given by previous contestants. SBS said that on several occasions after this, the presenter gave an accurate list of answers which had already been eliminated (without mentioning “*giraffe*” again). These answers were also continually shown on screen in a caption. It added that the presenter had also provided two clues about the pre-selected animal in the envelope: firstly that it was a common animal and secondly that it began with the letter ‘g’. SBS said that, given that the presenter gave these clues and that the answers which had already been eliminated were continually displayed on screen, viewers could not have been misled into thinking that “*giraffe*” was an answer that had already been eliminated.

SBS told Ofcom that there were 15,658 calls and texts to the competition. Of these, 10,955 were made after the presenter had accidentally announced “giraffe” as being an eliminated answer. It said that three contestants had been brought to air after the presenter’s unintentional error.

It added that it decided to give compensation of 5,000 Krona to each of the three callers who were brought to air after the presenter’s error, however, it discovered that the last caller who, when told that “giraffe” was the answer in the envelope, said to the presenter “*I thought you had mentioned giraffe earlier in the show*”, had already been given 5,000 Krona compensation by the on-air producer. SBS surmised that on hearing the last contestant questioning the presenter about her earlier reference to “giraffe”, the on-air producer (who has now left the production company) reviewed the programme, realised that an error had occurred during the competition and decided to compensate this contestant. SBS said that the on-air producer did not inform the executive producer or SBS that she had taken this action.

The broadcaster also informed Ofcom that it taken the following action:

- Upon notification of the complaint by Ofcom, SBS published an apology on its website;
- It gave compensation of 5,000 Krona to the other two contestants who were put to air after the presenter’s error; and
- It investigated whether it could refund the call charges for all the callers who called after the presenter’s error. It found that the telecoms provider keeps caller identification information for 30 days, a period which had lapsed before SBS had received the complaint.

SBS also informed Ofcom that since receipt of the complaint, the production company has instructed its on-air producers to be more vigilant in monitoring the presenters on-air to avoid anything being said or done which may mislead the audience.

SBS compared this case to a previous edition of *Full Pott* which was found in breach of Rule 2.11<sup>2</sup>. It argued that this case was less serious than the previous case because the presenter in the previous case had made an error on five occasions, whereas in this case, the presenter made a “single inadvertent slip of the tongue”. The broadcaster said that “human error cannot be legislated out of existence...no matter what safeguards are put in place”.

## **Decision**

### *Full Pott – 4 December 2008*

Ofcom requested SBS to provide information demonstrating the prize amounts that had been awarded in competitions using this particular prize strategy. While this information demonstrated that a range of prize amounts had indeed been awarded, Ofcom was nevertheless concerned by the broadcaster’s comments that “no guarantee nor assurance that anything other than the minimum prize would be awarded” and that if “only the minimum [prize] was ever awarded then [it] did not believe that this would have led to breach of rule 2.11”.

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<sup>2</sup> [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb117/issue117.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb117/issue117.pdf)

Ofcom considered that, based on the prize range described to viewers on air, they would have paid to enter the competition expecting they had a chance to win the maximum possible amount offered as a prize (i.e. 10,000 Krona). However, the decision to award a prize above the minimum amount offered (i.e. 1,000 Krona) appeared to be at the whim of the on-air producer. There was therefore no guarantee that an entrant could win a higher prize during the competition, when viewers were likely to believe they had a chance to do so.

Where a range of cash prizes is indicated, any reasonable viewer would expect a number of the possible prize amounts from within the range to be awarded – including the maximum possible prize. Ofcom considers that viewers would be likely to take this into account in making a decision to pay to enter the competition. However, in this case, because there was no mechanism in place for allocating prizes fairly, there was no guarantee that the maximum possible prize was available to be won. Therefore the actual prize amounts available in the competition were not made clear and the prizes were not therefore described accurately, in breach of Rule 2.11.

#### Full Pott – 18 December 2008

Ofcom noted that SBS had made efforts to make amends for the presenter's error. It had sought to compensate all entrants, although it had only been able to compensate the three entrants who had been brought to air after the presenter's error; it had made a public apology on its website; and it had taken measures to improve compliance processes.

Ofcom accepts that the presenter of this live programme had inadvertently revealed the name of the animal in the envelope (i.e. "giraffe"). However, given the use of PRS in this programme, and that viewers were relying on accurate information at all times for them to decide on whether to pay a premium rate to enter the competition, the broadcaster had a clear responsibility to give accurate information to the audience during the competition. Any misunderstanding in such circumstances carries the risk of potential material harm to the audience.

In Ofcom's view, as a result of the presenter's error, viewers were likely to have understood that "giraffe" had been eliminated as a possible answer. Even though an accurate list of eliminated answers was displayed on screen (not including "giraffe") and other clues were given, Ofcom considered that it was still likely that the error had misled viewers who paid to enter the competition after the mistake occurred. The competition was therefore not conducted fairly, in breach of Rule 2.11.

As indicated above, a previous *Full Pott* programme broadcast on Kanal 5 was found to be in breach of Rule 2.11 of the Code for errors broadcast during another competition. In view of the two additional breaches of Rule 2.11 recorded in this finding, Ofcom is concerned about the adequacy of SBS' compliance procedures in relation to Rule 2.11 of the Code. Ofcom is therefore putting the broadcaster on notice that should any further similar breaches occur, further regulatory action is likely to be considered.

#### **Ofcom expects all broadcasters to exercise extreme caution in the use of PRS in programmes.**

Further guidance on Rule 2.11 can be found at:  
<http://www.ofcom.gov.uk/tv/ifi/guidance/bguidance/guidance2.pdf>

**4 December 2008 – Breach of Rule 2.11**  
**18 December 2008 – Breach of Rule 2.11**



## In Breach

### Allan Lake

*Absolute Radio, 20 February 2009, 00:00*

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#### Introduction

Allan Lake presents a late-night call-in show on Absolute Radio. Ofcom received one complaint that, during the programme, he talked about a particular brand of electronic cigarette ('e-cigarette') which claims to help smokers quit. The listener felt Allan Lake made repeated references to Smart Smoker (the manufacturer) and also made health claims about the e-cigarette which could not be proven.

After reviewing the material, Ofcom asked Absolute Radio to respond under Rules 10.3 (products and services must not be promoted in programmes), 10.4 (undue prominence), and 10.5 (prohibition of product placement) of the Code.

#### Response

Absolute Radio admitted that Allan Lake went beyond acceptable boundaries when discussing a product on air. It said the presenter often discussed his desire to quit smoking and was contacted by a member of the audience who recommended this particular product. Allan Lake obtained a free sample of the e-cigarette from the manufacturer to test and discuss on-air.

Absolute Radio stated that it had received no payment, financial or otherwise, for any reference to the product. The manufacturer had not sought to place the product within the programme. Instead, it said the subject matter was an ill-judged editorial choice on the part of the presenter who wanted to discuss on air his own experience giving up smoking and therefore asked to test the e-cigarette.

The broadcaster said it believed the programme had breached Rules 10.3 and 10.4. On being made aware of the complaint, it suspended the presenter's programme and had discussed the matter with him. Absolute Radio said that Allan Lake had been thoroughly re-briefed on the sections of the Code relating to the broadcast of commercial references. The broadcaster stated that it was also ensuring all relevant personnel attend a further compliance course.

#### Decision

The Code prohibits broadcasters promoting, or giving undue prominence to, products and services in programmes. This is to ensure there is clear separation between programmes and advertising and to prevent programmes from being distorted for commercial purposes.

Ofcom accepts there was an attempt by the presenter, albeit ill-judged, to discuss the product as part of the editorial of the programme. We have found no evidence that the broadcaster received payment, financial or otherwise, for any references made to the product or manufacturer. As a result, we have not found the programme in breach of Rule 10.5.

However, there were repeated references to the manufacturer of the e-cigarette as well as claims about the health benefits of the product. Examples included:

- . “...go to *smartsmoker.co.uk*...”;
- “...I was sent from *smartsmoker.co.uk* an electronic cigarette. Basically it's got these little capsules of nicotine in and it's much healthier...”; and
- “...no toxins and stuff...”.

There was no editorial justification for the frequency and prominence of these references, which Ofcom considered to be unduly prominent, in breach of Rule 10.4.

Additionally, although Allan Lake talked about his personal experience with the product, these sections of the programme undermined the editorial integrity of the programme as the presenter gave repeated, positive endorsements of the attributes of the product, such as:

- “for a smoker these are like the best invention ever ... it's safe for everyone around you ... nicotine isn't going to give you cancer...”;
- “...they are as good as cigarettes, right?”;
- “...the *i-fag* is so much better than the normal fag...”; and
- “...it does taste like a normal fag...”.

These references promoted the product, in breach of Rule 10.3.

Ofcom welcomes the action taken by Absolute Radio in addressing this situation both with the presenter and the relevant staff at the station. Irrespective of the presenter's intentions, this broadcast was misjudged and in clear breach of Rules 10.3 and 10.4.

#### **Breach of Rules 10.3 and 10.4**

## In Breach

### Indian Idol

*Sony TV Asia, 26 December 2008, 21:00*

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#### Introduction

Sony TV Asia is a subscription-based channel broadcasting on Sky. The channel broadcasts general entertainment programming aimed at a UK-based Asian audience.

A viewer complained that throughout this programme, which is a singing talent show based on the American programme, *American Idol*, there was “flagrant product placement”.

When Ofcom viewed the programme it noted that after one of the contestants had performed, one of the presenters said:

*“SMS for Bhavya on 52525 or call from your Indian Idol LG KP199 mobile phone”.*

Later in the programme, one of the presenters said:

*“The person who leaves the stage in this round will get a LG mobile KP199 Indian Idol phone. Hope the person who leaves is not your favourite, so vote now”.*

As well as these verbal references, there were mobile phones displayed in front of each of the three judges with signs that clearly indicated the make and model - LG KP199.

We asked the broadcaster for its comments in relation to the following Code Rules:

- 10.3 - Products and services must not be promoted in programmes.
- 10.4 - No undue prominence may be given in any programme to a product or service.
- 10.5 - Product placement is prohibited.

#### Response

The licensee, MSM Satellite (Singapore) Pte. Ltd., assured Ofcom that while a product placement arrangement had been in place when the programme was originally produced in India, the licensee had not directly benefited from this arrangement or received any payment or valuable consideration for the inclusion of, or reference to, the LG mobile phone featured in the programme.

In response to the visual references to the LG mobile phone displayed in front of the judges, the broadcaster advised that it took steps to cover them with a strap across the bottom of the screen but accepted that because the strap was transparent, on occasions the phones and signs were still visible underneath the strap. The broadcaster advised that in subsequent episodes of the programme it had used opaque straps.

The broadcaster did not provide an explanation as to why the presenters had referred specifically to the LG mobile phone during the programme.

## Decision

One of the fundamental principles of European broadcasting regulation is that advertising and programming (that is editorial content) must be kept separate. This is set out in Article 10 of the Television Without Frontiers Directive which is in turn reflected in the rules in Section Ten (Commercial References in Programmes) of the Code.

### Rule 10.5

We noted the broadcaster's assurances that it had not directly benefited from the product placement arrangement that had been in place when the programme was produced in India. The Code sets out an exemption under the prohibition of product placement in Rule 10.5, for television programmes acquired from outside the UK, provided that the Ofcom licensee broadcasting the acquired programme does not directly benefit from that arrangement.

Further, we noted that the broadcaster had received no payment, or other valuable consideration, for featuring the LG mobile phone in the programme and therefore concluded that it was not in breach of Rule 10.5 of the Code.

### Rules 10.3 and 10.4

While the exemption to Rule 10.5 set out above enables licensees to acquire television programmes from outside the UK that have involved a product placement arrangement (provided the Ofcom licensee has not directly benefited), such programmes must still comply with the other rules in the Code, notably in this case the rule regarding undue prominence. Undue prominence may arise where a product or service is referred to without editorial justification.

Ofcom noted that in front of each of the three judges, was a stand holding an LG mobile phone and displaying the model number and the LG logo. Therefore, the mobile phones were visible to viewers each time the judges were in shot.

Ofcom observed that the strap at the bottom of the screen did not obscure the mobile phones because it did not move to cover them and it was also transparent. It appeared to Ofcom that the purpose of the strap was to display a caption informing the audience that voting was only open to viewers in India, rather than to obscure the mobile phones.

Ofcom judged that there was no editorial justification for displaying these visual references to the mobile phones as they had no connection to the programme.

Similarly, there was no editorial justification for the following verbal references to the mobile phone:

- *"SMS for Bhavya on 52525 or call from your Indian Idol LG KP199 mobile phone".*
- *"The person who leaves the stage in this round will get a LG mobile KP199 Indian Idol phone. Hope the person who leaves is not your favourite, so vote now".*

As such, Ofcom found these visual and verbal references to be unduly prominent, in breach of Rule 10.4 of the Code. In addition, the nature and number of these unduly

prominent references resulted in them being promotional. Ofcom therefore also found the programme in breach of Rule 10.3.

**Breach of Rules 10.3 and 10.4**

## In Breach

### Mickey Rourke

*The Biography Channel, 25 February 2009, 19:17*

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#### Introduction

The Biography Channel is a factual documentary channel broadcast on cable and satellite. Ofcom received one complaint about offensive language in a documentary about the actor Mickey Rourke.

The History Channel UK Ltd (“History Channel”) is responsible for the compliance of The Biography Channel and provided Ofcom with a recording of the programme.

Ofcom noted the programme included a clip from the film *Body Heat* containing the word “fuck”.

Ofcom asked History Channel for its comments under Rule 1.14 of the Code (the most offensive language must not be broadcast before the watershed).

#### Response

History Channel unreservedly apologised for the transmission of the offensive language. The broadcaster said that, on being informed of the complaint by Ofcom, it had withdrawn the programme from further transmission. On investigation, History Channel discovered that, due to human error, a transmission master-tape had been produced without the offensive language being omitted. Further, the programme had been mistakenly cleared for pre-watershed scheduling.

As a consequence of these compliance errors, History Channel outlined various steps it had taken to improve compliance. These included the checking of final transmission master-tapes and their entry onto the programming database by third parties not involved in the original editorial process.

#### Decision

Ofcom’s research<sup>1</sup> confirms that most viewers find “fuck” one of the most offensive words. Ofcom welcomes History Channel’s apology and admission of the compliance error and the steps it has taken to improve compliance procedures.

The use of most offensive language before the watershed, as in this case, is a clear breach of Rule 1.14. Further, it should be noted that there have been two previous published Findings against The Biography Channel and its sister channel The History Channel, involving the broadcast of the most offensive language before the watershed<sup>2</sup>. Ofcom therefore remained concerned that despite these previous Findings, the channel’s compliance procedures were such that a further breach involving the editing of offensive language should have been recorded against the channel.

#### Breach of Rule 1.14

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<sup>1</sup> “Language and Sexual Imagery in Broadcasting: A Contextual Investigation”, Sept 2005.

<sup>2</sup> See *The Beatles’ Biggest Secrets*, The Biography Channel, Bulletin 80, 12 March 2007; *Ax Men*, The History Channel, Bulletin 118, 15 September 2008; and *Guns N’ Roses*, The Biography Channel, Bulletin 119, 13 October 2008.

## In Breach

### Big FM 87.7

*Big FM 87.7, 15 December, 2008, 22:30*

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#### Introduction

Big FM broadcast locally in Leeds from 8 December 2008 until 4 January 2009, under a 28 day Short-term Restricted Service Licence.

Ofcom received two complaints about comments made by a Big FM presenter, on 15 December 2008. The complainants said the presenter had made derogatory comments of a racial nature about a number of business owners in the community. Ofcom asked Big FM for a recording of the programme to assess its content.

#### Response

Ofcom's first request for a recording was made in writing on 19 December 2008. This request was followed by two telephone calls to the station on 13 January and 5 February 2009. During these conversations Big FM gave Ofcom assurances firstly that the recording had been sent, and secondly that a further copy would be dispatched immediately. When no recording was received by Ofcom, it sent a final written request on 11 February 2009.

