Ofcom Broadcast Bulletin

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Introduction

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

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

a) Ofcom's Broadcasting Code ("the Code"), which, can be found at: http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/.

b) the Code on the Scheduling of Television Advertising ("COSTA") which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at: http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/.

c) certain sections of the BCAP Code: the UK Code of Broadcast Advertising, which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:

- the prohibition on 'political' advertising;
- sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
- 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising[2].

The BCAP Code is at: www.bcap.org.uk/The-Codes/BCAP-Code.aspx

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

Other codes and requirements may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at: http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/

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

[1] The relevant legislation is set out in detail in Annex 1 of the Code.

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

Offensive language in radio programming cases

Note to Broadcasters

Offensive language in radio programming

This issue of the Broadcast Bulletin contains a number of findings relating to the use of offensive language in radio programming. In view of our concerns about the material in these cases, especially those broadcast when children were particularly likely to have been listening, we will be requesting that a number of radio broadcasters across the industry who transmit such programming attend a meeting at Ofcom to discuss the compliance of such material.

In Breach

Rory's Reggae Roots

Brick FM, 23 February 2011, 15:00

Introduction

Brick FM is a community radio station providing a service for the people of St Boswells, Newton St Boswells and the surrounding area in the Scottish Borders. It has been on air since January 2008 and the output is presented by volunteers. The licence is held by Brick FM Ltd ("the Licensee"). One of Brick FM's key commitments is to establish links with local primary schools, who will be encouraged to visit the station and to make their own programmes. It also aims "to appeal to the different age demographics of the local community".

When monitoring the station's output on Wednesday, 23 February 2011, Ofcom identified various instances of offensive language. For example, after welcoming "ladies and gentlemen, boys and girls" a guest DJ proceeded to play songs that contained offensive language:

- at 15:07 a song ("More Punany[1]" by Dr Evil) containing two instances of the word "fuck" was broadcast; and

- at 15:24 a song ("Pass Out" by Tinie Tempah) containing five instances of the word "fucking" was broadcast.

Ofcom considered that the content raised issues that warranted investigation under the following Code rules:

Rule 1.14: "The most offensive language must not be broadcast … when children are particularly likely to be listening (in the case of radio)."

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

We therefore sought the Licensee's comments under these rules.

Response

Brick FM's response to Ofcom's request for comments incorrectly identified the instances of output at 15:07 and 15:24 as content from a "live feed" from a local school programme. After further communication from Ofcom, it acknowledged that they occurred within a segment of the programme *Rory's Reggae Roots* hosted by guest DJ Roundabout. Brick FM apologised for the error and said that it "did not hear the offending words when broadcast". It added that the show was no longer being broadcast.

Regarding the material itself, Brick FM said that a "punany" was a "sandwich sold locally and is made of Italian bread with cheese and tomato which is heated up" and therefore did not accept the song "More Punany" had sexual connotations. Brick FM also maintained that the word "fuck" is "a commonly used word in Scotland, as a

[1] "Punany" or "punani" is an urban slang word meaning "vagina".

description, when something goes wrong or if they get angry or upset" rather than a sexual act giving the phrases "f---cars or f---crazy" as examples. It argued that it had "the right to use the commonly spoken word which is not considered offensively locally" and claimed that Ofcom was "unfamiliar with our [its] local dialect".

The broadcaster said it had not received any complaints about the programme and that *Rory's Reggae Roots* "is not a children's programme and is more for adult listening in the afternoon", adding that children "are catered for in the morning or after five at night".

Decision

Under the Communications Act 2003, Ofcom has a duty to set such standards for broadcast content as appear to it best calculated to secure the standards objectives, including that that "persons under the age of eighteen are protected" and that "generally accepted standards" are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material.

Rule 1.14

Rule 1.14 of the Code states that "the most offensive language must not be broadcast... when children are particularly likely to be listening...".

Ofcom's research on offensive language[2] indicates that the word "fuck" and its derivatives are examples of the most offensive language. Ofcom noted seven instances of the most offensive language in the material it was monitoring. The Code states (see Rule 1.5) the phrase "when children are particularly likely to be listening" largely refers to the school run and breakfast time "but might include other times". Ofcom noted that the two songs in question were broadcast between 15:07 and 15:27 on a weekday and that they were introduced by the Guest DJ welcoming "ladies and gentlemen, boys and girls." Regardless of this programme's intended adult audience, we therefore concluded it was particularly likely that children were listening at this time, and there was a breach of Rule 1.14 as regards the expletives broadcast between 15:07 and 15:27.

Rule 2.3

Rule 2.3 of the Code requires that potentially offensive material must be justified by the context.

Ofcom considered first whether the repeated swearing in this afternoon programme was potentially offensive; and, if so, whether the offence was justified by the context. Context includes for example: the editorial content of the programme, the service on which it is broadcast, the time of broadcast and the likely size and composition of the potential audience and the likely expectation of the audience.

Irrespective of whether the word "fuck" is used in a sexual context or as an expression of anger, our research indicates the word and its derivatives are examples of the most offensive language. Ofcom therefore does not accept Brick FM's argument that the word is not considered offensive in Scotland. In Ofcom's view, the broadcast of this language clearly had the potential to offend.

[2] Audience attitudes towards offensive language on television and radio, August 2010 (http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf)

Ofcom noted the lyrics to the song "More Punany" contain the following:

"last night I had a crazy threesome"

"I like to see the girls in the sexy bikini ni ni
Want to take my chilli and push it between ni ni"

"I like pun-na-na-na-ni even if it's a virgin"

Ofcom rejected Brick FM's comments as to "punany referring to a local sandwich". The word was clearly used in this song as urban slang word meaning vagina, and it was used in a sexual context. While Ofcom's research (2005) on the word "punani" is unclear as to whether it is widely regarded as the most offensive language, this word does have the potential to offend.