Ofcom received two recordings on 23 February 2009, which were labelled 24 December 2008 and 2 January 2009. The station manager called on 24 February 2009 to check that the recordings had arrived. During this conversation Ofcom confirmed that it had received the recordings but that none was for the correct date. The station manager confirmed the correct recording would be delivered within 48 hours.

Ofcom received a recording on 12 March 2009, much later than the deadline promised. When Ofcom reviewed the recording, it comprised three audio tracks. Ofcom could find no derogatory references as described by the complainants, but did identify apparent gaps between the tracks. When Ofcom contacted Big FM for an explanation the station manager explained this was due to limited recording facilities, but that the content described by the complainants was not broadcast in any case.

#### Decision

It is a condition of all local radio licences that the licensee adopts procedures for the retention and production of recordings and supplies recordings to Ofcom "forthwith" if requested. Further, the recordings should be 'as broadcast' (i.e. the same quality in terms of both sound and picture as when originally transmitted).

Two complaints of a potentially serious nature were received, and while we note that the licensee denied that the alleged comments had been made, it is unsatisfactory that Ofcom was not able to judge the output as broadcast against the requirements of the Broadcasting Code. Big FM did provide recordings, however, it did so well outside the required timeframe. Also, in light of the edits to the recording supplied, they were not 'as broadcast'. As a result, as explained above, Ofcom was not able to assess independently the programme, as listened to by the complainants.

These are serious and significant breaches of the broadcaster's licence. They will be held on record.

Big FM's 28 day licence has now come to an end. Ofcom will take the station's compliance record into consideration should it make any application for a broadcast licence in the future.

**Breach of Licence Condition 8, Part 2 General (Retention and Production of recordings)**

**Breach of Licence Condition 9 (Failure to supply adequate recordings)**



## Resolved

### Soccer AM

*Sky Sports 1, 7 February 2009, 10:45*

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#### Introduction

*Soccer AM* is a live soccer-based magazine programme broadcast on Sky Sports 1 on Saturday mornings. Ofcom received three complaints objecting to the use of offensive language before the watershed by a member of the band “The View”, who were guests on the programme.

Ofcom noted that the word “*fuck*” was used during the broadcast. Ofcom asked Sky for comments under Rule 1.14 (the most offensive language must not be broadcast before the watershed).

#### Response

Sky sincerely apologised for the use of offensive language in this case. Sky said it was an unintentional mistake on a live programme. The broadcaster stated that it had robust compliance processes in place to deal with live programmes. These had been followed both before and after the incident to ensure compliance with the Code. In this case, for example, “The View” had been briefed about bad language before their appearance in accordance with programme production policy. This was despite the fact the band had appeared without incident on the programme in January 2007. Further, the band member who used the expletive was immediately reprimanded by one of the presenters, and both presenters apologised to viewers before reminding the guests not to use similar language again.

#### Decision

Ofcom’s research<sup>1</sup> confirms that most viewers find “*fuck*” and its derivatives some of the most offensive language. *Soccer AM* is an irreverent football-themed programme that is particularly aimed at adult male football fans. In this instance, Ofcom noted that this was a live broadcast; and that the language was clearly not used with the intention to offend, given the guest’s own reaction to using the word. Further, both presenters immediately apologised to viewers and the guests were warned by one of the presenters to “*be careful*” in future. Given the above, including the prompt actions taken by the broadcaster, Ofcom considered the matter resolved.

#### Resolved

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

## Not In Breach

### Big Brother 9

Channel 4 and E4, June to September 2008, various dates and times

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#### Summary

**Ofcom received 4,724 complaints regarding the ninth series of *Big Brother* which was transmitted between May and September 2008 on Channel 4. The majority of the complaints focussed on concerns that bullying, aggression and intimidating behaviour by Housemates were not dealt with appropriately by Channel 4. Ofcom has not upheld the complaints, except one relating to offensive language, which was resolved.**

#### Introduction

*Big Brother*<sup>1</sup> is a well known reality show. A number of Housemates live together in a house (“the House”) cut off from the outside world observed by cameras 24 hours a day where they “compete” to win a prize fund of £100,000. The viewing public is given the opportunity, on a weekly basis, to vote for the Housemate they wish to be evicted and the results of that eviction are revealed in a weekly live television show on Friday nights. This format continues until the final Housemate remaining in the House is declared the winner and receives the prize fund.

The ninth series of Big Brother (“BB9”) was broadcast on Channel 4 (and on S4C in Wales) and E4 between June and September 2008. An edited version of the previous day’s main events was broadcast on Channel 4 at either 21:00 or 22:00 (“the Main Show”). The Main Show was re-broadcast at around 07:30 the following morning on Channel 4 after any necessary editing to comply with the requirements of daytime transmission. Parts of the day’s events were streamed live on E4 (“Live Streaming”). These live programmes had a 14 minute 10 second delay for compliance purposes.

In total, Ofcom received 4,724 complaints about BB9 covering a number of areas. Ofcom assessed all the complaints it received about this series. However, it only investigated those matters which raised issues under the Code. Those issues are dealt with in this Finding. In particular, as this ninth edition of the series progressed the complaints focussed on alleged bullying and intimidation of Housemates by other Housemates.

Ofcom’s investigation concerned the following Code rules in relation to a number of specific incidents that occurred in ten editions of the programme:

- Rule 1.2 (Broadcasters must take all reasonable steps to protect people under eighteen);
- Rule 1.3 (Children must be protected by appropriate scheduling from material that is unsuitable for them);
- Rule 1.14 (The most offensive language must not be broadcast before the watershed);

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<sup>1</sup> *Big Brother* the programme is distinguished from Big Brother the character by the use of italics throughout this Finding.

- Rule 1.16 (Offensive language must not be transmitted before the watershed unless it is justified by the context);
- Rule 2.3 (In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include offensive language, violence, humiliation, distress, discriminatory treatment or language); and
- Rule 2.4 (Programmes must not include material which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour).

Ofcom wrote to Channel 4 regarding the following:

### **Bullying and intimidation**

A number of complaints related to what was alleged to be the aggressive and at times intimidating behaviour of Housemates (by other Housemates). Complainants claimed, through its actions (or a lack of prompt action), Channel 4 had endorsed or encouraged such behaviour.

The specific incidents, in date order, were:

- i) 10 June 2008 (22:00): Alexandra De-Gale (“Alex”) allegedly bullying Housemates over the cooking of chips

Housemates were at the dining table eating dinner and Alex was not happy with the way Rebecca Shiner (“Becks”) had cooked some chips. As the conversation developed Stephanie McMichael (“Steph”) became involved which culminated in an argument with Alex who called her a “*dickhead*” three times and a “*prick*” twice. Steph retaliated calling her a “*fucking prick*”. Because of Alex’s manner and tone during the argument viewers complained that she was aggressive and intimidating to Housemates. Some complainants considered that Channel 4 tolerated her alleged bullying and did not intervene quickly enough to challenge her behaviour.

- ii) 11 June 2008 (22:00): Alex’s alleged bullying of Rex Newmark (“Rex”)

Alex was eating a bowl of food she had prepared earlier whilst other Housemates were discussing the dwindling food supplies and the need to ration meals. This evolved into an argument between Rex and Alex about the fact that she had prepared her own food. The following exchange took place:

Rex: *“I don’t have a problem with you. You are a hypocrite because you said to everyone about snacking...”*

Alex: *“...no one is respectful of me, so I won’t be respectful of you. Yeah. Remember I told you”.*

Rex: *“No, don’t try and over talk me because it’s not going to fucking work. Yeah. No, no, no. Don’t try and squash me. Yeah. Don’t fucking try and squash me”.*

She responded by calling him a “*prick*” and a “*fucking asshole*”. Because of Alex’s manner and tone during the argument viewers complained that she was bullying Rex.

iii) 17 June 2008 (22:00): Alex's allegedly bullying Mohamed Mohamed ("Mo") over his cross-dressing outfit

Mo had requested a fancy dress party for his birthday with men dressing as women and vice versa. Not all the Housemates were enthusiastic about this idea and both Luke Marsden ("Luke") and Alex expressed concerns about "cross-dressing".

Towards the end of the party Mo talked to Big Brother in the Diary Room about how much he had enjoyed his party, although he remarked to Big Brother how it was unfortunate that Alex had not joined in. Big Brother asked "*how did it make you feel that Alex didn't join in?*" This question was accidentally transmitted into the House. When Mo emerged from the Diary Room, another Housemate, Michael Hughes ("Mikey"), tried to tell him what had happened but Alex interrupted and asked to speak to Mo alone. A conversation then took place between the two of them which became heated and revolved around Alex's criticism of a Muslim man like Mo wearing women's clothes.

Big Brother asked Alex to go to the Diary Room where it explained that it had unfortunately (and accidentally) played part of Mo's Diary Room to the House and that she should not feel singled out because this mistake had occurred.

Some complainants felt that the way Alex had berated Mo was overtly aggressive and amounted to bullying. Viewers complained that Alex made offensive and discriminatory remarks to Mo for wearing women's clothes at his birthday party.

iv) 18 June 2008 (22:00): Alex's alleged continued bullying of Mo over his cross-dressing outfit

Following on from the previous day's events it was clear that Alex was still upset. She started another conversation with Mo in which she told him that she was "*really disgraced*" by him. She continued by saying "*I just wanted to reiterate how small you are...*" and that she was "*disgusted*" by his behaviour. He responded that she should not bring religion into the conversation. Big Brother called Alex to the Diary Room and asked her whether the argument became too personal; questioning the way in which she expressed her opinions to Mo and reminding her that it did not approve of intimidating behaviour in the House or her behaviour towards Mo in this instance.

Viewers complained that Channel 4 allowed Alex to continue to bully Mo for his choice of fancy dress costume.

v) 19 June 2008 (21:00): Alex's alleged threatening of Housemates

This programme concerned Alex's alleged threats to various Housemates and her subsequent eviction from the House.

The programme of the 19 June 2008 evening highlights was a little different to the usual ones. Normally each episode is restricted to action from the House from the previous day. However, the 19 June 2008 edition (which would normally have just included highlights of House action from 18 June) began with a discussion that took place in the House on the evening of 17 June 2008. This was between some of the Housemates: Alex, Darnell Swallow ("Darnell"), Dale Howard ("Dale"), Rex and Dennis McHugh ("Dennis"). The consequence of this

discussion was that Alex was removed from the Big Brother House. Relevant parts of that discussion are as follows:

Alex: *"...three months in a House. Everyone has got to come outside the House. Personal offence is never forgotten. Do you know what I mean. We're just inside the House. I've got a very, very, very, very strong team outside the House. Strong, so solid strong. I look forward to whatever the result...If I get out first I get out, I make the plans. Everyone's got to come out after that. Every single one of you. Come out afterwards. Remember I told you. Like I say, my team is strong. So strong. I just can't wait to see my mans and them. See what their plans are.*

Darnell: *Hook me up with some collaborations for when I get out dude.*

Alex: *I'm not talking about those mans and them. I'm talking about my gangster friends.*

Darnell: *Tell them I wanna write some tunes.*

Alex: *They've got some instructions to follow out. As of Friday it's eleven weeks innit. Yeah, eleven weeks on Friday.*

Dennis: *Yeah.*

Alex: *See I'm gonna see all you bitches real soon. All of you.*

Dennis: *The thing is Alex, how you do you know it's you that's going to go like?*

Alex: *No, even if I did I'm saying I'll see all of you.*

Dennis: *Yes you'll see us in eleven weeks. In fact you'll probably see me in the week after.*

Alex: *Your families, your friends. I'll see them all, all, all.*

Darnell: *If you do go that's two females in a row.*

Alex: *You get to make all the plans, you know, that you, that you wanna make. When you are in here you can't do certain things. In my life I'm used to doing certain things. And you know, people piss me off and I'll do something. I can't actually do that while I'm here. But like I say, I get to go out, I get to see everyone's friends. I get to see their family, I get to do the shit what I wanna do [makes 'pow, pow, pow, pow, pow pow pow, pow' sound with her mouth].*

Darnell: *The reason why I guess I don't want to go out so bad, is because I don't have all that shit to go back to dude. I'll sort you out dude.*

Alex: *I get to make use of all my gang signs. Oh my days. When I go to Tottenham.*

Darnell: *Oh man, I'll be in Tottenham as well dude. What part of Tottenham, is that north Tottenham or south Tottenham.*

Dale: *And what?*

Alex: *That's where all the gangsters reside."*

Later that evening Big Brother called Alex to the Diary Room. It said:

Big Brother: *"Big Brother has already called you into the Diary Room twice to discuss your aggressive, potentially intimidating and offensive behaviour towards other Housemates. On the first occasion you were reminded that Big Brother takes unacceptable behaviour in the House very seriously. On the second occasion you were told that Big Brother does not approve of intimidating behaviour in the House. Big Brother is surprised and disappointed that despite these two warnings about your behaviour, you have now left Big Brother with no choice but to take further action".*

Big Brother then read to Alex her comments from the previous night (see above) and asked her to explain what she had meant by them. Alex responded:

Alex: *"I'm talking to Darnell, like I get to see your friends, your family. I've already told Darnell that I will be his biggest support camp. As you said, the conversation was with Darnell. I wasn't threatening anybody, but you can put it into whatever context you want. That's ridiculous, that is absolutely ridiculous".*

When asked by Big Brother whether she accepted that these remarks could be perceived as threatening Alex responded:

Alex: *"No, I don't because that's how I talk and you've never said anything like that before. We always say bullet, pup, pup, that's an expression that we make. Or 'pow, pow' that's an expression as well. That was even a song. So, like, what are you trying to say, that I'm making a gun noise? What is it that you're trying to say?"*

Big Brother then asked Alex what she meant by various specific remarks, including *"you know, people piss me off and I do something like, I can't actually do that when I'm in here. But like I say, I get to go out, see everyone's friends, I get to see their family and I get to do what I want to do?"*

Alex responded that:

Alex: *"[t]he way that I would usually react to someone being disrespectful to me, meaning I would probably get in their face and tell them what I really think, I would never be able to do that in this House yeah. That's why I said it's a three month span, whatever...what else are you saying that I said? People are just going too deep now. Like, the simple things that come out of my mouth, you have huge problems with. I've got no problems with making genuine threats, Big Brother, but I just don't think that this is the time and the place to threaten anyone. I'm on Big Brother, why would I threaten someone, it doesn't make sense. That's slightly incriminating, I'm not thick.*

*You've just twisted a whole conversation and put it into a completely different context."*

After being given time to reflect on what had been said to her, Big Brother asked Alex what her thoughts and feelings were. Alex responded:

Alex: *"first it was the situation with Steph, then it was the situation with Mohamed and now this. Intimidating and threatening. I'm someone's mum. You're trying to paint me out to be some kind of violent, aggressive person that I am not."*

Big Brother concluded the conversation by informing Alex that this incident, coupled with her previous conduct, had led it to decide to remove her from the House. The remaining Housemates were informed and reminded that:

Big Brother: *"Big Brother will intervene and may remove Housemates from the House if they behave in an unacceptable way which could cause serious offence to any Housemate or the viewing public. Big Brother believes that on a number of occasions Alexandra's conduct amounted to unacceptable and intimidating behaviour"*.

Viewers complained that Alex directly threatened Housemates and Channel 4 did not act swiftly enough to evict her.

vi) 20 June 2008 (22:30): Alex's exit interview

On 20 June, a post eviction interview with Alex was broadcast ("the Interview"). The Interview was conducted by *Big Brother* host Davina McCall but with no studio audience or live crowd. Viewers complained that Channel 4 should not have given Alex a "post-eviction" interview since she had not been evicted but removed from the House for unacceptable behaviour.

vii) 27 June 2008 (01:00), Live Streaming of the Big Brother House on E4, "Pizza smudge/spitting incident"

Jennifer Clark ("Jen") noticed that Rex had smudged some pizza on a picture she had painted. She became extremely upset for which Rex apologised a number of times. However a heated argument between Housemates developed. At approximately 00:52 the visuals and sound were cut and an on-screen graphic was displayed stating:

*"Apologies for this break in the live coverage from Big Brother, we will be returning to the action as soon as possible"*.