Ofcom considered whether there were sufficient contextual factors to justify the broadcast of this language: in particular we took into account the editorial content of the programme and the likely size, composition and expectations of the audience. One of Brick FM's key commitments is to "appeal to the different age demographics of the local community" and Ofcom noted that the Guest DJ welcomed listeners to the programme by referring to "ladies and gentlemen, boys and girls." It was therefore likely that the audience for this midweek afternoon programme would be broad. They were not expecting to hear two songs containing seven examples of the most offensive expletive, together with repeated broadcast of the offensive word "punani", within a half hour segment of programming - especially if they came upon this content unawares. Further, no information was given to listeners in advance to warn them about this offensive content.

This context was not therefore, in Ofcom's view, sufficient to justify the potential offence caused, the broadcaster did not apply generally accepted standards and there was a breach of Rule 2.3 of the Code.

Ofcom was concerned that Brick FM was initially unable to identify its output that Ofcom had referred it to (even when supplied with specific transmission details); and that Brick FM did not detect on broadcast any of the seven instances of the most offensive language during the twenty minute afternoon period.

In Broadcast Bulletins 176[3] and 184[4], Ofcom recorded breaches of Brick FM's licence conditions regarding the retention of recordings, providing the service described in the station's key commitments and the provision of information to Ofcom to enable monitoring of the station. Ofcom therefore has serious concerns about Brick FM's approach to compliance and may consider regulatory action if further breaches occur.

Breaches of Rules 1.14 and 2.3

[3] Ofcom Broadcast Bulletin 176 - http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb176

[4] Ofcom Broadcast Bulletin 184 - http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb184/obb184.pdf

In Breach

Howard Taylor at Breakfast

Total Star – Wiltshire, 20 May 2011, 06:00

On 15 September 2011, this finding was removed from this issue of the Bulletin, until further notice. This is due to Ofcom receiving additional information relating to this case that was not available to it prior to the time of publication. Ofcom will re-publish its finding on this case in due course.

In Breach

School's Out

Bishop FM, 8 June 2011, 18:13

Introduction

Bishop FM is a community radio station serving south-west County Durham. Ofcom received a complaint from a listener who had been listening to this programme called *School's Out* with their 11-year old daughter. The complainant objected to the broadcaster playing a song containing several offensive words.

On assessing this programme, Ofcom noted that *School's Out* consisted of various songs being played, with different school children introducing and dedicating these songs to different people. A little before 18:15, we noted that two children announced that the track 'I Need a Doctor' by Eminem would be played. However, at this point a different Eminem track, 'No Love', was played instead. The following lyrics were broadcast:

"Throw dirt on me and grow a wildflower
But it's 'fuck the world', get a child out her
Yeah, my life a bitch, but you know nothing 'bout her
Been to hell and back, I can show you vouchers
I'm rolling Sweets, I'm smoking sour
Married to the game but she broke her vows
That's why my bars are full of broken bottles
And my night stands are full of open Bibles
I think about more than I forget
But I don't go around fire expecting not to sweat
And these niggers know I lay them down, make their bed
Bitches try to kick me while I'm down: I'll break your leg
Money outweighing problems on the triple beam
I'm sticking to the script, you niggers skipping scenes
Be good or be good at it
Fucking right I've got my gun, semi-Cartermatic
Yeah, put a dick in their mouth, so I guess it's 'fuck what they say'
I'm high as a bitch: up, up and away
Man, I come down in a couple of days
OK, you want me up in the cage, then I'll come out in beast mode
I got this world stuck in the safe, combination is the G-code".

At this point the broadcast was faded out by an adult presenter, who then continued with the programme.

Ofcom considered the material raised issues warranting investigation under the following Rules of the Code:

Rule 1.5: "Radio broadcasters must have particular regard to times when children are particularly likely to be listening"; and

Rule 1.14: "The most offensive language must not be broadcast…when children are particularly likely to be listening…".

Response

The broadcaster acknowledged that a song with "inappropriate lyrics" had been broadcast and added that, "We deeply regret this and offer our sincere apologies to the listener concerned". Bishop FM said that during this edition of *School's Out* volunteers at the station "were working with the children in the studio to plan their next link and unfortunately the song played out for over a minute before they realised the nature of its content". The broadcaster added that, "The song was stopped as soon as the volunteers in the studio were aware of its content, but no mention was made of it during the programme". In addition, a "full apology" was given by the station's Volunteer Director in the following week's edition of this programme, broadcast on 15 June 2011.

Bishop FM explained its compliance process for loading music tracks onto its music library. It said that in this case, "In contravention of station policy which specifies a presenter must seek assistance from the Studio Manager in obtaining the song, a presenter brought the song into the studio outside of these checks". The broadcaster said that following this incident: disciplinary action had been taken against the presenter in this case; and, all volunteers at the station had been reminded of the broadcaster's Code of Conduct and "Style and Presentation Guide".

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that "persons under the age of eighteen are protected".

Rule 1.14 of the Code states unequivocally that "the most offensive language must not be broadcast … when children are particularly likely to be listening …"

Ofcom research on offensive language[1] clearly notes that the word "fuck" and its derivatives are considered by audiences to be amongst the most offensive language. Such language is unacceptable when children are particularly likely to listening, whatever the audience profile of the station. In this case, Ofcom noted three instances of the word *"fuck*" or its derivatives were broadcast within a very short period.

Given the nature and title of this programme i.e. a music programme called *School's Out* in which children introduced the various musical tracks being played, we considered that this was clearly a programme aimed to a large extent at child listeners. Further, the song was broadcast soon after 18:00. For these reasons, Ofcom considered that children would have particularly been likely to be listening.

The broadcast of the most offensive words in this programme was therefore a clear breach of Rule 1.14.

Ofcom welcomes the action to improve compliance taken by the broadcaster, since it became aware of the broadcast of the offensive language in this case. However, we noted that, although the broadcaster became aware of the transmission of the offensive language while the song was playing and faded out the song, this was only after the song had been broadcast for some time and there was one instance of the

[1] Audience attitudes towards offensive language on television and radio, August 2010 (http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf).

most offensive language at the start of the song in the second line. Also the broadcaster waited one week before broadcasting an apology at the same time the following week. Ofcom expects licensees to monitor all output as broadcast and, if offensive language is broadcast, to apologise at the earliest opportunity, ideally by or at the end of the same programme.