At approximately 01:53 the sound and visuals were restored. It later transpired that Live Streaming had been halted because an incident occurred where Dennis allegedly spat in Mo's face as tensions rose around Rex smudging Jen's painting. Viewers complained that the live events were not handled appropriately by Channel 4 and, given that it knew that Dennis had allegedly spat in Mo's face, it should have immediately removed Dennis from the House.

viii) 27 June 2008 (21:00): Highlights programme on Channel 4 of "pizza smudge/spitting incident" that had occurred the night before

As stated in (vii) above, Jen was upset that Rex had smudged her picture. After Dennis allegedly spat in Mo's face, the heated situation that developed culminated in Mo, Rex and Darnell being locked in the B Block bedroom. Viewers complained that: Channel 4 did not act swiftly enough to contain the situation and allowed it to escalate into unacceptable levels of aggression; and that the pre-transmission warning for viewers to expect "heated arguments" gave insufficient information for what was to follow.

ix) 26 August 2008 (22:00): Darnell, Rex and Mo allegedly bullying Sara

Rex asked Sara Folino ("Sara") how many men she had slept with. Before Sara could answer Rex said "*nine thousand*". When Rex asked again how many men she had slept with Sara responded "*It's not like I keep a fucking book of every guy I slept with like,*" to which Rex replied, "*well, first thing, you wouldn't need a book you'd need a fucking manual*". Later on Darnell called Sara an "*ugly bitch*" and "*the biggest slut in here*". Big Brother called Sara to the Diary Room to discuss how she was feeling and called both Rex and Darnell to the Diary Room to discuss their behaviour towards her. Both men were reminded that unacceptable behaviour would not be tolerated in the House. Viewers complained that Sarah was bullied by Rex and Darnell.

x) 2 September 2008 (20:00): Offensive language pre-watershed

In a recorded highlights section from the previous day, Mo, in an argument with Sara over cigarettes, said "*oh fucking hell, don't say I took them...*" Later, in relation to Darnell being stung by a wasp, Sara said "*shit*" twice. Viewers complained that the words "*fucking*" and "*shit*" were used in a pre-watershed eviction show transmitted from 20:00.

## **Channel 4's response**

### **Bullying, intimidation and compliance procedures in general**

As regards bullying and intimidation, Channel 4 said that it did not believe that the Code had been breached. This was because any material that may have caused offence was justified by the context and in line with the expectations of the audience for *Big Brother*.

The broadcaster stated that its distinctive and unique statutory remit, which requires it to push and challenge boundaries, was relevant. In particular, it said that Section 265(3) of the Communications Act 2003 provides that: "The public service remit for Channel 4 is the provision of a broad range of high quality and diverse programming". It continued that innovative and risk taking programmes, especially ones as high profile as *Big Brother*, inevitably attract a higher number of complaints and very careful consideration is always given to the editorial justification for broadcasting potentially harmful or offensive material. It said that bullying takes many different forms. In its view, whilst it accepted that some of the conduct by Housemates could be classified as bullying, if that conduct is adequately dealt with and responsibly broadcast, that broadcast cannot be seen to "condone or glamorise" or "encourage others to copy such behaviour."

In terms of how the programme relates to viewers, Channel 4 continued that it is the viewers "who decide" who leaves and who stays in the House by paying to cast their votes so it is therefore important they are given fair and accurate information upon which to base their decisions. It continued that since the fate of Housemates is in



viewers' hands, it is an inevitable consequence that they will become closely engaged with Housemates, their foibles, attitudes and personalities. In its view, Channel 4 said that viewers grow to care for Housemates in a way that non-reality television programmes may not allow. The broadcaster did not accept that showing the alleged instances of bullying complained of, in the context they were presented, amounted to any kind of endorsement by Channel 4 of such behaviour. It also did not accept that the intervention by Big Brother/Channel 4 was inadequate, stating that such intervention was measured and proportionate in all the circumstances.

Channel 4 said it had put a number of processes and new procedures in place since 2007 to improve compliance<sup>2</sup> which included new anti-bullying guidelines, improved compliance training and revised House Rules which made specific reference to threatening behaviour and physical violence. In addition, escalating types of intervention were specified to address unacceptable behaviour (including alleged bullying) which included: close monitoring and Diary Room discussions with Housemates, formal reprimands and warnings and immediate eviction. Reference-up procedures were reviewed and reissued and procedures put in place to assist in the identification of bullying and how best to address it.

Channel 4's responded as follows to the specific incidents:

i) 10 June 2008 (22:00): Alex's alleged bullying of Housemates over the cooking of chips

Channel 4 said that Alex had begun by complaining to Becks about the badly cooked chips but her anger appeared to be directed mainly at those Housemates who attempted to defend Becks. After this incident, the decision was taken to discuss what had occurred with Alex in the Diary Room. Excerpts from this Diary Room session were included in the 10 June 2008 episode:

Big Brother: *"any of your behaviour tonight could be deemed as either aggressive, potentially intimidating or offensive in any way?"*

Alex: *"...as far as I'm concerned, if I've got someone like Steph calling me a dickhead, obviously I'll call her a dickhead back and you know, I'll tell her she's simple, you know, because who does she think she's talking to?"*

Big Brother *"[Big Brother was] very aware that conflicts may arise, Big Brother just wants you to be aware that there needs to be boundaries concerning behaviour...and you must take responsibility for these boundaries".*

Channel 4 said that the intervention by Big Brother/Channel 4 on this occasion was appropriate and proportionate in all the circumstances and that the material was justified in context. In addition, it did not consider that the use of relatively mild abusive terms such as "dickhead" and "prick" required any special kind of intervention although it recognised that the use of these terms cumulatively, and together with other comments by Alex, did require a level of intervention and this was addressed in the Diary Room session it conducted with Alex.

ii) 11 June 2008 (22:00): Alex's alleged bullying of Rex

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<sup>2</sup> Linked to Ofcom's decision to impose a sanction on Channel 4 for the series of Celebrity Big Brother in 2007 (see [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/channel4\\_cbb/channel4\\_cbb.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/channel4_cbb/channel4_cbb.pdf))

Channel 4 said that it accepted that Alex had different opinions from some of the others about matters such as whether she was entitled to eat food. It also acknowledged that she called Rex a “prick” and that a number of Housemates at this time were showing some resentment towards her behaviour. However, the broadcaster continued that this behaviour – which was reflective of Alex’s personality traits – did not constitute overly “aggressive” behaviour. After assessing the tone and manner in which the conversations took place, it did not believe that her behaviour at this stage warranted any specific intervention by Big Brother/Channel 4.

iii) 17 June 2008 (22:00): Alex’s alleged bullying and discrimination against Mohamed over his cross-dressing outfit

Channel 4 stated that the context of Alex’s criticism was that she looked to Mo as a Muslim man to set an example and expected more from him. This was an issue that was very important to Alex and Mo did not appear at the time to be offended at the fact that Alex’s reasons for disapproving were based on her own Muslim beliefs. Channel 4 therefore did not believe that the comments amounted to discriminatory treatment of Mo because of his religion and said that, in terms of context, it was relevant that two people were able to debate an issue and express their views.

iv) 18 June 2008 (22:00): Alex’s alleged continued bullying of Mohamed over his cross-dressing outfit

Channel 4 said that it considered the level of reprimand given to Alex was reasonable and appropriate in the circumstances. In addition, it strongly rejected any claim that it promoted bullying, and that it would ever do so for the sake of entertainment.

v) 19 June 2008 (21:00): Alex’s alleged threatening of Housemates and her removal from the Big Brother House

Channel 4 said that it accepted that Alex’s behaviour, which culminated in her “threatening” remarks (see pages 3 and 4 above) on the evening of 17 June 2008, was unacceptable. This ultimately resulted in her removal: the strongest level of sanction for unacceptable behaviour in the House. It said that it believed that despite the content of Alex’s remarks it was appropriate and indeed necessary to transmit her comments, so that viewers understood the reasons why she was removed and in fairness to Alex, viewers needed to know what had led to this decision. Channel 4 said that to have simply removed Alex from the House without broadcasting her remarks may have given a misleading impression to viewers that she was removed for her earlier behaviour.

With regard to the delay before Alex’s removal from the House (24 hours after she made the “threatening” remarks) Channel 4 said this was to ensure her safety. Alex’s home address had been disclosed by a newspaper and her car had been vandalised, which meant that additional precautions were necessary for her personal welfare - all of which took time to arrange.

vi) 20 June 2008 (22:30): Alex’s exit interview

Channel 4 said that Alex’s removal from the House could be distinguished from that of other Housemates who had in the past (and in this series) been removed

for highly offensive behaviour. In this case, Channel 4 said that Alex's removal was based on both an accumulation of her behaviour and an amount of ambiguity in the alleged "threats" she had made to Housemates. It said that it was therefore important to give Alex a full and fair right to reply after she had had time to understand the full impact of her remarks as perceived by the public – that is, that she had threatened Housemates. It added that the justification for giving Alex a closing VT package of her time in the House was to be fair to her and to place her behaviour in its full context. Channel 4 said that this was not done in such a way as to convey that her unacceptable behaviour had in any way been tolerated.

vii) 27 June 2008 (01:00): Live streaming of the "Pizza smudge/spitting incident on E4"

Channel 4 said it strongly believed that it was the right decision in all the circumstances to stop "live streaming" from the House for a period when the Live Streaming team correctly identified a potential dispute escalating in the House, which included Dennis possibly spitting in Mo's face and a potential brawl between some of the male Housemates (this resulted in the forced separation of two groups of men). Channel 4 said that the incident clearly had the potential to be serious and, whilst measures were taken to address the situation in the House, live streaming was halted so that it could assess the situation fully.

With regard to the allegation by some viewers that Channel 4 should have removed Dennis immediately from the House, Channel 4 said that swift action was taken at the time by Big Brother to separate Housemates and to call Dennis to the Diary Room to sit alone and calm down. It said that, because this incident occurred in the middle of the night and had not been seen by all the relevant people at Channel 4, the decision was made to first explore the events as they had occurred with all the relevant people the following day. Then, once the decision to remove Dennis from the House was taken, time was needed to ensure his safe removal from the House. This explained what some viewers considered was the 'delay' in removing him.

viii) 27 June 2008 (21:00): "pizza smudge/spitting incident" (in the highlights show)

Channel 4 said that *Big Brother* viewers have an expectation that they will see what goes on in the House even when it involves unpalatable behaviour. It acknowledged that on this occasion some of the conduct shown had the potential to offend viewers but said that its broadcast was justified by the context. The material was carefully edited for example to include the point of view of all relevant Housemates, and relevant Diary Room sessions reprimanding some Housemates were included in the broadcast.

As set out in (vii) above, Channel 4 explained that because this incident occurred in the middle of the night, all the relevant material was reviewed the next morning before any decisions were made. It said that to have removed Dennis immediately for the alleged spitting, without first having talked the matter over with him and other Housemates, would have been unfair. After the review of the material by senior management at Channel 4, and after discussing the matter with Housemates, Big Brother removed Dennis from the House for unacceptable behaviour. In addition, Channel 4 also said that the warning given at the beginning of the programme ("*strong language and heated arguments*") was sufficient for a programme transmitted after the watershed to alert viewers to expect something more than a normal episode.

ix) 26 August 2008 (22:00): Darnell and Rex allegedly bullying Sara

Channel 4 believed that while the comments made to Sara i.e. that she was “an ugly bitch” and “the biggest slut in the room” were clearly offensive it considered that their broadcast was appropriate. This was in order to explain in particular the unravelling of Sara and Darnell’s complicated friendship, which had been followed throughout the series, and to show what Channel 4 considered to be the ‘tipping’ point in their relationship. Channel 4 said that Big Brother made it very clear that Rex and Darnell’s behaviour was unacceptable and this was conveyed to viewers both in the programme highlights and by Davina McCall in her live studio links. It therefore considered that both Rex and Darnell were appropriately reprimanded by Big Brother for their actions.

x) 2 September 2008 (20:00): Offensive language pre-watershed

The broadcaster said that the use of “*fucking hell*” before the 21:00 watershed was accidentally included due to human error and it deeply regretted this oversight. However, it did not consider that the use of “*shit*”, which is considered mild bad language, was unsuitable for transmission after 20:00. Channel 4 said that after this language was broadcast the presenter, Davina McCall, apologised stating: “*Hello and welcome back to surprise eviction night on Big Brother and apologies for the bad language that went out earlier, there was a technical glitch*”.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for the content of broadcast television programmes in a Code with which broadcasters should comply. Ofcom must ensure broadcasters comply with the Code and carry out its duties in light of Article 10 of the European Convention of Human Rights which provides for the right to freedom of expression.

In setting standards for the content of broadcast television programmes, Ofcom requires broadcasters to ensure that “generally accepted standards” are applied to the content of television programmes so as to provide adequate protection from the inclusion of offensive or harmful material. Under the Code, broadcasters are required, in applying these generally accepted standards, to ensure that material which may cause offence is justified by the context.

In the case of Channel 4, it is a public service broadcaster with a unique statutory remit to provide a broadcast range of high quality and diverse programming. This programming should in particular: demonstrate innovation, experiment and creativity in the form and content of programmes; appeal to the tastes and interests of a culturally diverse society; make a significant contribution to meeting the need for the licensed public service channels to include programmes of an educational nature and other programmes of educative value; and exhibit a distinctive character<sup>3</sup>

In considering whether breaches of the Code occurred during BB9, Ofcom recognises that material that is potentially offensive or harmful may be broadcast in compliance with the Code so long as its inclusion is justified by the context so as to provide adequate protection for members of the public. The Code therefore does not prohibit the broadcast of potentially harmful or offensive material in all circumstances: there is always the potential for material, which some viewers might find personally

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<sup>3</sup> Section 265(3) Communications Act 2003

offensive, to be transmitted. However, what is essential for compliance with the Code is the way in which such material is transmitted and/or complied by the broadcaster. Accordingly, in considering whether Channel 4 breached the Code in this instance, Ofcom's starting point is not whether material which was potentially offensive was transmitted, but whether such material was appropriately handled by Channel 4 and justified by the context in line with the requirements of the Code.

### **Bullying and intimidation**

While *Big Brother* is an entertainment programme and viewers therefore perceive what happens in the House as "entertainment", they also view it as "reality" i.e. they view the events as real events happening to real people. This means that the audience can become genuinely concerned for the welfare of Housemates with the expectation that any serious, problematic or anti-social behaviour will be appropriately dealt with. This has become one of the generally accepted tenets of *Big Brother* where it is understood that Channel Four through *Big Brother* "will not tolerate aggressive or intimidating behaviour from any Housemates".

Ofcom also recognised that *Big Brother* is the type of programme in which controversial matters will inevitably be raised and emotional and offensive exchanges occur, as the characters of the participants are revealed. Given this, what is broadcast may contain language and behaviour which is capable of causing offence to viewers. However, as described above, viewers expect the broadcaster, through *Big Brother*, to challenge such behaviour appropriately.

In its response to Ofcom, Channel 4 clearly outlined the regard it has given to all past regulatory decisions on *Big Brother* and its associated programmes.<sup>4</sup> It also pointed to its own recommendations implemented after Ofcom's investigation into *Celebrity Big Brother 2007*. These were intended to provide guidance as to how to identify and address potentially unacceptable behaviour (such as alleged bullying). In addition, Ofcom noted that in order to ensure that BB9 complied with the Code, Channel 4 put in place anti-bullying guidelines and additional compliance training.

Ofcom acknowledged all the measures put in place by Channel 4 to identify, monitor and resolve potential issues such as bullying during the course of the programme. However, despite all these measures, *Big Brother* issued a number of warnings and reprimands to Housemates regarding aggressive and/or intimidating behaviour, removed two Housemates for aggressive and/or intimidating behaviour, and was forced, on one occasion, to segregate two groups of Housemates in different rooms in the House after one Housemate allegedly spat in another's face.

### **In relation to the specific incidents, Ofcom found as follows:**

- i) 10 June 2008 (22:00): Alex's alleged bullying of Housemates over the cooking of chips

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<sup>4</sup> *Big Brother's Little Brother* ([http://www.ofcom.org.uk/tv/obb/prog\\_cb/pcb49/issue46.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/pcb49/issue46.pdf)), *Big Brother 5* ([http://www.ofcom.org.uk/tv/obb/prog\\_cb/pcb\\_20/192078.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/pcb_20/192078.pdf)), *Big Brother 6* ([http://www.ofcom.org.uk/tv/obb/prog\\_cb/pcb45/50.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/pcb45/50.pdf)), *Big Brother's Little Brother* ([http://www.ofcom.org.uk/tv/obb/prog\\_cb/pcb33/issue62.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/pcb33/issue62.pdf)), *Big Brother 7* ([http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb69/issue69.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb69/issue69.pdf)) and ([http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb74/issue74.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb74/issue74.pdf)), *Celebrity Big Brother 2007* ([http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/channel4\\_cbb/channel4\\_cbb.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/channel4_cbb/channel4_cbb.pdf)), *Big Brother 8* ([http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb96/issue96.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb96/issue96.pdf)),

Viewers complained that Alex was allowed to bully and intimidate a number of Housemates over a meal of badly cooked chips. Ofcom accepts that it is important that Channel 4 accurately reflects what has happened in the House so that viewers are adequately informed regarding the characters and conduct of individual Housemates. This is especially important given that it is viewers' understanding of these factors that informs their voting decisions. Ofcom concluded that, whilst the aggressive arguments and limited amount of abuse present in this episode may be considered offensive by some, it did not consider them to be so offensive that they needed some form of greater context beyond that which was provided by the programme, which included Housemates standing up to Alex and attempting to defuse the tension themselves. By calling Alex into the Diary room to inform her that it disapproved of her behaviour and reprimanding her for it, Ofcom considered that Channel 4 dealt with this issue in a reasonable and appropriate manner – it sufficiently informed both Alex and viewers that abusive behaviour, including bullying, was unacceptable and would not be tolerated. The manner in which such issues are handled is often the key to ensuring compliance with the Code.

**Not in breach of Rule 2.3 or 2.4 of the Code**

ii) 11 June 2008 (22:00): Alex's alleged bullying of Rex

During this period in the House, Housemates were surviving on basic food rations. Therefore issues about food and its preparation led to a number of arguments including this one where Rex called Alex a hypocrite for making her own food. Disputes in the House are a common feature of *Big Brother* and in line with audience expectation. It is neither expected nor necessary for Channel 4 through *Big Brother* to intervene in each and every argument. The inclusion of this brief dispute in the programme was therefore editorially justified given the context of food shortages in the House, and the clash of differing personalities that is an accepted part of the dynamic of *Big Brother*. While this was certainly a heated exchange, there appeared to be no question of violence arising and it ended quite quickly after name calling on both sides. Taken overall, Channel 4 applied generally accepted standards to this material and Ofcom did not consider that Channel 4 condoned or glamorised seriously anti-social behaviour and/or was likely to encourage others to copy such behaviour.

**Not in breach of Rule 2.3 or 2.4 of the Code**

iii) 17 June 2008 (22:00): Alex's alleged bullying of Mo over his choice of fancy dress outfit

Viewers complained that Alex bullied and insulted Mo because he had requested (and received) a "cross-dressing" themed birthday party from *Big Brother*. The focus of her anger appeared to be that it was wrong for a Muslim man to wear women's clothes and make-up. Ofcom considered that whilst Alex's criticism of Mo could be deemed offensive by some it was her personal viewpoint put forward in a discussion with another as to how their faith should be practised and what actions might bring it into disrepute. However, by this point viewers were aware of Alex's behaviour and her tendency to adopt a more aggressive tone than others in the House which some Housemates and viewers found intimidating. While acknowledging this, Ofcom did not consider that the nature of her comments and behaviour towards Mo and the manner in which it was broadcast could be seen to condone or glamorise seriously anti-social behaviour.

It was clear to Ofcom that the accidental broadcast to the House of part of Mo's supposedly confidential Diary Room interview increased the tension in the House, and, in particular, between Alex and Mo. Ofcom noted that viewers were concerned that when Mo exited the Diary Room he was unaware that the Housemates including Alex had heard some of his Diary Room session. The House had heard Big Brother ask *"how did it make you feel that Alex didn't join in?"* Viewers complained that Alex's subsequent confrontation of Mo was intimidating and amounted to bullying. After a period, Channel 4 intervened and Alex was called into the Diary Room where it explained that the transmission was an accident and that the Diary Room is a place where Housemates can talk privately and where Big Brother can ask questions. It also discussed her recent behaviour towards Mo and how it may have affected him.

While Ofcom does not consider that the transmitted material of Alex and Mo arguing went further than viewers normally expect from Big Brother, it does consider that it would have been preferable for Channel 4 to have intervened a little earlier. This is because the argument was facilitated by the inadvertent broadcast of Mo's session in the Diary Room and because Big Brother had already warned Alex about previous aggressive behaviour. However, overall, in determining whether the Code was breached, Ofcom did not consider that the content of this edition of the programme could be viewed as condoning or glamorising anti-social behaviour or that it was in breach of generally accepted standards.

#### **Not in breach of Rule 2.3 or 2.4 of the Code**

- iv) 18 June 2008 (22:00): Alex's alleged continued bullying of Mohamed over his cross-dressing outfit

As detailed in (iii) immediately above, Ofcom did not consider that Alex's aggressive and at times intimidating behaviour towards Mo went beyond general viewer expectations for Big Brother and therefore of the requirements of the Code. Ofcom noted that Big Brother talked to Alex about her behaviour, in particular regarding the manner in which she conveyed her views to Mo and, as a consequence, judged that Big Brother/Channel 4 acted appropriately in addressing the situation. Given that one of the central themes of Big Brother is that the unvarnished characters and conduct of the Housemates should be revealed to the audience, Ofcom concluded that Channel 4 did not breach the Code by showing the extent of the debate that occurred as a result of Mo's themed party. The manner in which Alex conducted herself was clearly unpalatable to some viewers but her aggressive dispute with Mo nonetheless contained important information about two characters in the House who shared a religion but not the same ideas as to how to practise it.

#### **Not in breach of Rule 2.3 or 2.4 of the Code**

- v) 19 June 2008 (21:00): Alex's alleged threatening of Housemates

Regarding the alleged 'threats' made to Housemates by Alex, Ofcom viewed the material and studied a transcript of the remarks she made extremely carefully. Alex made her comments while sitting in the sofa area and conversing with some fellow Housemates (see (v) in the Introduction section of this finding). Although the remarks could be reasonably perceived as threatening to some extent – and indeed were so regarded by some Housemates – their meaning could also be seen as ambiguous. Any threats they contained were implicit rather than explicit,

and indirect rather than direct. Ofcom noted that Channel 4 took care to place the remarks in context. It broadcast what she had said, the reactions of some Housemates, her Diary Room session with Big Brother (where it made it clear that such remarks, coupled with previous warnings for intimidating behaviour, were unacceptable), and her subsequent removal from the House. Further, all of this occurred in one edited highlights programme ensuring the material was put into full context and generally accepted standards were applied. Viewers were therefore in no doubt as to the cause and effect of what had occurred between the 17, 18 and 19 June 2008. Overall Ofcom judged that this approach provided adequate justification for broadcasting Alex's remarks.

Removal from the House for unacceptable behaviour is the strongest sanction available to Big Brother/Channel 4. Whether to remove someone from the House is an editorial decision for Channel 4. However, Ofcom considered that Alex's removal from the House would have left viewers in no doubt that her conduct was not to be tolerated, and that therefore Channel 4 did not condone or glamorise violent, dangerous or anti-social behaviour.

### **Not in breach of Rule 2.3 or 2.4 of the Code**

#### vi) 20 June 2008 (22:30): Alex's exit interview

In determining whether Channel 4 breached the Code in giving Alex an exit interview after her removal from the House, Ofcom noted that Channel 4 considered there was sufficient ambiguity in the remarks made by Alex to warrant providing her with a right to reply in the form of an exit interview. Whether, from a fairness perspective, Channel 4 needed to give Alex airtime to defend her behaviour and explain herself was not a matter - in terms of this finding - for Ofcom to consider.

From the perspective of providing members of the public with adequate protection from harm and offence, however, Ofcom looked at whether there was anything in the exit interview conducted by Davina McCall that breached the Code. Ofcom noted that Alex was challenged by the interviewer on a number of incidents and asked to explain her behaviour. Ofcom observed that the tone of the interview was serious, and considered it was likely that, given the significant media interest in Alex at the time, a number of viewers would have been interested in hearing her version of events. Taking all the circumstances into account, Ofcom concluded that – although likely to have been offensive to some viewers – broadcast of the interview was justified by the overall context and generally accepted standards were applied by Channel 4. In addition, in transmitting the interview, Ofcom did not consider that Channel 4 could reasonably be considered to have endorsed or promoted bullying by giving Alex the opportunity to air her perspective, especially given the manner in which the interview was conducted. Ofcom noted for example that the presenter's introduction underlined that Alex's behaviour had been unacceptable.

### **Not in breach of Rule 2.3 or 2.4 of the Code**

#### vii) 27 June 2008 (01:00): "Live Streaming" coverage of the "Pizza smudge/spitting incident" on E4

The alleged "spitting" incident was not broadcast to viewers during the 'live' streaming on E4. The Live Streaming team had noted in real time that a hostile situation between Housemates was developing in the House, and because the



'live' streaming is broadcast subject to a 14 minute and 10 second delay for editorial and compliance reasons, Channel 4 decided to stop the Live Streaming and take the programme off-air temporarily until the hostile incident in the House was contained. Once the situation was under control live streaming was resumed. Ofcom considered this action by Channel 4 was timely, responsible and appropriate and there was no breach of the Code. In addition, Ofcom accepted, given that this incident occurred in the early hours, that the broadcaster acted appropriately in waiting until the next day to establish the facts of the case before taking any decision as to whether remove any Housemates from the House over what had occurred.

### **Not in breach of Rule 2.3 of the Code**

viii) 27 June 2008 (21:00): "pizza smudge/spitting incident" (in the highlights show on Channel 4)

In judging whether or not generally accepted standards were complied with in this episode, Ofcom took into account that integral to the appeal of *Big Brother* are elements of conflict and drama of varying intensity between Housemates. During this incident Channel 4 transmitted material showing Housemates when they were at times extremely emotional and aggressive, but this was balanced by demonstrating the consequences of this behaviour. Here the consequence was the removal of Dennis from the House for unacceptable conduct, shown in a programme that appeared carefully edited and structured. Ofcom considered that Channel 4 provided sufficient context to justify the transmission of this material. In addition, Ofcom did not consider that by transmitting the material in this context, Channel 4 was condoning anti-social behaviour, particularly given that the consequence of this example of unacceptable behaviour was that the Housemate responsible was removed from the House.

Ofcom also notes that this programme was preceded by a warning ("expect strong language and heated arguments"). Ofcom considered that with such a well-established programme as *Big Brother* where audience expectations are to a great extent already set, arguments and disagreements between Housemates which become heated are expected by many viewers. Nonetheless the pre-transmission warning helped to prepare viewers for the material broadcast in this episode.

### **Not in breach of Rule 2.3 and 2.4 of the Code**

ix) 26 August 2008 (22:00): Darnell and Rex allegedly bullying Sara

Again, the issue for Ofcom was whether the potentially offensive material that was broadcast - in this case offensive comments directed at Sara by Rex and Darnell in particular - was justified by the context. Viewers complained that Rex and Darnell bullied Sara, for example by Darnell calling her "*an ugly bitch*" and the "*biggest slut in the room*". Ofcom observed that Channel 4 included in this programme by way of context: the Diary Room reprimands given to both Rex and Darnell for their behaviour toward Sara; a Diary Room session with Sara asking for her reaction to their comments; and footage of Darnell being called a "moron" by Rex for the way in which he had spoken to Sara.

Ofcom considered that this unpleasant behaviour - whilst uncomfortable for some in the audience - was within the limits of what viewers have come to expect in the *Big Brother* House. Housemates are confined together for a period of time,

competing for attention and support and developing both friendships and hostile relationships within the volatile environment of the House. Some personal abuse is an almost inevitable result of confinement in the Big Brother House and is one of the reasons why viewers are attracted to, and interact with, the programme. What is important is not only how Big Brother deals with acts of aggression but how Housemates resolve conflicts, having regard to the fact that some behaviour may be inappropriate. On this occasion, Big Brother reprimanded both Rex and Darnell for their behaviour which led them to apologise to Sara. Ofcom therefore considered that Channel 4 acted appropriately in transmitting this footage which it did not consider went beyond viewer expectations. It also did not consider that in transmitting this footage, Channel 4 was promoting and/or endorsing dangerous, violent or anti-social behaviour.

### **Not in breach of Rule 2.3 or 2.4 of the Code**

#### x) 2 September 2008 (20:00): Offensive language pre-watershed

Rule 1.14 provides that the most offensive language must not be broadcast before the watershed. Ofcom accepted that on this occasion the broadcast of a clear example of this language ("*fucking hell*"), whilst unfortunate, was caused by human error. It also noted Channel 4's swift apology to the audience for this lapse. Taking account of all the circumstances, Ofcom therefore considered this matter resolved. Ofcom acknowledges that the word "*shit*" is considered only mildly offensive and a "toilet word."<sup>5</sup> Its use here in a programme transmitted before the watershed but after 20:00, was isolated, justified by the context and so was not in breach Rule 1.16 of the Code (offensive language).

**Resolved (Rule 1.14: the most offensive language)**  
**Not in breach (Rule 1.16: offensive language)**

### **Conclusion**

Ofcom recognises that *Big Brother* is the type of programme that will almost inevitably contain controversial material and that emotional and potentially offensive exchanges will at times occur between Housemates. They are deliberately chosen to form a disparate group of people who have agreed to live in a restricted and confined space. As a series of *Big Brother* continues, individual personalities are revealed and character clashes can develop. Some language and behaviour capable of causing offence to some viewers, even some who are dedicated fans of the programme, will almost inevitably be broadcast. When such potentially offensive material is to be shown, it is the broadcaster's duty to ensure that it is at all times editorially justified and complies with the requirements of the Code by being placed in context.

In assessing whether the Code was breached during this series, Ofcom took account of the various new measures introduced by Channel 4 to help ensure that unacceptable conduct by Housemates was properly contained and dealt with. Ofcom also had regard to the fact that the broadcaster took a series of complex and difficult compliance decisions under considerable time pressure, and it is important that those decisions were not judged unfairly with the benefit of hindsight. Due regard must also be given to the broadcaster's right to freedom of expression and its editorial judgment, and the context in which those decisions were originally taken.

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<sup>5</sup> Language and Sexual Imagery in Broadcasting: A Contextual Investigation, Ofcom 2005.

In conclusion Ofcom accepts that, in being fair to its viewers, Channel 4 must accurately illustrate what has occurred in the House and that conflict is an intrinsic and anticipated element of *Big Brother*. However, it should be noted that this series of *Big Brother* received the highest number of complaints for any series (excluding Celebrity Big Brother 2007) - mainly about alleged bullying and aggressive behaviour. While Ofcom has concluded overall in this case that Channel 4 acted with due speed and appropriately, by ensuring that such behaviour was sufficiently placed in context and not endorsed, Channel 4 should be aware of viewer expectations about such material. In particular, the broadcaster should be seen to defuse and resolve areas of inappropriate conflict and hostility quickly so as not to prolong the aggression and intimidating behaviour unnecessarily.