We also noted that the song in question included a number of lyrics which touched on various adult-based themes. For example:

"I'm rolling Sweets, I'm smoking sour[2]";

"And these niggers know I lay them down, make their bed";

"I've got my gun, semi-Cartermatic";

"Yeah, put a dick in their mouth"; and

"*I'm high as a bitch".*

Ofcom recognises that there is a tradition of 'urban' artists, such as Eminem, referencing various adult themes in their songs, such as the taking of drugs and sexual activity. However, Rule 1.5 of the Code requires that radio broadcasters must have particular regard to times when children are particularly likely to be listening. Therefore, Ofcom considered that the broadcast of a song which included a range of clearly adult-oriented material and containing several instances of the most offensive language would not be appropriate for broadcast within a programme presented by children, and mainly aimed at a child audience. The programme was therefore also in breach of Rule 1.5 of the Code.

Breaches of Rules 1.5 and 1.14

[2] "Sour" is a slang term meaning a type of cannabis.

Resolved

Radio 1's Big Weekend

BBC Radio 1, 14 May 2011, 19:50

Introduction

On 14 and 15 May 2011, Radio 1 hosted a live music event in Carlisle called Radio 1's Big Weekend. BBC Radio broadcast segments of the event on Radio 1 across the weekend.

At approximately 19:50 on 14 May 2011, Radio 1 played the 30-minute live set of the Black Eyed Peas from the event. Five minutes and 40 seconds before the broadcast went live to the performance by the Black Eyed Peas, the on-air presenter broadcast the following warning:

> *"Now, as I said, Black Eyed Peas are going to be on in one song's time from now, and obviously it's a festival, and we are taking the set live as it's happening…and you know what they're like – Apl.de.Ap is filth, Taboo[1] isn't much better, so there might be some naughty language – so if you are offended maybe come back a bit later on. I just can't promise that's all."*

This was followed by one recorded track and some discussion between the on-air presenters, before the programme broadcast the Black Eyed Peas set live from the event at approximately 19:50.

Two minutes into the Black Eyed Peas' first song ('Let's get it started'), the following line could be clearly heard:

> *"What the fuck's going down".*

One minute and 50 seconds later during the Black Eyed Peas' second song ('Shut up'), the following line could be clearly heard:

> *"This song's for all the fucking crazy people".*

Twenty seconds later during the same song, the following line could be clearly heard:

> *"Have you ever had that moment when you just wanna go to the edge and just lose your motherfucking mind."*

Twenty seconds later the song was dipped and the presenter gave the following warning:

> *"You're listening to Black Eyed Peas live at Radio 1's Big Weekend in Carlisle. Obviously this is a live set from Black Eyed Peas and there may be some strong language – as there just was – so just to warn you."*

At the end of the song the on-air presenter gave the following apology:

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[1] Apl.de.Ap and Taboo are members of the Black Eyed Peas.

> *"This is live Black Eyed Peas from Radio 1's Big Weekend in Carlisle and we're sorry for the bad language that you just heard in that last track. The rest of this set may contain some more strong language – so if you are offended by that we do apologise, maybe come back later."*

At the end of the 30-minute live set by the Black Eyed Peas, the on-air presenter provided another apology:

> *"BBC Radio 1. And on the main stage that was the Black Eyed Peas. Sorry again if you were offended by that."*

Ofcom received a complaint from a listener who was "deeply upset to hear the offensive language broadcast over the national radio while [his] family which includes small children were listening."

Ofcom considered that this material raised issues under the Code and warranted investigation. We therefore asked the BBC for its comments as to how this content complied with the following Code Rules:

Rule 1.14: "The most offensive language must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio)."

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, but is not limited to, offensive language, ... Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."

Response

The BBC told us that it takes its responsibilities regarding the broadcast of content which may cause harm or offence extremely seriously.

The BBC explained that "strenuous efforts" were made ahead of the programme to ensure that all performers were aware that the event would be broadcast live and that they therefore should not swear.

The BBC told us that it took the following steps before the broadcast:

i) A risk assessment carried out before the event gave the Black Eyed Peas a medium risk rating. Such a rating is give to those with some history of swearing although not excessive, occasional swearing in lyrics and speaking segments. The risk assessment concluded that while the Black Eyed Peas' songs do contain some strong language, they are well used to self-editing, as their performance at the Super Bowl XLV on 6 February 2011[2] had demonstrated. The band has previously performed live at a number of other Radio 1 events, including "Switch Live", without incident or strong language, and there was no reason to expect that this occasion would be different.

[2] The Super Bowl is an annual American football event, which also includes live musical performances. At the Super Bowl XLV on 6 February 2011, The Black Eyed Peas performed live at half time and the performance was broadcast around the world.

The BBC stated that "the decision to broadcast the performance live, took into account likely audience expectations and the fact that the number of children listening to Radio 1 at this time on Saturday nights is usually very small. Radio 1 is aimed at a target audience of 15 to 29 year olds and its Saturday evening schedule usually caters for fans of black music, with programming designed to act as a showcase for its sister station BBC Radio 1Xtra. This particular slot (7-9) is normally occupied by Trevor Nelson and features a range of specialist RnB and black music tracks. Regular listeners are likely to be well aware of the Black Eyed Peas' songs, and that some of their songs do contain strong language."

The BBC explained that "given this background, and the planned transmission time of 7.30/8pm on a Saturday evening (a time when children were unlikely to be listening), a decision was taken to broadcast fully live with a presenter on standby."

ii) On Friday 29 April 2011, Radio 1's Music Executive sent an email to the Black Eyed Peas' representatives, which included the following line: "Also just to stress, that as we are taking the band's set live, it is imperative that the band don't swear during their set."

iii) At the event itself, signs were placed in the artists' dressing rooms to alert them that performances would be broadcast live.

iv) The Executive Producer for the main stage at the event reminded record company representatives that performers should not swear.