**Not in breach**

## Not In Breach

### Big Brother 9 voting

Channel 4 and E4, June to September 2008, various dates and times

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#### Introduction

Ofcom received 4724 complaints about the ninth series of *Big Brother*, and associated programming, of which 117 were about matters relating to voting. Of these, 74 raised issues pursued by Ofcom (The programme content issues raised by complainants are detailed in the previous Finding in this bulletin).

Voting on *Big Brother* is conducted using premium rate service (“PRS”) telephone lines.

Because viewers complained across the series, Ofcom sought detailed information from Channel 4 as well as comments both early on in respect of the eviction of 13 June 2008 and after the end of the series, about a variety of dates.

The subjects complained about by viewers were that:

#### 13 June 2008:

- phone lines for Mario [a *Big Brother* housemate] had been ‘rigged’ by early closing;
- Davina McCall was urging fans to vote at 21:45 when the lines had been closed at 21:20;
- lines used for Mario did not connect;
- a caller claimed to have been charged for calling Mario’s voting number even though they were told the line was closed; and
- a call to Mario’s line said it was closed but Luke’s [a housemate] line remained open.

#### 27 June 2008:

- An internet forum carried postings from a self-declared ‘C4 insider’ saying that Sylvia [a housemate] was to be evicted regardless of the vote

#### 1 August 2008:

- the voting lines closed earlier than publicised on this day: this was alleged to be unfair on those voting; and
- Rex [a housemate] remaining on the show was questionable, raising suspicions that the vote was engineered to save him from eviction.

#### 22 August 2008:

- The highlights show treated Nicole [a housemate] unfairly so as to show her unfavourably.

#### 29 August 2008:

- Two internet portals were posting results of evictions when voting was still taking place.

2 September 2008:

- Voting lines were open on the Tuesday until 22:10 but the following day (3 September) the highlights show made clear that the evictions had taken place at 20:50 and 21:20 the night before.

5 September 2008:

- Rachel [a housemate] was so unlikely a winner that her victory raised questions in complainants' minds about the honesty of the outcome; and
- Voting arrangements changed such that votes for the eventual final two housemates across the final week did not count and only the final hour's voting counted for them in the ultimate vote.

Generally:

- Certain evictions took place with an hour's delay and therefore should not be described as 'live' and that these evictions took place while votes were active; and
- Viewers were unable to register votes on various dates across the series; some of these complainants noted that after trying to vote for one housemate and being unsuccessful, they had found other housemates' lines receiving votes.

We sought comment from Channel 4 under Rules 2.2 (misleadingness) and 10.10 (use of premium rate numbers must comply with PhonepayPlus rules) of the Code.

**Response**

Channel 4 provided substantial information and comment. As to the generality of voting arrangements it commented as follows.

The broadcaster said that it and the producers of *Big Brother* had invested a significant amount of time and resources over the years to ensure that the voting systems in place for the series are equitable and fair and, they stressed, compliant both with the Code and the PhonepayPlus<sup>1</sup> Code of Practice. Channel 4 pointed out that *Big Brother* is now in its ninth series and said that it maintains a very good track record for its phone voting systems.

Channel 4 stressed that an experienced and expert independent third party is used to verify voting results.

*Big Brother* voting uses BT's RIDE platform [a call termination system that handles the phone votes], and has done so since the first series started. The broadcaster stated that it had not encountered any significant issues with the platform during the nine years it had been in use.

Further, Channel 4 said, RIDE is the UK's largest call termination platform and is used by nearly all UK broadcasters in mass call events. A large 'televote' can generate huge volumes of simultaneous calls and the RIDE platform has been set up with 20,000 lines and 40 call handling nodes around the country. At its peak, the broadcaster said, the RIDE platform can handle 190,000 calls per minute. The RIDE platform also has a built in facility to ensure that callers who attempt to take part in a

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<sup>1</sup> PhonepayPlus is the regulator of premium rate telephone services.

service outside the period of the vote are not charged (e.g. when the vote has closed or when the vote numbers are not in use).

Channel 4 told us that prior to the vote lines being opened, the lines are always tested by BT and Channel 4's appointed service provider<sup>2</sup>. The testing procedure involves phoning the lines (usually from a landline and a mobile phone) to ensure they are working. From this point, according to the broadcaster, it is technically impossible to change the audio that callers hear on being connected to each specific line without stopping the entire vote, re-allocating audio and re-starting the vote. All voting lines open at exactly the same time so no housemate is given an unfair advantage over another.

Votes are routed to the RIDE platform using the first eight digits of a voting number only [the 'stem' digits], and as all the housemates' voting lines share the same 'stem' digits, it is not possible to give any one particular housemate's number preferential treatment. Furthermore where two or more housemates are up for eviction the lines close for all housemates at exactly the same time as it is not possible for the platform to close an individual housemate's number and keep another number open. Again, Channel 4 said, this has the added benefit of ensuring that no housemate is given an unfair advantage over another.

Channel 4 also commented on production considerations relevant to the conduct of phone votes. Prior to the start of the series, it said, each housemate is allocated a specific telephone number that will be used for that housemate throughout the duration of the 14 week series (or until they are evicted). The number is not re-allocated to another housemate if that person is evicted. Viewers should therefore become familiar with which number is linked to which housemate, so reducing the number of viewers misdialling for the wrong housemate.

As to contingency measures, Channel 4 said that before the start of each series of *Big Brother*, it puts in place a protocol and procedure to ensure that the voting process is carried out competently and fairly. The protocol is drafted after consulting with BT, with the PRS service provider and with the third party verifier and sets out the procedure that must be followed once it is known which housemates have been nominated for eviction. Channel 4 supplied a copy of the protocol to Ofcom.

Channel 4 explained that in addition to setting out the standard operation of the voting lines, the protocol also sets out a clear escalation procedure in the event that a voting platform fails or there is a technical fault once the voting lines have been opened. This is designed to ensure that prompt action can be taken to alert callers to the technical problem and to ensure that the problem is resolved as soon as possible. The protocol also sets out that vote readings will be taken at regular intervals during the day of eviction until the vote closes. Vote readings are for limited internal monitoring purposes only and are strictly monitored by the third party verifier. The circulation of a vote reading is confidential and strictly limited to protect the integrity of the vote. Once the final results are confirmed, a Vote Result document is signed by the third party verifier.

### 13 June 2008:

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<sup>2</sup> A service provider is a specialist telecommunications company that co-ordinates the numbering used in PRS applications and manages the call termination and logging processes.

On the evening of Friday 13 June 2008, in accordance with standing contractual arrangements, the vote was being monitored by BT at its offices. A BT representative monitors call volumes and would identify if there were any problems and alert the broadcaster. On this occasion, Channel 4 said no problems were identified.

The broadcaster said further that, in accordance with the protocol, representatives from the PRS service provider, Channel 4 and the verifier were on-site at the Elstree Television Studios throughout the live eviction. Vote updates were taken by the service provider on a regular basis throughout the programme. These were overseen by Channel 4 and monitored by the verifier. Channel 4 told us that it was evident from these updates that votes were being received for Mario, Stephanie, Lisa and Luke until the lines closed at 21:49.

Monitoring during the programme and post-vote analysis carried out by BT confirmed to Channel 4 that there were no issues with the RIDE platform during the vote. The established protocol was followed for the vote, Channel 4 said, and there were no problems with the voting systems reported by BT, the service provider, the verifier or Channel 4. Votes were being received for all housemates up for eviction.

(For discussion of network congestion see below.)

Channel 4 told us that BT reserves up to 30 numbers for each series although not all are used, and of course for any particular eviction only some of those that are allocated to housemates will be opened. BT's post-vote analysis did highlight that there were a significant number of misdials within the *Big Brother* number range over the period of the vote. These callers would have heard the following audio message "This Big Brother vote line is not in use. You have not been charged for this call".

The broadcaster said that misdials are not unusual, especially for the first vote of a new series and, at Channel 4's request, Davina McCall's script for the eviction on Friday 27 June had included a reminder to viewers to dial carefully.

In other cases, Channel 4 stated that it could be that some callers who heard a 'dead tone' when dialling the vote numbers were unaware that they were calling from phones that were barred from making PRS calls.

#### 27 June 2008:

Channel 4 said that the vote showed no irregularity and that, in line with the protocol, no results were known until after the vote had closed.

#### 1 August 2008:

Channel 4 confirmed that the vote held for this day's eviction was closed early, at midnight the day before. However, the broadcaster said, on-screen graphics and voiceover in the programme made clear when the vote would close. As with all *Big Brother* votes, this one was independently verified and therefore had not been 'engineered'.

#### 22 August 2008:

The broadcaster told us that it takes great care to ensure fairness and refuted any suggestion of unfair editing.

#### 29 August 2008:

Channel 4 commented that this vote closed at 21:50 on 29 August and that only once the independent verifier had signed off the result was it released to the production company. The broadcaster confirmed that votes were being received right up until lines closed. Channel 4 could not therefore offer an explanation for the postings.

#### 2 September 2008:

Channel 4 said that on 2 September a surprise eviction took place and there were accordingly two shows broadcast that evening, one at 20:00 and one at 22:00. For this vote the lines were suspended during the first show at 20:40. Viewers were informed by an on-screen caption stating that *"lines close in 1:00"* and a 60 second countdown was displayed, after which a caption read *"lines temporarily suspended"*.

At the beginning of part four of the first show, Davina McCall stated that *"voting has been temporarily suspended and a vote reading is taking place – please do not call"*. The evictions of two housemates took place at 20:49 and 21:16 respectively. The second show was on a one-and-a-quarter hour delay and therefore the evictions were not broadcast until during the second show from 22:00. The voting lines remained suspended until 22:56, at which time they were re-opened for the remaining housemates.

Channel 4 went on to say that in the show on 3 September, highlights of the previous evening's evictions were shown. During this show, the eviction's timings were made clear.

#### 5 September 2008:

The broadcaster stressed that bookmakers' predictions do not affect the voting and repeated that the votes are verified by an independent organisation.

In respect of the final voting, Channel 4 told us that the 'vote to win' opened on Friday 29 August. Any votes cast for Mikey and Rachel from this point counted towards their vote total on the final of 5 September 2008. Channel 4 rejected any suggestion that only the last hour's votes were counted.

As to the remaining general objections, Channel 4 said that the majority of evictions are filmed live, although there is a small proportion where transmission is on a time delay, such as when the evictions are shown before the 21:00 'watershed': on those occasions a delay of up to fifteen minutes is imposed; delays of this length do not prevent a programme being described as live. On other occasions, local planning regulations mean that evictions have to be delayed by up to an hour and a quarter. In these circumstances the programme is not billed as live. Channel 4 stated that at no point does any delay impact the validity of the votes cast and any delay is taken into consideration when planning when to close the vote and announce the result.

Channel 4 told us that it was not aware of any issues with the vote platform and on each eviction night the broadcaster received emails from BT confirming that the platform performed as expected. As with the response it submitted to Ofcom early in the series, the broadcaster reiterated the range of most usual reasons why callers have difficulty registering a vote to a particular number: misdialling, congestion at a local network level (discussed further below) and call barring. Channel 4 again confirmed that no problems were reported with the vote lines on the dates given by Ofcom's complainants.

Channel 4 stressed that it had at all times complied with Rules 2.2 and 10.10 of the Code.



## Decision

Having carefully considered the series, alongside all the information and evidence available to us, including voting data, we are satisfied that the programme design and voting were conducted with appropriate care. Importantly, and as the broadcaster made clear, the voting results were compiled with the supervision of independent third parties.

Many of the complaints concerned callers' suspicions about propriety after failing to get through on a voting line (and sometimes finding that they were then able to register a vote for a different participant). In this case, we do not consider such circumstances to be evidence of anything other than network overloading. Ofcom has investigated similar matters previously and would refer viewers to previous adjudications<sup>3</sup>. It is important to bear in mind that certain network effects are outside the control of the broadcaster.

These effects can occur at different points in networks. On some occasions it may be that call termination is overloaded, on others it may happen that, further up the chain, local exchanges or particular networks are for short periods unable to cope with the surge in phone traffic. However, in all cases congestion affects all lines equally and does not discriminate against any one housemate.

Some complainants observed that when one contestant's number was engaged another's was not. In such cases viewers should be reassured that the technical structure of the telephone network does not allow for calls for different contestants to be treated differently. At least the first eight digits of the phone numbers (the 'stem' numbers) are the same for all contestants, with only the last few (often two) digits of the phone number specific to a contestant. The preceding 'stem' digits common to all the numbers are those used by the network to route the calls to the vote recording system. The system answers calls in turn using a large number of answering points that can capture any of the votes, i.e. any of the final identifying digits. The chance of a call getting through is therefore the same, regardless of which contestant a caller is voting for.

We would also draw attention to FAQs on this subject compiled by PhonepayPlus which are available at:

<http://www.phonepayplus.org.uk/consumers/faq/default.asp#!%20tried%20voting>.

## Not in breach

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<sup>3</sup> See for example Bulletin 124 at [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb124/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb124/)

## Statement

### **Strictly Come Dancing**

*BBC 1, 13 December 2008, 18.10 and 20.55*

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*Strictly Come Dancing* is a dance competition in which celebrities are paired with professional dancers. Each week contestants perform a dance routine and are awarded a ranking. The ranking is calculated by combining points awarded by the programme's dance judges and those allocated by the viewer vote. The two couples with the lowest rank in each round must take part in a 'dance off'. After this performance, the judges decide which couple should be eliminated.

Ofcom received 297 complaints about the semi-final round of 2008's series of the programme.

In this programme three couples competed, so that three points were awarded to the couple with the highest judges' score, two points to the next highest and one point to the lowest scoring couple. The same process would have applied to the couples' placings in the public vote.

However, on 13 December 2008 two couples tied in the judges' scores and were awarded three points each. The other couple, Tom Chambers and Camilla Dallerup, were awarded one point. Therefore, even if they had won the public vote – and so achieved four points – they could not have avoided the dance-off. This meant that viewers who voted for Tom Chambers and Camilla Dallerup could not have affected the overall result. After the voting had opened, this oversight was spotted by the show's producers. At the end of the evening's later show it was announced that all three couples would go through to the final.

Viewers complained about the mistake, saying that they felt let down and many argued that refunds should be offered.

The BBC did not dispute the mistake. Further, it was clear to Ofcom that the mistake had resulted from an oversight, rather than any shortcomings in the technical arrangements for voting or in the handling of votes received. Therefore, Ofcom sought background details and information from the BBC to assure itself that full and proper consideration had been given to remedial measures, both in respect of the show and for individual viewers who had voted.

The BBC said that it deeply regretted the oversight and explained the steps subsequently taken to find a solution which was as fair as possible to the voting audience while not being unfair to the contestants. In arriving at a decision to carry over the judges' scores and viewers' votes to a final contested by all three couples, the BBC had considered a variety of options and taken advice from an independent statistical expert.

The BBC also stressed that it had made clear from the following Monday morning that vote refunds were available to any viewers who wanted them. The refunds were publicised during *Strictly Come Dancing*, other news reports, and on the *Strictly Come Dancing* website.

To prevent anything similar happening in the future, the BBC said, the voting and judging mechanisms used in all BBC voting programmes have been thoroughly examined.

Ofcom was satisfied that appropriate steps were taken by the BBC and the disadvantage to viewers minimised.

In Ofcom's view the BBC had been open and transparent with viewers about the mistake it made and the solution adopted. Ofcom notes that an explanation of the BBC's actions, including details of how to seek a refund, has been available on the *Strictly Come Dancing* website since soon after the semi-final: see [http://www.bbc.co.uk/strictlycomedancing/news/december/wk13\\_news\\_update\\_151208.shtml](http://www.bbc.co.uk/strictlycomedancing/news/december/wk13_news_update_151208.shtml).

## Fairness and Privacy Cases

### Upheld

#### Complaint by Mr Terry Schuler

*Drivetime, BBC Radio London, 28 May 2008*

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**Summary:** Ofcom has upheld this complaint of unfair treatment made by Mr Terry Schuler.

Drivetime is a weekday topical radio phone-in programme which features London's news and views. The programme offers an opportunity for contributors to express their views and opinions and for themes to be discussed further by the presenters and later contributors. In this particular programme, the main presenter, Mr Eddie Nestor, invited listeners to contribute their thoughts about the outcome of a high profile court case in which Nisha Patel Nasri's husband was found guilty of the murder of his wife. Mr Schuler was a caller to the programme and used the pseudonym "*Dave from Islington*". He referred to three crime stories which had been featured in earlier news bulletins that involved crimes "highly represented by people from either the Afro Caribbean community or Eastern Europeans or Asians". Mr Schuler complained that he was portrayed as a racist in the programme in that comments were attributed to him which he did not make.

Mr Schuler's complaint was considered by Ofcom's Executive Fairness Group. In summary Ofcom found the following:

Despite Mr Schuler using the pseudonym "*Dave from Islington*" he was identifiable. Significant allegations were made about Mr Schuler. The presenter said that "*what he actually wants to talk about is colour...he's not talking about any kind of cultural heritage*" and later "*what 'Dave' wanted to say was white people but he didn't say it*". It was incumbent on the programme makers to give Mr Schuler an appropriate and timely opportunity to respond to these serious allegations. He was not offered this opportunity and this was unfair to Mr Schuler.

#### Introduction

On 28 May 2008, BBC Radio London broadcast its weekday evening news and phone-in programme *Drivetime*. The programme includes news and traffic reports, caller phone-ins and emails and general discussion about news of the day related to London and particular topics chosen by the presenters, Eddie Nestor and Kath Malandri.

The programme broadcast on 28 May 2008 included a news item about the conviction of Nisha Patel Nasri's husband for her murder, and a statement from the mother of murder victim, Victoria Climbié. A caller referred to as "*Dave from Islington*" ("Dave") phoned in to the programme with his views in connection with the crimes highlighted in the programme. The discussion that took place between Dave and the presenter, Mr Nestor, included:

Dave                    *"In my opinion some of the news reports that's just been on and this one in particular and the Victoria Climbié just been mentioned on the news and the Birmingham case are a direct result of our blind*

*insistence on multiculturalism and mass immigration that the BBC in particular seems to be not questioning in any form whatsoever."*

Mr Nestor: *"How do you mean?"*

Dave: *"Well we've had mass immigration and on BBC London in particular we're hearing about these crimes every single day now highly represented by people from either the Afro Caribbean community or Eastern Europeans or Asians".*

Later in the discussion the presenter said:

Mr Nestor: *"You seem to be using those cases to back up a particular argument so I just want to hear what that argument is".*

Dave: *"We are bringing people to this country that don't have the same respect or attitude towards law and order that indigenous people in this country have. OK we've got our own nutcases and we'll deal with them but we're importing people as I state that do not have the same respect for law and order as we have. They have different ways of solving problems and it's becoming more evident day by day".*

The call was terminated at that point with the presenter thanking Dave for his contribution and inviting any reaction to the points made by him.

Later in the programme another caller participated in the discussion and suggested that *"delicacy is something that Dave lacked"* but that *"modern integrated society does throw up delicate and difficult issues"* and that people were afraid of the conversation. Various emails from listeners were also referred to during the programme in relation to the subject of Dave's call. The presenters also continued the discussion, including the following exchange:

Mr Nestor: *"What I wanted to do...is to push him (Dave) because what he actually wants to talk about is colour. He's not talking about any kind of cultural heritage".*

And later:

Mr Nestor: *"What Dave wanted to say was white people but he didn't say it"...*

Ms Malandri: *"...but didn't he mean white people but not Eastern Europeans?"*

Mr Nestor: *"Yes"*

Ms Malandri: *"Just want to make that clear as well"*

Mr Nestor: *"Sorry. Yes that's right".*

Mr Terry Schuler, who is the caller referred to as *"Dave from Islington"*, complained to Ofcom that he was treated unfairly in the programme as broadcast.

### **The Complaint**

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

He was unfairly portrayed in the programme as a racist in that:

- Mr Schuler said his call was intended to spark discussion of immigration issues after news reports that had just been highlighted in the programme. These related to crimes that had been committed by people from either the Afro-Caribbean community, Eastern Europeans and Asians. He did not suggest that the indigenous population was incapable of committing crimes as he said that this country had its own “*nutcases*” to be dealt with, but that immigrants from the communities he had mentioned had different ways of solving problems and did not have the same respect for law and order that British people had. The presenter, Mr Nestor, said that what Mr Schuler really wanted to talk about was an issue of colour. This was not the case as Mr Schuler referred to persons of Eastern European heritage.

By way of background, Mr Schuler said that he used the pseudonym “*Dave from Islington*” because he thought his words might be misrepresented in the programme. He said that there was bias and a total imbalance in the broadcaster’s judgments.

### **The broadcaster’s statement**

In summary, the BBC said that listeners would have been aware from the exchanges between Mr Schuler and the presenters that Mr Schuler believed immigration policy had led to a rise in crime because some people coming to the UK didn’t have the same respect or attitude towards law and order that indigenous people had. It said Mr Schuler was allowed to put his views across clearly and without interruption. The BBC noted that thought-provoking comments were made by the presenters immediately after Mr Schuler’s call was terminated. These included the ironic comment from Mr Nestor “*when I hear people like David it just makes me think that, you know, before immigration there was no crime at all committed in this country*” and comments from the co-presenter Kath Malandri about Teddy Boys in the 1950s “*all tooled up going out looking for trouble and fights and disrespecting old people*”. The BBC suggested that these types of comments were typical of the type of thought provoking comments listeners have come to expect from the programme, which was designed to stimulate debate and encourage listeners to call in with their views, and were made in response to Mr Schuler’s call.

However, the BBC accepted that what Mr Schuler said on the programme was not accurately represented by Mr Nestor when he attempted to summarise the contribution later in the programme. It accepted that it was not warranted for the presenter to suggest that what Mr Schuler wanted to talk about was an issue of colour or that what Mr Schuler wanted to say was “white people” but that he did not say this. It noted that Mr Nestor was corrected by his co-presenter when she pointed out that Mr Schuler had mentioned Eastern Europeans among the immigrants he had referred to in his call, but accepted that on this occasion the programme fell short of the standards of fairness contributors should expect. The BBC said it had written to Mr Schuler and acknowledged that this was a matter of regret.

However, in its response the BBC asked Ofcom to consider whether any unfairness to Mr Schuler was sufficiently significant bearing in mind Mr Schuler chose to use an assumed name when he called the programme. As the effect of calling under a pseudonym was precisely to avoid identification it questioned whether listeners were in a position to identify Mr Schuler or apply Mr Nestor’s comment to him regardless of how Mr Schuler was portrayed in the programme. The BBC argued that although listeners may have assumed that “*Dave from Islington*” held racist views, so far as

the BBC was aware, the only person who knew the real identity of the caller was Mr Schuler himself. The BBC suggested that any consideration of the significance of the unfairness should reflect this. Even if listeners thought the voice was familiar, the BBC believed the repeated reference to the caller as “Dave” or “David” would have strongly counteracted any thought that he was in fact Mr Schuler, and that Mr Schuler’s voice was not so distinctive as to allow any listener to identify him with any certainty.

### **Mr Schuler’s response to the broadcaster’s statement**

In summary Mr Schuler referred to various points in the programme where emails were read out by the presenters or comments were made by the presenters that were not corrected or challenged. He further quoted instances where he considered the presenters did not give out accurate information or made “sweeping statements” that were not strictly true. Mr Schuler said that someone did recognize his voice despite the BBC’s assumption that no-one would. He said that a comment had been made in a venue that Mr Schuler frequents and it became a talking point at that particular time. Mr Schuler said he also found a nail in his tyre a week later and even though he could not be sure this was a direct result of the programme and his comments, this had never happened to him before.

### **The broadcaster made no further comments in response to Mr Schuler’s statement.**

### **Decision**

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

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

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

Ofcom addressed the complaint that Mr Schuler was treated unfairly in the programme as broadcast in that he was portrayed as a racist when the presenter said that what Mr Schuler really wanted to talk about was an issue of colour and that he meant “white people”. In considering this Ofcom took account of Practice 7.2 which states that broadcasters should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do so otherwise. It also took account of Practice 7.11 which stipulates that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom noted that Mr Schuler’s call was made under the pseudonym “Dave from Islington” (“Dave”) and that his complaint related to the part of the programme quoted

in the Introduction. Ofcom also noted that Mr Schuler used a pseudonym but his voice rendered him identifiable in the programme as broadcast, during which he had a prolonged exchange with the presenter.

Some time after Mr Schuler's conversation, Ofcom noted the following comments by the presenter, Mr Nestor:

Mr Nestor: *"What I wanted to do.....is to push him [Dave] because what he actually wants to talk about is colour. He's not talking about any kind of cultural heritage".*

And later the presenter made a further allegation about Mr Schuler when he said:

Mr Nestor: *"What Dave wanted to say was 'white people' but he didn't say it".*

Ofcom also acknowledged that the co-presenter Kath Malandri tried to correct one of Mr Nestor's statements about Mr Schuler when he said Dave wanted to talk about "white people" by adding: *"but didn't he mean white people but not Eastern Europeans"* to which Mr Nestor agreed.

However, in Ofcom's view, in spite of the co presenter's attempted correction the comments made by Mr Nestor about Mr Schuler amounted to an allegation that Mr Schuler's views were racist. This was a significant allegation to make and in Ofcom's view it was incumbent on the programme makers to provide Mr Schuler with a timely and appropriate opportunity to respond.

Ofcom noted that Mr Nestor's comments about the complainant were made after Mr Schuler's call was ended. In the circumstances, Ofcom considered that Mr Schuler was not provided with an appropriate or timely opportunity to respond to the allegations made in the programme. Ofcom acknowledges that contributions to programmes of this nature are often dealt with robustly, and forthright opinions can be exchanged by both listeners and presenters. However, in Ofcom's opinion, a significant allegation was made about Mr Schuler and he should be given an appropriate opportunity to respond to it. This did not occur in this case.

Ofcom then went on to consider the fact that Mr Schuler had used a pseudonym when contacting the programme with a view to deciding if this impacted in a significant way on how identifiable he was in the programme as broadcast, and the extent to which the allegations could have caused unfairness to Mr Schuler (who was not named or referred to in the programme as broadcast).

Ofcom takes the view that callers to phone-in programmes, whose voices can be heard and potentially identified, should be treated fairly. This is regardless of whether the caller chooses to reveal their real identity or assume a different one. Ofcom noted that although Mr Schuler had given a false identity, the broadcast of his voice would have made him identifiable to a number of people.

In the circumstances Ofcom concluded that Mr Schuler was identifiable and the programme made significant allegations against him to which he was not given a timely and appropriate opportunity to respond. This resulted in unfairness to him in the programme as broadcast.

**Accordingly Ofcom has upheld Mr Schuler's complaint of unfair treatment.**



## Not Upheld

### Complaint by Mr Joseph Lake

*Living the Dream Revisited, BBC2, 2 May 2008*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy in the broadcast made by Mr Joseph Lake.

The programme revisited the story of the Wood family who had featured in an episode of *Living the Dream* five years earlier. It explained that they had purchased a house and an acre of land in Spain from Mr Lake, who owned an eight acre property. The programme featured footage of them celebrating the purchase together with Mr Lake. The programme said that the family was now looking to sell the property but needed to check that the paperwork from the original purchase was in order. The commentary stated “After five years of waiting for Joe to sort the deeds it looks like they’ll [the Wood family] have to pay for everything themselves.”

Mr Lake complained that he was unfairly portrayed as someone who walked away from legal obligations when this was not the case, and his privacy was unwarrantably infringed in the programme through the broadcast of footage of him, and reference to his name, without his consent.

In summary Ofcom found that:

- The programme makers had taken reasonable care to satisfy themselves that material facts (in relation to the allegation that Mr Lake had failed to fulfil his promise to provide the Woods with legal title to the land) were presented fairly. In addition the programme makers had provided Mr Lake with an appropriate and timely opportunity to respond to the allegation.
- Mr Lake did not have a legitimate expectation of privacy in relation to the footage of him celebrating the purchase of the property with the Woods, footage which was first shown in the programme *Living the Dream*. In coming to this conclusion Ofcom took note of: Mr Lake’s original consent for the recording and broadcast of the footage; the fact that footage was already in the public domain at the time of the broadcast of *Living the Dream Revisited*; it was not of a particularly private or sensitive nature; and, its re-use in the later programme was in the same context as the earlier programme. Ofcom therefore found Mr Lake’s privacy was not unwarrantably infringed.

### Introduction

On 2 May 2008, BBC2 broadcast an edition of its *Living the Dream* series. This series documents the experience of people attempting to set up their dream businesses. In this edition, entitled *Living the Dream Revisited*, the programme makers revisited the Wood family who had taken part in the series five years earlier. In the programme the Wood family’s move from Essex to Spain (with the plan of setting up their own B&B business) five years previously was shown.

In recounting the Wood family’s experience of moving to Spain, the programme described how the family had purchased a house in Spain from an English owner and real estate agent named “*Joe Lake*”. It explained that the house had originally been part of an eight acre property but that Mr Lake had agreed to sell the Wood

family the house with one acre of the land. Mr and Mrs Wood were shown celebrating their house purchase at the home of Mr Lake. In the footage, which was taken from the original programme, Mr Lake was shown swimming in his pool and pouring champagne for the party. The programme stated that: *“They’ve [the Woods] signed the contract but Joe still needs permission to divide his land in two before he can draw up new deeds”.*

The programme explained that five years later the family was considering another move to Bulgaria and was looking at selling their home in Spain. The programme said that in order for the family to sell their home, they would need to ensure that the paperwork relating to the division of the land was in order. The commentary stated that:

*“The house was part of an eight acre plot of land that Joe, the man who sold it to them, told them could be officially split or segregated into two separate plot...The deeds are still in the names of a Scottish couple called the Kemps and the names can’t be changed unless the land segregation is approved by the Town Hall.”*

The programme then showed Mr and Mrs Wood visiting a solicitor who advised that it was possible to divide the land but that it would be an expensive process. After this meeting the programme commentary stated that:

*“After five years of waiting for Joe to sort the deeds it looks like they’ll [the Wood family] have to pay for everything themselves.”*

Ofcom received a complaint from Mr Joseph Lake, the man who had sold the Wood family their home. Mr Lake complained that he had been treated unfairly and that his privacy had been unwarrantably infringed in the broadcast of the programme *Living the Dream Revisited*.

## **The Complaint**

### **Mr Lake’s case**

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

- a) The programme unfairly portrayed him as a person who had walked away from legal obligations, which potentially left the Wood family with costly and complicated legal issues. Mr Lake said this was not the case. Mr Lake said that he had paperwork to prove that a public title exists in his name. Mr Lake said that if the programme makers had provided him with an appropriate opportunity to contribute, the issues raised in the programme could have been presented in a true and accurate manner.

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

- b) The programme makers did not ask him whether he minded the scene at his house, in which his name was mentioned and face shown, being used in the programme. He should have been asked, given that the scene was included in a programme in which he was portrayed as a man who could not be trusted.

## The BBC's case

- a) In response to Mr Lake's complaint that the programme had portrayed him unfairly as a person who walked away from legal obligations, the BBC said that Mr Lake was accurately portrayed as a man who purported to sell a property to the Wood family but had been unable to provide evidence of a legal title to the property. It said that to date Mr Lake had been unable to supply Mr and Mrs Wood with any documentation that proved their ownership of the property which they bought from him in good faith. It also noted that Mr Lake had not furnished Ofcom with any evidence to support his claim to the contrary. The BBC also said that, although it was not included in the programme Mr and Mrs Wood had told the programme makers that when they bought the property they paid Mr Lake a considerable sum of money for the legal work to officially segregate the land and create an escritura (deed).

The BBC added that since the broadcast of the programme Mr Lake had suggested to Mr and Mrs Wood that they sell their one-acre plot and house as part of the whole original eight-acre plot of land, with each party (i.e. the Woods and Mr Lake) taking a share of the sale money. The BBC argued that this unusual proposition suggested that Mr Lake was not in possession of valid deeds to the Wood's house and one-acre plot of land.