The BBC said that "clear warnings were broadcast to signpost to audiences that there was a possibility of bad language occurring. As required by the risk assessment for the programme, a number of general warnings were given in programmes across the day to alert audiences to the fact that Radio 1 would be broadcasting many of the performances live." The BBC then referred to the warning broadcast at about 19:45, just over five minutes before the performance started. The BBC explained that "the references to Apl.de.Ap and Taboo [in this warning] were tongue-in-cheek, fans of the band being aware that these two members of the band are rarely heard from." The BBC explained that it was not possible to position the warning immediately before handing over the Black Eyed Peas set because it was not clear exactly when that would be.

In response to the complaint, the BBC also referred to the two other warnings and two apologies referred to above.

The BBC noted that Radio 1's Big Weekend takes place annually. While noting that "audience data for this specific programme does not exist due to the limitations of the RAJAR monitoring system", the BBC did provide some audience information for the 19:00 to 21:00 slot on Saturdays. This slot is usually occupied by Trevor Nelson and has an average 623,000 listeners, 11% of whom are aged 10 to 14. The BBC stated that the total number of 10 to 14 year olds usually listening between 20:00 and 20:15 is 17,000, 6.9% of the programme's audience at that time.

The BBC said that it believes that "Radio 1's audience would have taken into account that this was a live broadcast from a music festival, and that there is a generally accepted understanding that strong language is more likely to be part of the overall atmosphere of such an event than would be the case for a standard studio-based

programme. The relative lack of feedback received by the BBC following the broadcast (one complaint was received) seems to support the assumption that the language, while regrettable, did not exceed the expectations of the majority of the audience."

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives, two of which are that "persons under the age of eighteen are protected" and "generally accepted standards" are applied.

Rule 1.14 of the Code states that "the most offensive language must not be broadcast... when children are particularly likely to be listening...". Rule 2.3 of the Code requires that potentially offensive material must be justified by the context,

Ofcom research on offensive language[3] concluded that the word "fuck" and its derivatives are considered by audiences to be amongst the most offensive language. In this case, Ofcom noted that one instance each of the words *"fuck"*, *"fucking"* and "*motherfucking*" were broadcast as part of a live music performance.

Rule 2.3
Ofcom first considered whether the BBC complied with Rule 2.3 by applying generally accepted standards. Since the offensive language in this case was clearly capable of causing offence, Ofcom assessed whether the broadcast of the three expletives was justified by the context. In judging context, Ofcom took into account factors such as the nature of the service and programme, the fact that it was a live broadcast, the time of broadcast, and audience expectations.

Ofcom acknowledged that there was editorial justification for broadcasting live sets from Radio 1's Big Weekend event. Ofcom took into account that the warnings made before and during the broadcast, the apology made during the broadcast, and the apology at the end of the broadcast would have gone some way in mitigating any offence caused to the audience. We noted the BBC's response that it was not possible to position the warning immediately before handing over the Black Eyed Peas set because it was not clear exactly when that would be.

BBC Radio 1 broadcast three warnings and two apologies at various points before, during and after the broadcast. Ofcom noted that the first warning was not made immediately after the first instance of strong language i.e. *"What the fuck's going down"* in the Black Eyed Peas first song. Instead, this particular warning was broadcast two minutes and 30 seconds after this first instance of strong language. This was followed in their second song by an instance of *"fucking"* and the use of *"motherfucking"*. The second warning was broadcast twenty seconds after this last instance of strong language. Ofcom noted that no apology was provided at this point, rather it was provided at the end of the second song, with a further apology broadcast at the end of the Black Eyed Peas' set.

Ofcom acknowledged that the BBC took various measures before the Black Eyed Peas' live performance at the event to try to prevent strong language from being broadcast. These included doing a risk assessment, and various communications to

[3] Audience attitudes towards offensive language on television and radio, August 2010 (http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf).

the band informing them that the performance would be broadcast live and therefore they must not use strong language. Ofcom noted in this case that the BBC's risk assessment concluded that the Black Eyed Peas were "medium risk" and as a result it was appropriate to broadcast fully live with a presenter on standby. We also noted that the BBC considered the various warnings to the band before and during the performance, and the broadcast of three warnings and two apologies at various points before, during and after the broadcast were sufficient compliance measures. Ofcom is concerned however that these various measures may not in fact have been sufficiently rigorous, in view of the fact that the BBC permitted three separate instances of the broadcast of the most offensive language to take place over a period of about two minutes.

Broadcasters must be alert to inappropriate offensive language in live broadcasts and, if a warning or apology is appropriate, provide it as soon as possible. In this case, we considered that the language was likely to exceed audience expectations and the broadcaster's apologies could have been more timely. However, given the measures taken by the broadcaster before the live performance to avoid the broadcast of strong language and the three warnings and two apologies provided at various points before, during and after the broadcast, Ofcom considered that on balance this issue under Rule 2.3 is resolved.

Rule 1.14

Ofcom also assessed this offensive language under Rule 1.14. This states that on radio the "most offensive language must not be broadcast…when children are particularly likely to be listening."

Ofcom noted the BBC's indicative audience figures for this programming slot on Radio 1, the target audience of the service (15-29 year olds), and the fact that this material was broadcast a little before 20:00 on a Saturday night. We considered that it was possible that a relatively high number of children may have been listening on this particular occasion, as this programme featured coverage of an annual music festival which had been heavily promoted on Radio 1. Many of the artists whose performances were broadcast on Radio 1 from the festival throughout, and earlier in, the day would have appealed to children. It is therefore likely, in Ofcom's view, that children would have continued to listen to coverage of the festival through into Saturday evening in relatively high numbers.

However, given the various compliance measures taken by the BBC before the broadcast to prevent the broadcast of the most offensive language, and warnings made during the broadcast, Ofcom considered that on balance this case is also resolved in respect of Rule 1.14 of the Code.

Conclusion and guidance

Ofcom recognises that it is important that broadcasters are able to exercise the editorial freedom to transmit to transmit material live that has an element of risk attached. There could be a disproportionate restriction on broadcasters' and viewers'/listeners' freedom of expression[4] if broadcasters were required, when transmitting live, only to interview individuals or broadcast material where there was perceived to be absolutely no risk of offensive language being used. However, when broadcasting live, a careful balance needs to be struck between a programme's editorial freedom to feature material where there is an acceptable risk it might potentially contain offensive content, and a requirement to take all appropriate

[4] As enshrined in Article 10 of the European Convention on Human Rights.

measures to ensure people under eighteen are protected and to apply generally accepted standards.