In relation to Mr Lake's complaint that he had not been provided with an appropriate and timely opportunity to respond to the allegations made in the programme, the BBC said that the programme makers made a number of attempts to trace Mr Lake but were unable to find him. The BBC said that the programme makers did not have Mr Lake's address when they were making the programme and detailed the efforts they made to contact him. These efforts included:

- Speaking with Mr and Mrs Wood. The BBC said that according to Mr and Mrs Wood, Mr Lake had closed the offices of his estate agency without a forwarding address and failed to respond to their many attempts to contact him.
  - Attempting to call Mr Lake on his mobile number and also on his business number. The BBC said that when Mr Lake contacted the programme makers after the programme had been broadcast he explained that his phone had been cut off as he had been unable to pay the bill.
  - Trying to search for him online. The BBC noted that according to Mr Lake his website had been attacked by hackers.
  - Visiting Mr Lake's former business premises and speaking to the new tenant. The BBC said that the new tenant contacted the programme makers a few weeks later advising them that she could now forward a letter to Mr Lake as she had an address for his father. The programme makers sent a letter to Mr Lake via this route.
- b) The BBC said it did not understand on what basis Mr Lake believed his privacy had been infringed. It said that Mr Lake was a real estate agent by trade and the sale of the property to Mr and Mrs Wood was not a private matter. As regards the champagne celebration following the purchase of the property, the BBC said that it had been filmed with the full knowledge and consent of Mr Lake. The BBC argued that the *Revisited* programme needed to show some extracts from the first programme in order for the audience to fully appreciate the history of Mr and Mrs Wood's life in Spain.

## 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.

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.

Mr Lake's complaint was considered by Ofcom's Executive Fairness 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 and both parties' written submissions.

- a) Ofcom considered Mr Lake's complaint that he was unfairly portrayed as a someone who had walked away from legal obligations, which potentially left the Wood family with costly and complicated legal issues and that he was not given an appropriate opportunity to contribute to the programme regarding this matter.

Ofcom considered this complaint in light of the requirement on broadcasters in Rule 7.1 of Ofcom's Broadcasting Code ("the Code") to avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also took particular account of Practice 7.9 of the Code which states that before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual and that anyone whose omission could be unfair to an individual has been offered an opportunity to contribute. In addition, it took particular account of Practice 7.11 of the Code which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom noted that with regard to Mr and Mrs Wood's purchase of the property from Mr Lake this programme included the following commentary and footage (which was re-used from the original programme that had been broadcast five years previously):

*"They've asked the landlord, an English estate agent, to sell. Its part of an eight acre plot of land but he's agreed to sell them just the house and an acre. They've come to shake on it with the landlord, Joe Lake, at his home".*

This commentary was accompanied by footage of a celebration of the Woods' purchase of the property which took place around the pool at Mr Lake's home. Ofcom also observed that towards the end of this section of the programme the narrator said:

*“They’ve signed the contract but Joe still needs permission to divide his land in two before he can draw up new deeds”.*

Ofcom noted that in relation to Mr and Mrs Wood’s plan to sell their house in Spain some five years later the programme included the following sections of commentary:

*“But to even think about selling they need their paperwork in order and although they’ve been living in their house five years now Bob and Tracey are still uncertain what they bought”;*

As well as:

*“The house was part of an eight acre plot of land that Joe, the man who sold it to them, told them could be officially split or segregated into two separate plots. He sold them the smaller one with the house”;*

And:

*“They’re worried because they’ve discovered they may not actually own their home. The deeds are still in the names of a Scottish couple called the Kemps and the names can’t be changed unless the land segregation is approved by the Town Hall.”*

Ofcom observed that between these sections of commentary the programme included footage of Mr and Mrs Wood discussing the situation and that during this discussion Mr Wood was shown saying:

*“We were told that it [the land] could be segregated but five years down the line it hasn’t been done and there obviously seems to be some, there’s a problem”... and ... “Joe never got the title deeds signed at the Town Hall. Its not a legal document as such”.*

In addition, Ofcom also observed that the programme showed Mr and Mrs Wood visiting a local solicitor to discuss *“the problem with their deeds or escritora”*. During this visit Mr and Mrs Wood were shown having the following exchange with the solicitor about whether or not it would be possible to get the house put in their name (i.e. to resolve the problem with the escritora on the property):

Solicitor: *“It’s rustic land and it’s complicated to segregate.”*

Mr Wood: *“So this means that he may not be able to segregate?”*

Solicitor: *“In this moment it’s possible okay. The difficulty is the cost. When you’re making escritora you pay 7% for the tax transfer and you pay your notary fees and your register fees and the work for the architect to make the plan and this certificate, okay.”*

Mr Wood: *“Its Joe’s responsibility to get this done.”*

Solicitor: *“Yes but...”*

Mr Wood: *“Whether or not he does...”*

Mrs Wood: *“I’m not giving him no more money.”*

The programme then included this commentary:

*“It seems there is a solution but one that could cost them thousands of Euros to sort out. After five years of waiting for Joe to sort out the deeds it looks like they’ll have to pay for everything themselves”.*

The end of the programme showed Mr and Mrs Wood remaining in Spain, as the planned move to Bulgaria was too expensive given the downturn in the Spanish property market which meant that:

*“Bob’s work [refurbishing properties bought by British people] has dried up and any chance of paying the solicitor to make the deeds legal is becoming more and more remote.”*

In Ofcom’s view, taken together, the footage described above and the accompanying commentary implied that Mr Lake had failed to fulfil his agreement to legally separate the plot of land on which the house that Mr and Mrs Wood bought stood and thereby provide them with appropriately registered deeds to the property. Ofcom considered that this was a serious allegation of either incompetence or wrongdoing, on the part of Mr Lake, which disadvantaged Mr and Mrs Wood because in order to move they would have to pay money to resolve the issue with their deeds and they could not afford to do so.

In considering whether it was unfair for the programme to make this allegation about Mr Lake Ofcom looked at the source of this information.

It observed that the claim that five years after the Woods purchased the property Mr Lake had failed to fulfil his promise to separate the land as agreed, and to provide the Woods with legal title to their home, was based on the testimony of Mr and Mrs Wood themselves, who, as the purchasers of the property, had first-hand knowledge of the events described. Ofcom considered that in light of this Mr and Mrs Wood were credible witnesses.

Ofcom noted that the programme included footage of a visit to a local solicitor who, having looked into the case, gave her professional opinion that the land had not been legally separated to date. Ofcom noted that the solicitor also indicated that while it was still possible to get the land separated (at the time the follow-up programme was made) it would be difficult and costly to do so because the land in question was *“rustic”*.

Given these factors Ofcom concluded that the allegation that Mr Lake had failed to fulfil his promise to separate the land as agreed and provide the Woods with legal title to their home was based on credible evidence provided by first-hand witnesses and corroborated by a lawyer who had been engaged to give an unbiased opinion on the case. In light of this Ofcom found that the programme makers had taken reasonable steps to satisfy themselves that material facts were not presented unfairly. However Ofcom considered that this allegation (i.e. that Mr Lake had failed to fulfil his agreement to secure legal deeds to Mr and Mrs Wood’s property) was a serious allegation of either incompetence or wrongdoing on the part of Mr Lake. Therefore, in Ofcom’s view it was incumbent upon the broadcaster to offer Mr Lake an appropriate and timely opportunity to respond to this allegation.

Ofcom observed that within its submission the BBC detailed the steps that the programme makers took in order to offer Mr Lake such an opportunity. In brief, the BBC explained that having been informed by Mr and Mrs Wood that Mr Lake had closed the office in which his estate agency had been based without a forwarding address or contact details, the programme makers tried to call him on both the mobile and business numbers he had previously used. The broadcaster also said that the programme makers searched for his website online and spoke to the new tenant at his former offices. The BBC explained that despite these actions the programme makers failed to contact Mr Lake. However, it added that some weeks later the new tenant at Mr Lake's former offices contacted the programme makers to offer to forward a letter to Mr Lake care of his father (Mr Lake senior).

Ofcom observed that on 20 April 2008 therefore the programme's producer wrote to Mr Lake. In this letter the producer detailed the nature of the programme. The letter also informed Mr Lake that the programme included a discussion of "the difficulties" that Mr and Mrs Wood had faced regarding the deeds to their property and Mr Lake's role in the original sale of the property and the subsequent difficulties as well as a scene where the Woods discuss the matter with a solicitor. The letter also explained that the producer had tried, with no success, to contact Mr Lake while he was filming the follow-up programme in order to discuss these issues and that the programme was due to be broadcast on 2 May 2008. Ofcom has not been provided with any evidence to suggest that Mr Lake responded to this letter although he does not dispute having received it (a copy of the letter was provided by Mr Lake within the documents submitted in support of his complaint).

In light of the above considerations Ofcom considered that the programme makers had taken reasonable steps to try to contact Mr Lake and that the producer's letter of 20 April 2008 represented an appropriate and timely opportunity to respond to the allegation of either wrongdoing or incompetence made about him in the programme. Therefore, Ofcom did not consider that Mr Lake was treated unfairly in this respect.

- b) Ofcom then considered Mr Lake's complaint that his privacy was unwarrantably infringed in the programme as broadcast in that he was not asked whether he minded the scene at his house (in which his name was mentioned and face shown) being used in the programme.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about 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".

In considering this part of the complaint Ofcom took account of Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. It also took particular account of Practice 8.10 of the Code which provides that broadcasters should ensure that the re-use of material i.e. the use of material originally filmed for one purpose and then used in a later or different programme, does not create an unwarranted infringement of privacy.

Ofcom considered whether Mr Lake had a legitimate expectation of privacy in relation to his complaint that he was not asked whether he minded the scene at his house (in which his name was mentioned and face shown) being used in the programme.

Having examined the footage in question Ofcom noted that it had been filmed during the making of the original programme and that none of the people included (Mr Lake, Mr and Mrs Wood and their families) had been filmed surreptitiously. Rather, on the information available to Ofcom and the actual footage it appeared that Mr Lake had given his consent for the material to be recorded and subsequently broadcast in the programme *Living the Dream*.

In light of this Ofcom observed that this footage was re-used in the follow-up programme *Living the Dream Revisited* (about which this complaint was made) in order to establish the background to Mr and Mrs Wood's current situation. Ofcom observed that the footage was shown in the context of Mr and Mrs Wood's pleasure in purchasing the property from Mr Lake five years previously. In addition, Ofcom noted that the use of the footage in this programme did not reveal anything which had not already been revealed in the original programme.

In these circumstances it was Ofcom's view that the complainant did not have a legitimate expectation of privacy with regard to the broadcast of this footage. In coming to this conclusion Ofcom took note of Mr Lake's original consent for the recording and broadcast of the footage. Further, the footage had been broadcast in *Living the Dream* and was therefore already in the public domain at the time of the broadcast of *Living the Dream Revisited*. The material was not of a particularly private or sensitive nature and its re-use in the later programme was in the same context as the earlier programme, i.e. an illustration of the celebration of the original purchase of the property.

Given that Ofcom found that the complainant did not have a legitimate expectation of privacy, Ofcom found that Mr Lake's privacy was not infringed in the broadcast of the programme. It was not therefore necessary for Ofcom to further consider whether any infringement of privacy was warranted.

**Accordingly Ofcom has not upheld Mr Lake's complaint of unfair treatment or of unwarranted infringement of privacy in the broadcast of the programme.**



## Other Programmes Not in Breach/Resolved

Up to 22 April 2009

Programme	Transmission Date	Channel	Category	Number of Complaints
100 Greatest Standups	10/04/2009	More4	Offensive Language	1
5 Live Breakfast	31/03/2009	BBC Radio 5 Live	Generally Accepted Standards	1
Afternoons With Sweets	30/03/2009	Rock Radio 106.1	Generally Accepted Standards	1
Al Murray's Multiple Personality Disorder	03/04/2009	ITV1	Generally Accepted Standards	1
Al Murray's Multiple Personality Disorder	27/02/2009	ITV1	Generally Accepted Standards	13
Alan Carr: Tooth Fairy Live	11/04/2009	Comedy Central	Generally Accepted Standards	1
Alan Robson Nightowls	30/03/2009	Metro Radio	Sex/Nudity	1
All The Small Things	31/03/2009	BBC1	Religious Offence	1
An Inconvenient Truth	04/04/2009	Channel 4	Due Impartiality/Bias	4
An Inconvenient Truth	04/04/2009	Channel 4	Advertising	1
BBC Breakfast	25/02/2009	BBC1	Generally Accepted Standards	2
BMIbaby.com sponsorship of ITV Weather	n/a	ITV1	Offensive Language	6
Bible's Buried Secrets	11/04/2009	National Geographic	Religious Offence	1
Boots 'N' All	01/04/2009	Sky Sports 1	Inaccuracy/Misleading	1
Bowtime	20/03/2009	Talksport	Generally Accepted Standards	1
Bowtime with Ian Wright and Adrian Durham	22/12/2008	Talksport	Crime (incite/encourage)	1
Breakfast Show	25/03/2009	209 Radio	Due Impartiality/Bias	1
Britain's Got More Talent	18/04/2009	ITV2	Generally Accepted Standards	1
Britain's Got More Talent	18/04/2009	ITV2	Dangerous Behaviour	1
Britain's Got Talent	18/04/2009	ITV1	Generally Accepted Standards	1
Britain's Got Talent	11/04/2009	ITV1	Offensive Language	1
Britain's Got Talent	11/04/2009	ITV1	Generally Accepted Standards	141
Britain's Got Talent	17/04/2009	ITV2	Generally Accepted Standards	3
CSC Media competitions	n/a	CSC Media	Competitions	1
CSI Welsh Sketch	10/03/2009	Heart 106FM	Generally Accepted Standards	1
Casualty	04/04/2009	BBC1	Generally Accepted Standards	1
Celebrity Juice	01/04/2009	ITV2	Inaccuracy/Misleading	1
Channel 4 News	28/03/2009	Channel 4	Violence	1
Chris Evans	16/04/2009	BBC Radio 2	Sex/Nudity	1
Chris Moyles Show	02/04/2009	BBC Radio 1	Generally Accepted Standards	1
Chris Moyles Show	20/03/2009	BBC Radio 1	Substance Abuse	1
Chris Moyles Quiz Night	05/04/2009	Channel 4	Generally Accepted Standards	1
Coleen's Real Women	25/03/2009	ITV2	Generally Accepted Standards	1
Coleen's Real Women	24/03/2009	ITV2	Generally Accepted Standards	1
Come Dine With Me	29/03/2009	Channel 4	Generally Accepted Standards	1
Come Dine With Me	05/04/2009	Channel 4	Inaccuracy/Misleading	1
Come Dine With Me	05/04/2009	Channel 4	Generally Accepted Standards	1
Comic Relief - Horne & Corden	14/03/2009	BBC1	Generally Accepted Standards	1
Comic Relief - Horne & Corden	14/03/2009	BBC1	Religious Offence	1
Competition	21/03/2009	Venus TV	Competitions	1