Broadcasters should note that as well as taking steps to avoid strong language during live performances, they must also be vigilant during the broadcast itself for any potential breaches of the Code and where necessary take timely action during the broadcast to prevent them.

Resolved

Resolved

BBC Introducing in Essex

BBC Radio Essex, 6 May 2011, 19:00

Introduction

BBC Introducing in Essex is a radio programme presented live that broadcasts songs by unsigned artists from the area. Ofcom received a complaint about the song 'Tigerface' by the band Baddies, which was broadcast during this programme. The complainant objected to the broadcast of the word "fucker" during the song.

On assessing this programme, Ofcom noted the song contained the lyrics *"Make this fucker feel alive"*. Ofcom considered this use of offensive language raised issues warranting investigation under Rule 2.3 of the Code, which states:

> "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context ... such material may include, but is not limited to, offensive language ... Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."

We therefore asked the BBC how the broadcast of the expletive complied with this rule.

Response

The BBC said it regrets the inclusion of offensive language in a song featured in this programme and "apologises unreservedly for any offence that may have been caused to listeners". The BBC explained that all items for *BBC Introducing in Essex* are previewed in advance of transmission, and on this occasion, the producer and presenter had concerns over the track and checked the song lyrics with the band. It said that the band informed the BBC that "the word in question was 'sucker' and on that basis [the producer and presenter] mistakenly believed that the track was fit for airplay."

The BBC stated that *BBC Introducing in Essex* is "a live radio programme showcasing new young musical talent from the region." It added that given that the featured artists are "by definition raw and untested" the audience would expect "the inclusion of a certain amount of challenging material." The BBC stated that it has taken steps to ensure this oversight is not repeated. It explained that in future "the production team will refer all questionable musical items to a member of the local management team before transmission."

Decision

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

Rule 2.3 therefore requires that, "in applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context" (Rule 2.3 of the Code). Context includes, for example: the degree of offence likely to be caused, the editorial content of the programme and the likely expectation of the audience.

Ofcom first considered whether the use of offensive language was potentially offensive. Ofcom's research on offensive language[1] indicates that the word "fuck" and its derivatives are examples of the most offensive language. Therefore the use of the word *"fucker"* in the song clearly had the potential to cause offence.

Ofcom also noted that this programme was broadcast at 19:00, at a time when few children would have listened to this station. Ofcom therefore considered that children were not particularly likely to have been listening to the broadcast, and therefore we did not consider this content under Rule 1.14 of the Code, which states that "the most offensive language must not be broadcast… when children are particularly likely to be listening …".

Ofcom went on to assess whether the potential offence was justified by the context. As regard the editorial content of the programme and the likely expectations of the audience, Ofcom noted the BBC's explanation that *BBC Introducing in Essex* is a live programme that includes new young musical talent from the region. As such audiences would expect a certain amount of challenging material. However, while only one instance of the most offensive language was broadcast, this particular word was clearly audible. Ofcom's research confirms that audiences regard this language as among the most offensive. Its broadcast in this programme had the potential to cause offence. We considered that the use of this language was likely to have gone beyond the expectations of the audience for a programme of this type broadcast in the early evening on a BBC local radio station, especially for those in the audience who came across this material unawares. This was confirmed by the efforts of the producer and presenter of the programme to confirm with the band in advance whether in fact the lyrics did contain an example of the most offensive language. Further, no information was given to listeners in advance to warn them about this content to minimise any potential offence.

Ofcom however notes the BBC's apology, that this broadcast of the most offensive language in this song was an oversight, and the steps taken to improve compliance procedures at the station following this incident. Given these points made by the broadcaster, and the measures taken to prevent any further breaches of the Code, we consider the matter resolved.

Resolved

[1] Audience attitudes towards offensive language on television and radio, August 2010 (http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf).

Resolved

James Barr

Capital Radio East Midlands (Leicester), 14 May 2011, 19:28

Introduction

Capital Radio East Midlands (Leicester) is a local commercial music radio service broadcasting to Leicester and the surrounding area. The licence holder for this service is Global Radio UK Ltd ("Global"). Ofcom received a complaint about the song 'Do it Like a Dude' by Jessie J, which was broadcast during this programme. The complainant objected to broadcast of the words *"fucker"* and *"motherfucker"* during this song.

On assessing this programme, Ofcom noted that the first verse of the song, as broadcast, was as follows:

> *"Stomp stomp I've arrived*
> *Drop the beat, nasty face*
> *Why ya lookin' at me?*
> *Flyin' flyin' flyin' flyin' through the sky*
> *In my spaceship I'm an alien tonight*
> *Dirty dirty dirty dirty dirty sucka*
> *You think I can't get hurt like you, you motherfucker".*

However, Ofcom could not identify any further offensive language in the version of the song as broadcast, subsequent to the first verse.

Ofcom considered the material raised issues warranting investigation under Rule 2.3 of the Code, which states that:

> "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the content…Such material may include, but is not limited to, offensive language…"

We therefore asked Global for its comments under the Code.

Response

Global said that there are two versions of this song: a 'radio edit' version; and the original version, which contains two instances of the word "*motherfucker".* The broadcaster added that the Capital Radio stations usually broadcast the 'radio edit' version of this track. However, on this occasion, there was a "presenter error" and the original version of song was played. Global said that "the presenter identified his error once the first 30 seconds of the track had aired, and immediately edited the track" whilst it was playing to avoid the second instance of the word *"motherfucker"* being broadcast. The broadcaster added that "The presenter's priority was to edit the mix so that the error did not occur again; by the time this had…happened, the opportunity to apologise live on air had passed in his view".

As a result of this incident, Global said that: "internal disciplinary action" had been taken; and reminded all presenters of "their responsibility to know their content and maintain the standards to which we hold them".

In conclusion, the broadcaster maintained that the harm caused by this "unfortunate incident" was limited in this case due to, in Global's opinion, the fact that the single instance of offensive language in this case was "audible when you're listening specifically for it". The broadcaster added that the fact that only one complaint was received "reinforces our belief that most listeners would not have actively heard the offensive term".

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives, two of which are that "persons under the age of eighteen are protected" and "generally accepted standards" are applied.

Rule 1.14 of the Code states that "the most offensive language must not be broadcast... when children are particularly likely to be listening...". Rule 2.3 of the Code requires that potentially offensive material must be justified by the context,

Ofcom research on offensive language[1] clearly notes that the word "fuck" and its derivatives are considered by audiences to be amongst the most offensive language. Such language is unacceptable when children are particularly likely to listening, whatever the audience profile of the station. In this case, Ofcom noted one instance of the word "*motherfucker*" was broadcast.

Ofcom also noted that this programme was broadcast at 19:28, when historically, few children listened to this station. Ofcom therefore considered that children were not particularly likely to have been listening to the broadcast, and therefore we did not consider this content under Rule 1.14 of the Code, which states that "the most offensive language must not be broadcast… when children are particularly likely to be listening …"

However, we did consider whether the offensive language in this broadcast was justified by the context. We took into account factors such as the likely composition of the audience; and the nature of the offensive content in this case.

In Ofcom's view, although only one instance of the most offensive language ("*motherfucker")* was broadcast, this particular word was clearly audible. We considered that the use of this language was likely to have gone beyond the expectations of the audience for a DJ-led programme of this type at this time, on a general 'Hits'-based music station such as this.

We had concerns that no apology was broadcast on air following the incident. Ofcom expects licensees to monitor all output as broadcast and, if offensive language is broadcast, to apologise at the earliest opportunity, ideally by or at the end of the same programme.

However, we noted the fact that following the broadcast of the offensive word that appeared in the first verse of this particular song, the broadcaster edited the song live to ensure that the second instance of the word "*motherfucker"* was not audible to listeners. In addition, we noted that the broadcaster also faded the word *"dick"* in the following line:

[1] Audience attitudes towards offensive language on television and radio, August 2010 (http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf).

"My B.I.T.C.H.E.S. on my dick like this".

Given the above steps taken by the broadcaster in this instance to prevent any further breaches of the Code during a live programme, on balance, we considered the matter resolved.

Resolved

Other Standards cases

In Breach

Candy Bar Girls (Trailers)

Channel 5, 5, 18 to 29 June 2011, various times before 21:00*

Introduction

Thirty-four complainants alerted Ofcom to potentially offensive content in trailers for the programme *Candy Bar Girls* which were broadcast at various times before the 21:00 watershed on Channel 5 and 5*. Some complainants also considered the trailers were inappropriate for children when shown at this time.

Candy Bar Girls is a documentary series on Channel 5 that follows regular customers and staff from the Candy Bar, a well-known lesbian night club in London's West End.

Trailer One

In this trailer, music was played over various shots of the lips (including a close up of one woman pursing her lips suggestively), faces and upper bodies of two young women, who were sweating and appeared sexually aroused or engaged in sexual activity. These shots were interspersed with three separate full-screen neon-like signs, which read consecutively:

"Red"
"Hot"
"Lesbians".

The trailer ended by cutting to a wide shot of the two women exercising in a gym (one on a treadmill and one doing sit-ups). The voice over then said:

"Well, what were you expecting? Real lesbians, real lives, no clichés, Candy Bar Girls coming soon to Channel Five".

The woman doing sit-ups then said: *"I really need a shower,"* and the other woman squirted her with a water bottle.

Trailer Two

In this trailer music was played over a shot of a young woman who was sitting in a high-backed armchair facing away from camera so her face and body were largely hidden. A second young woman then walked in and knelt down in front of the seated woman, gave her a suggestive look and then leant forward so that her face disappeared from view but appeared to go into the crotch of the seated woman, giving the impression that she was performing oral sex on her. These images were interspersed with three separate full-screen neon-like signs, which said:

"Pussy"
"Loving"
"Ladies".

A voice over then said:

"Well, what were you expecting? Candy Bar Girls coming soon to Channel 5".

The kneeling woman then leant back and stated: *"Nice pussy".* The seated woman replied: *"Thanks, I just got it stuffed."* The seated woman then showed the other woman a stuffed toy on her lap in the shape of a cat.

Ofcom considered the broadcast of these trailers before the watershed raised issues warranting investigation under the following rules of the Code:

Rule 1.3: "Children must ... be protected by appropriate scheduling from material that is unsuitable for them."

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

Ofcom requested formal comments from Channel 5 (or "the Licensee") on how the trailers described above complied with these rules.

Response

The Licensee explained "both trailers were initially scheduled for transmission at any time, with the restriction [emphasis in original] that when scheduled pre-watershed, they could not be scheduled in or around programming aimed at children or programming which was anticipated to have an under 16 audience of more than 7% under 16s (i.e. they were rated "EX KIDS")".

According to Channel 5, the decision was made to schedule the two trailers with this restriction because:

- although both trailers contain suggestions of sexual behaviour neither is explicit and the double entendre in both would be unlikely to be understood by children;

- the double entendre is not revealed to viewers until the end of each trailer. This, Channel 5 said, is a common technique employed by advertisers and therefore one the audience would be familiar with; and

- both trailers contain humorous references to common perceptions of lesbians and seek to inform viewers that Channel 5's series, *Candy Bar Girls,* is a programme about lesbians but that it will not conform to the usual stereotypes: it is about real-life lesbians and the day to day issues they face.

When scheduling the trailers for this programme pre-watershed, the Licensee said it first considered the nature of the programme being advertised and then the contents of each trailer to ensure they were appropriate for the time scheduled. The trailers were then scheduled taking into account the nature of the content, the likely age range of children in the audience, the times at which Channel 5 was considering broadcasting the trailers, the nature of Channel 5 and 5*, and the likely expectations of the audience.