Confessions	24/03/2009	ITV1	Generally Accepted Standards	1
Coronation Street	30/03/2009	ITV1	Substance Abuse	1
Coronation Street	03/04/2009	ITV1	Generally Accepted Standards	1
Coronation Street	27/03/2009	ITV1	Generally Accepted Standards	1
Coronation Street	13/04/2009	ITV1	Generally Accepted Standards	4
Coronation Street	13/04/2009	ITV1	Sex/Nudity	1
Coronation Street	17/04/2009	ITV1	Animal Welfare	1
Could You Eat an Elephant? (Trailer)	n/a	Channel 4	Animal Welfare	57
Criminal Minds	06/03/2009	Living	Advertising	2
DVD promotion	16/03/2009	Channel 4	Commercial References	3
Dancing on Ice - The Final	22/03/2009	ITV1	Use of Premium Rate Numbers	5
Date Movie (Trailer)	26/03/2009	Channel 4	Sex/Nudity	1
Dave Kelly	24/03/2009	Galaxy South Coast	Generally Accepted Standards	1
Deal Or No Deal	n/a	Channel 4	Generally Accepted Standards	1
Desperate Housewives	25/03/2009	Channel 4	Offensive Language	1
Dickinson's Real Deal	31/03/2009	ITV1	Competitions	1
Dickinson's Real Deal	16/04/2009	ITV1	Competitions	1
Dirty Sanchez	24/03/2009	TMF	Generally Accepted Standards	1
Dispatches: Confessions of a Nurse	23/03/2009	Channel 4	Due Impartiality/Bias	8
Dispatches: Immigrants - The Inconvenient Truth	01/10/2007	Channel 4	Generally Accepted Standards	5
Dispatches: Pakistan's Taliban Generation	16/03/2009	Channel 4	U18's in Programmes	2
Doctor Who	11/04/2009	BBC1	Religious Offence	1
Dragon's Den Goes Global	25/12/2008	BBC2	Generally Accepted Standards	1
Dreams Beds sponsorship	n/a	n/a	Sponsorship	1
Eastenders	14/04/2009	BBC1	Generally Accepted Standards	1
Edge of Adventure	06/03/2009	STV	Animal Welfare	1
Emmerdale	01/04/2009	ITV1	Animal Welfare	1
Emmerdale	16/03/2009	ITV1	Other	1
Emmerdale	06/04/2009	ITV1	Violence	1
Evening show	03/04/2009	Connect FM 107.4	Sex/Nudity	1
Extraordinary People: The World's Heaviest Man	08/04/2009	Five	Generally Accepted Standards	1
Extreme Fishing With Robson Green	30/03/2009	Five	Offensive Language	2
Five FM competition	23/02/2009	Five FM	Competitions	1
Freshly Squeezed	27/03/2009	Channel 4	Generally Accepted Standards	1
Friday Night With Jonathan Ross	27/03/2009	BBC1	Substance Abuse	1
Futurama	31/03/2009	Sky One	Sex/Nudity	1
GMTV	30/03/2009	ITV1	Generally Accepted Standards	1
GMTV	08/04/2009	ITV1	Offensive Language	2
GMTV	07/04/2009	ITV1	Sex/Nudity	1
Genius	20/03/2009	BBC2	Other	1
Great British Menu	31/03/2009	BBC2	Animal Welfare	1
Great Lives	07/04/2009	BBC Radio 4	Generally Accepted Standards	1
Grow Your Own Drugs	30/03/2009	BBC2	Generally Accepted Standards	1
Harry Hill's TV Burp	28/03/2009	ITV1	Sex/Nudity	5

Hell's Kitchen	13/04/2009	ITV1	Dangerous Behaviour	2
Hell's Kitchen	15/04/2009	ITV1	Dangerous Behaviour	1
Hell's Kitchen	17/04/2009	ITV1	Dangerous Behaviour	1
Herre pa Tappen	15/03/2009	TV6 Sweden	Animal Welfare	1
Heston's Roman Feast	29/03/2009	Channel 4	Sex/Nudity	1
Heston's Roman Feast	29/03/2009	Channel 4	Animal Welfare	1
Heston's Roman Feast	29/03/2009	Channel 4	Generally Accepted Standards	1
Holby City	31/03/2009	BBC1	Religious Offence	1
Holloway	24/03/2009	ITV1	Crime (incite/encourage)	3
Holloway	17/03/2009	ITV1	Suicide/Self Harm	1
Hollyoaks	31/03/2009	Channel 4	Sex/Nudity	3
Home and Away	14/04/2009	Five	Sex/Nudity	1
Horne & Corden	16/04/2009	BBC Three	Religious Offence	2
Horne & Corden	25/03/2009	BBC Three	Generally Accepted Standards	1
Horse People with Alexandra Tolstoy	07/04/2009	BBC2	Animal Welfare	1
How Do They Do It?	30/03/2009	Five	Generally Accepted Standards	1
Iain Lee	04/03/2009	Absolute Radio	Generally Accepted Standards	1
In My Life: Jon Culshaw	29/03/2009	Bio	Offensive Language	1
International Football	01/04/2009	ITV1	Due Impartiality/Bias	1
Interview With A Cannibal	25/03/2009	Five	Generally Accepted Standards	1
Jade's Funeral	03/04/2009	Sky News	Generally Accepted Standards	2
Jingle	24/03/2009	Jack FM 106.4	Generally Accepted Standards	1
Jo Whiley	31/03/2009	BBC Radio 1	Offensive Language	1
Jo Whiley	26/03/2009	BBC Radio 1	Crime (incite/encourage)	1
Jonathan Ross	24/01/2009	BBC Radio 2	Sex/Nudity	12
Law & Order UK	06/04/2009	ITV1	Generally Accepted Standards	1
Lewis	05/04/2009	ITV1	Violence	2
Lewis	29/03/2009	ITV1	Violence	1
Lewis	29/03/2009	ITV1	Substance Abuse	1
Limmy's Show	23/02/2009	BBC1 Scotland	Violence	1
Little Britain	22/03/2009	BBC Three	Generally Accepted Standards	1
Live International Football	01/04/2009	ITV1	Generally Accepted Standards	1
Live Sport	14/03/2009	BBC Radio 5 Live	Generally Accepted Standards	1
Live at The Apollo	16/01/2009	BBC1	Generally Accepted Standards	1
Live at The Apollo	16/01/2009	BBC1	Crime (incite/encourage)	1
Location, Location, Location	n/a	Channel 4	Inaccuracy/Misleading	1
Loose Women	31/03/2009	ITV1	Offensive Language	1
Loose Women	06/04/2009	ITV1	Offensive Language	1
Loose Women	31/03/2009	ITV2 + 1	Sex/Nudity	1
Lyxfällan	26/02/2009	TV3	Commercial References	1
Maltesers sponsorship of Loose Women	n/a	ITV1	Dangerous Behaviour	1
Maltesers sponsorship of Loose Women	n/a	ITV1	Crime (incite/encourage)	1
Match Of The Day 2	19/04/2009	BBC2	Other	1
Mike McClean	23/03/2009	XFM Manchester	Use of Premium Rate Numbers	1
Milkshake	04/04/2009	Five	Offensive Language	1
Moving Wallpaper	03/04/2009	ITV1	Religious Offence	1
Moving Wallpaper	27/03/2009	ITV1	Commercial References	1
News	20/01/2009	UTV	Religious Offence	1
News at Ten	30/03/2009	ITV1	Inaccuracy/Misleading	1
News at Ten	01/04/2009	ITV1	Crime (incite/encourage)	1
Nick Ferrari	25/03/2009	LBC 97.3FM	Due Impartiality/Bias	1

Off the Page	02/04/2009	BBC Radio 4	Offensive Language	2
Old Harry's Game	19/03/2009	BBC Radio 4	Religious Offence	2
Outtake TV	12/04/2009	Watch	Generally Accepted Standards	1
Over 18 TV	16/02/2009	Brit Hits	Sex/Nudity	1
Panorama	06/04/2009	BBC1	Offensive Language	1
Panorama	16/02/2009	BBC1	Violence	1
Partyland	22/03/2009	Partyland	Sex/Nudity	1
Partyland	n/a	Partyland	Sex/Nudity	1
Pets Undercover: Tonight	16/03/2009	ITV1	Due Impartiality/Bias	26
Please Sir	17/03/2009	Men and Motors	Violence	1
Police Camera Action: Drink Driving Special	17/12/2008	ITV1	Crime (incite/encourage)	9
Police Interceptors	25/03/2009	Five	Generally Accepted Standards	1
Pride and Prejudice	22/03/2009	Watch	Advertising	1
Project Raphael	09/04/2009	BBC Radio 7	Offensive Language	1
QI	06/02/2009	BBC1	Generally Accepted Standards	1
Question Time	26/03/2009	BBC1	Other	1
Quiz Call	29/10/2006	Five	Competitions	1
Quiz Call	10/04/2009	Five	Competitions	1
Racing From Aintree	03/04/2009	BBC2	Generally Accepted Standards	1
Ramsay's Kitchen Nightmares USA	27/03/2009	Channel 4	Animal Welfare	1
Ramsay's Kitchen Nightmares USA	03/04/2009	Channel 4	Offensive Language	1
Return to Palestine	26/01/2009	Press TV	Due Impartiality/Bias	2
Robin Hood	28/03/2009	BBC1	Violence	2
Rosemary & Thyme	10/04/2009	ITV3	Offensive Language	1
Scotland v Iceland	01/04/2009	Real Radio Scotland	Generally Accepted Standards	1
Scott Mills	13/04/2009	BBC Radio 1	Generally Accepted Standards	1
Sexcetera	09/12/2008	Virgin 1	Sex/Nudity	1
Shameless	07/04/2009	Channel 4	Sex/Nudity	1
Shameless	14/04/2009	Channel 4	Generally Accepted Standards	1
Shameless	08/04/2009	Channel 4	Sex/Nudity	1
Simon Mayo	09/04/2009	BBC Radio 5 Live	Offensive Language	1
Sky News	03/04/2009	Sky News	U18's in Programmes	1
Sky Sports News	03/04/2009	Sky Sports News	Offensive Language	1
Soccer AM	04/04/2009	Sky Sports 1	Violence	1
Something for the Weekend	12/04/2009	BBC2	Generally Accepted Standards	1
SpongeBob SquarePants	28/03/2009	ITV1	Violence	2
SpongeBob SquarePants	10/04/2009	Nick Toons	Offensive Language	1
Star Stories: Elton John	16/04/2009	E4	Generally Accepted Standards	1
Steve Allen	24/03/2009	LBC 97.3FM	Other	1
Steve Allen	07/04/2009	LBC	Generally Accepted Standards	1
Steve Allen	24/03/2009	LBC 97.3FM	Generally Accepted Standards	1
Stewart Lee's Comedy Vehicle	30/03/2009	BBC2	Other	1
Supersize vs Superskinny	31/03/2009	Channel 4	Sex/Nudity	4
SwiftCover.com Sponsorship	n/a	Sky One	Sponsorship	1
Switch	29/03/2009	BBC Radio 1	Generally Accepted Standards	1
Taste The Nation	27/03/2009	ITV1	Animal Welfare	1
Tennis	22/03/2009	Sky Sports1	Offensive Language	1
The Alan Titchmarsh Show	28/01/2009	ITV1	Sex/Nudity	10

The Alan Titchmarsh Show	04/02/2009	ITV1	Sex/Nudity	4
The Alan Titchmarsh Show	04/03/2009	ITV1	Sex/Nudity	20
The Alan Titchmarsh Show	25/02/2009	ITV1	Sex/Nudity	2
The Alan Titchmarsh Show	01/04/2009	ITV1	Generally Accepted Standards	3
The Brightonomicon	25/03/2009	BBC Radio 7	Religious Offence	1
The Christian O'Connell Breakfast Show	16/04/2009	Absolute Radio	Generally Accepted Standards	1
The Curse of Hollywood	26/03/2009	E!	Exorcism/Occult/Paranormal	1
The Gadget Show	06/04/2009	Five	Advertising	1
The Gadget Show	23/03/2009	Five	Commercial References	1
The Grand National	04/04/2009	BBC1	Generally Accepted Standards	48
The Hospital	07/04/2009	Channel 4	Generally Accepted Standards	1
The Hospital (Trailer)	06/04/2009	Channel 4	Generally Accepted Standards	1
The Inbetweeners	09/04/2009	E4	Generally Accepted Standards	1
The Inbetweeners	09/04/2009	E4	Sex/Nudity	1
The Inbetweeners (Trailer)	25/03/2009	Channel 4	Sex/Nudity	1
The Legend of Dick & Dom	02/04/2009	CBBC	Generally Accepted Standards	1
The Man Who Lives With Bears	03/03/2009	Five	Advertising	1
The Millionaire and the Murder Mansion	09/04/2009	Channel 4	Generally Accepted Standards	1
The Most Annoying People of the Year 2008	27/12/2008	BBC Three	Generally Accepted Standards	3
The Nolan Show	26/03/2009	BBC Radio Ulster	Sex/Nudity	1
The Now Show	14/03/2009	BBC Radio 4	Religious Offence	1
The One Show	20/03/2009	BBC1	Generally Accepted Standards	2
The One Show	09/03/2009	BBC1	Offensive Language	1
The One Show	02/04/2009	BBC1	Due Impartiality/Bias	1
The Paul O'Grady Show	07/04/2009	Channel 4	Offensive Language	1
The Paul O'Grady Show	09/04/2009	Channel 4	Generally Accepted Standards	1
The Ringer	03/04/2009	Channel 4	Generally Accepted Standards	1
The Secret Millionaire	12/04/2009	Channel 4	Generally Accepted Standards	2
The Secret Millionaire	19/04/2009	Channel 4	Advertising	1
The Simpsons	07/04/2009	Channel 4	Generally Accepted Standards	1
The Simpsons	13/04/2009	Channel 4	Sex/Nudity	1
The Simpsons	01/04/2009	TV6	Substance Abuse	1
The Sorcerer's Apprentice	08/04/2009	BBC2	Crime (incite/encourage)	1
The Super 14 Show	28/03/2009	Sky Sports 2	Generally Accepted Standards	3
The Truth About Super Skinny Pregnancies	26/03/2009	ITV1	Inaccuracy/Misleading	1
The Truth about Eternal Youth	02/04/2009	ITV1	Dangerous Behaviour	1
The Undercover Princes	30/03/2009	BBC1	Generally Accepted Standards	1
The Unit	26/03/2009	Virgin 1	Violence	2
The Wire	03/04/2009	BBC2	Offensive Language	1
The Wright Stuff	03/04/2009	Five	Generally Accepted Standards	1
The Wright Stuff	25/03/2009	Five	Crime (incite/encourage)	1
This Morning	01/04/2009	ITV1	Generally Accepted Standards	3
This Morning	06/04/2009	ITV1	Generally Accepted Standards	17

This Morning	07/04/2009	ITV1	Commercial References	1
This Morning	26/03/2009	ITV1	Offensive Language	3
This Morning	01/04/2009	ITV1	Inaccuracy/Misleading	1
This Morning	26/03/2009	ITV1	Sex/Nudity	1
This Morning	26/03/2009	ITV1	Offensive Language	1
Tony Horne in the Morning	13/03/2009	Metro Radio	Offensive Language	3
Tony Horne in the Morning	10/03/2009	Metro Radio	Generally Accepted Standards	1
Top 50 Celebrity Meltdowns	19/04/2009	Sky Three	Offensive Language	1
Top Gear	29/03/2009	BBC2	Generally Accepted Standards	2
True Stories: An Independent Mind	09/12/2008	More4	Generally Accepted Standards	11
UTV Live	07/01/2009	UTV	Due Impartiality/Bias	1
Victoria Derbyshire	25/03/2009	BBC Radio 5 Live	Crime (incite/encourage)	1
Viewers of Life Class: Today's Nude	n/a	Channel 4	Sex/Nudity	1
WWE Raw	31/03/2009	Sky Sports 3	Violence	1
Wales Tonight	30/03/2009	ITV Wales	Religious Offence	1
Walk on the Wild Side	28/03/2009	BBC1	Animal Welfare	1
Wave 105	30/03/2009	Wave 105	Generally Accepted Standards	1
Weakest Link	27/03/2009	BBC1	Religious Offence	1
Weakest Link	08/04/2009	BBC1	Generally Accepted Standards	1
Weakest Link	25/03/2009	BBC1	Generally Accepted Standards	1
Weakest Link	19/02/2009	BBC1	Generally Accepted Standards	1
White Chicks	29/03/2009	Five	Offensive Language	1
White Chicks	29/03/2009	Five	Generally Accepted Standards	1
Wipeout	08/03/2009	Kanal 5 (Sweden)	Offensive Language	2
You Could Be Rich: Tonight	03/04/2009	ITV1	Dangerous Behaviour	1