Rule 1.3

Trailer One

The Licensee was of the view that children were unlikely to come to the conclusion that the women in Trailer One were sexually aroused, particularly as there was no explicit portrayal of sexual behaviour; the shots were limited throughout; and the interspersed wording was simply descriptive. Additionally the Licensee considered children would be unlikely to understand the double entendre "which is no more than a comical, brief and cheeky reference to sexual behaviour, similar to the references to sex that one would see in a *Carry On* film (many of which are BBFC rated PG)."

Trailer Two

The Licensee explained Trailer Two does not contain any "explicit references to sexual behaviour" and considered children would not have understood the "subtle reference to sexual behaviour" or the references to 'Pussy Loving Ladies' or 'Nice Pussy'.

The Licensee added: "as above, the sexual references in Trailer Two were comical, brief and cheeky, similar to the frequent references Mrs Slocombe's 'pussy' on Are You Being Served?, a BBC programme which has been scheduled pre-watershed."

However, the Licensee stated that in light of the complaints received in respect of the trailers it decided to restrict the scheduling of Trailer Two to post-watershed slots only.

Rule 2.3

With regards to Rule 2.3, the Licensee stated: "Whilst we do of course apologise for any offence caused, we do not consider the Trailers to be offensive. As we have explained above, the sexual references contained in the Trailers were comical, clear double entendres, and appropriately limited to ensure they were suitable for the times they were scheduled."

The Licensee explained a significant proportion of the complaints it received were in relation to the subject matter of the Trailers (i.e. lesbians), and this subject was not in itself an inappropriate subject for pre watershed broadcast. The Licensee added: "We strongly disagree with the complaints we have received that lesbians are a topic that should be avoided pre-watershed. This attitude is bordering on homophobic and does not reflect modern day society...The Trailers should be considered in exactly the same way they would be if the programme had been about real life straight people and the Trailers had shown a man and a woman working out in a gym, or a man stroking a cat on a woman's lap."

Decision

Under the Communications Act 2003, Ofcom has a duty to set such standards for broadcast content as appear to it best calculated to secure the standards objectives, including that "persons under the age of eighteen are protected" and that "generally accepted standards" are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material.

In reaching its decisions, Ofcom must take into account the broadcaster's and audience's right to freedom of expression. This is set out in Article 10 of the

European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. Applied to broadcasting, Article 10 therefore protects the broadcaster's right to transmit material as well as the audience's right to receive it as long as the broadcaster ensures compliance with the Rules of the Code and the requirements of statutory and common law.

Rule 1.3

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them.

Ofcom noted that the first part of Trailer One consisted of various images of the faces, upper bodies and lips of two women who were engaged in some form of physical exertion and sweating. These shots were interspersed with three separate neon-like graphics which read consecutively *"Red"*, *"Hot"* and *"Lesbians"*. The neon-like style of these graphics is commonly associated with the adult entertainment industry. This combination in Ofcom's view clearly implied that the two women were sexually aroused or engaged in sexual activity. Ofcom noted that it was only at the end of the trailer that there was a wide shot of the two women working out separately in a gym. We noted the Licensee considered children would not have understood the implication of the first part of the trailer that the women were sexually aroused, however, we considered many older children would probably have understood the sexual inference of the trailer.

With regards to Trailer Two, Ofcom considered that the images of the two women in the first part of the trailer combined with the neon-like graphics (consecutively *"Pussy"*, *"Loving"*, and *"Ladies"*) clearly implied that one woman was performing oral sex on the other. The exchange between the two women at the end of the trailer when the stuffed cat toy was revealed (*"Nice pussy". "Thanks, I just got it stuffed"*) was based on viewers understanding this sexual implication. As with Trailer One, we considered that older children would have understood this implied message of the trailer.

Ofcom noted that Trailer Two contained two references to "pussy". Although by the end of the trailer this was revealed to be referring to a stuffed toy cat, it was clearly intended during the first part of the trailer to be understood by the audience as a reference to a woman's genitalia. Ofcom noted the intended humour behind the double entendre and the manner in which the term was used in this case. Ofcom research on offensive language[1] however clearly notes that the use of the word "pussy" in a sexual context is considered by audiences to be amongst the most offensive language, particularly before the watershed.

The Licensee argued that the material was suitable for children because of its double entendre humour: "comical, brief and cheeky…similar to the references to sex that one would see in a *Carry On* film…humorous to adults but entirely innocent as far as children are concerned." Ofcom disagrees. In its opinion the humour was clearly aimed at adults and would probably have been understood by older children; but the tone - because of the neon-like graphics commonly associated with the adult

[1] Audience attitudes towards offensive language on television and radio, August 2010 (http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf).

entertainment industry and the images used - was clearly more adult rather than "cheeky" and innocent.

Channel 5 suggested that some might be less concerned whether these trailers were suitable for children if they "had not been about a programme featuring lesbians but instead heterosexual people." All programmes – whatever their subject – can be trailed before the watershed provided the trailer complies with the Code.

In Ofcom's view both trailers contained material whose sexual tone and implied sexual content made them potentially unsuitable for children. Ofcom is clear that the unsuitability of these trailers for children was not based on their subject matter (a programme about a lesbian night club) but the manner in which that subject was treated.

Ofcom went on to consider whether these trailers were appropriately scheduled so as to protect child viewers. Appropriate scheduling is judged according to various factors such as the nature of the content, the likely number and age range of children in the audience, and the likely expectations of the audience.

Ofcom noted that the content in issue was trailers for reality programmes about a lesbian night club scheduled for broadcast after the watershed. Viewers are not able to select the trailers that they see and no prior information is provided and therefore broadcasters must take particular care about their content and scheduling. In this case, the clear implication of the images combined with the neon-like graphics commonly associated with the adult entertainment industry was that the women shown were sexually aroused or engaged in sexual activity. The nature of this content (trailers, which contained images designed clearly to suggest sexual activity, for a post-watershed programme) required very careful scheduling if children were to be protected and the trailers were to be broadcast before 21:00. Ofcom notes that following complaints Channel 5 did in fact later confine Trailer Two to post-watershed broadcast.

We noted that the Licensee took measures to ensure the trailers were not scheduled in or around programming aimed at children or programming which was anticipated to have an audience of more than seven percent of viewers under 16. However, we considered that both trailers were likely to exceed audience expectations when shown before the watershed on services like Channel 5 and 5*. In Ofcom's view, many in the audience – and especially parents – would not have expected trailers with this sexual tone and implied sexual content to be shown around and in programmes broadcast pre-watershed – a period of time when there is always a likelihood that children, some unaccompanied, will be in the audience. We noted that in some instances the trailers were broadcast during the weekend pre-watershed, when there was likely to be a greater chance of children being in the audience. The fact that Trailer Two in particular was likely to exceed audience expectations was acknowledged by the Licensee when, following complaints, Channel 5 scheduled it to be broadcast only after 21:00.

Overall therefore Ofcom concluded that these trailers contained material that was unsuitable for child viewers, and children were not protected from it by appropriate scheduling. Both trailers when shown pre-watershed were therefore in breach of Rule 1.3.

Rule 2.3

Broadcasters are required to ensure that material which may cause offence is justified by context. Context takes into account factors such as the editorial content of the material, the time of broadcast, the degree of offence likely to be caused and audience expectations.

As mentioned above, all programmes – whatever their subject – can be trailed before the watershed provided the trailer complies with the Code. A reference to "lesbians" or broadcasting a trailer for a programme about lesbians before the 21:00 watershed would not simply by virtue of the subject matter be problematic under the Code. What concerned Ofcom here was the sexual tone and implied sexual content of these two trailers, which it considered was potentially offensive. Trailers presented in a similar way for programmes about a club for heterosexuals or a club for male homosexuals would have a similar potential to offend.

Ofcom went on to assess whether the potential offence was justified by the context.

With reference to the editorial content of the trailers Ofcom noted both trailers implied the women were sexually aroused or engaged in sexual activity. Trailer One suggested the women were sexually aroused and included several, suggestive close-up images of their faces and lips. Trailer Two included images of both women on screen at the same time, the implication being that one woman was performing oral sex on the other. The images of the women included one kneeling between the other's legs, then bending her head towards the other's crotch and a close up of the woman in the chair biting her lip suggestively. These images were interspersed with the neon-like graphics commonly associated with the adult entertainment industry: *"Pussy" "Loving" "Ladies"*.

As already pointed out, these were trailers, not scheduled programmes with editorial content of substance. Viewers are not able to select trailers to view, and no prior information about them is given to audiences. Therefore the audience cannot make an informed choice as to whether they watch them. Ofcom's published guidance[2] advises broadcasters to bear this in mind when scheduling trailers. In this case, the clear implication of the images combined with the neon-like graphics was that the women shown were sexually aroused or engaged in sexual activity. The nature of this content (trailers, which contained images designed clearly to suggest sexual activity, for a post-watershed programme) required careful treatment if the potentially offensive content in them was to be justified by the context.

These trailers were shown at a variety of times pre-watershed on two general entertainment channels, Channel 5 and 5* (although 5* is aimed more at a young adults). Both are likely to attract a fairly broad range of viewers, and we further noted that both trailers were shown in and around a variety of popular programmes on these channels such as the *England vs. Sri Lanka cricket test match*, *Emergency Bikers, Home and Away, Neighbours* and *Five News*. Ofcom noted the Licensee rescheduled Trailer Two for broadcast after the watershed following a number of complaints from viewers. However, before this change of policy, both trailers had been broadcast throughout the day between Saturday 18 June and Sunday 19 June and Trailer One continued to be broadcast pre-watershed until Wednesday 29 June 2011.

[2] http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section2.pdf

In Ofcom's opinion, the sexual tone and implied sexual content of both trailers were likely to cause offence to viewers when broadcast pre-watershed. Trailer Two in particular had the potential to cause a considerable degree of offence. This was mainly because at the start of this trailer the two women were shown together and there was clearly a deliberate intention to suggest to viewers that one woman was performing oral sex on the other. Also as pointed out above, Ofcom research on offensive language[3] clearly notes that the use of the word "pussy" in a sexual context is considered by audiences to be amongst the most offensive language, particularly before the watershed.

Regarding the level of offence, Ofcom noted the Licensee's arguments that the sexual references could partly be justified by them being "comical, brief and cheeky". Channel 5 referred to the popular pre-watershed comedy *Are you Being Served?,* which regularly included references to Mrs Slocombe's "pussy", as an example of how this kind of double entendre humour had been acceptable pre-watershed in the past. In Ofcom's view, given the limited contextual factors to justify the broadcast of this material in the form of trailers before the watershed, and their obvious sexual tone and content, we considered this to be a flawed comparison.

For these reasons Ofcom concluded that these two trailers – and in particular Trailer Two – would have exceeded the likely expectation of the audience watching these trailers when shown before the 21:00 watershed. The broadcaster therefore did not apply generally accepted standards and breached Rule 2.3.

Breaches of Rule 1.3 and Rule 2.3

[3] Audience attitudes towards offensive language on television and radio, August 2010 (http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf).

In Breach

Station Ident

Ujima Radio 98 FM Bristol, 29 June 2011, 17:00

Introduction

A complainant alerted Ofcom to the use of discriminatory language in a station ident on this service.

Ujima Radio CIC ("the Licensee") holds a community radio licence and broadcasts a range of programmes designed specifically to meet the needs of the African-Caribbean and other black and minority ethnic communities in the St Paul's and Easton areas of Bristol.

Between 17:00 and 18:00 on 29 June 2011, as part of its early evening 'drive time' programme, the Licensee broadcast a station ident. The male presenter first said:

> *"Hey, my friend, let me tell you something, when I'm not at Ujima radio 98 FM, you certainly won't find me at a-"*

He then immediately played a very brief clip from a track called 'Gay Bar' by the group Electric Six released in 2003. The clip only contained the clearly audible words: *"gay bar, gay bar, gay bar".*

The presenter then said: *"Oh no, no, no, no, no".*

Ofcom considered the material raised issues warranting investigation under Rule 2.3 of the Code, which states:

> "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). Such material may include, but is not limited to, ... discriminatory treatment or language (for example on the grounds of ... sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."
>
> Context includes (but is not limited to):
>
> - The editorial content of the programme, programme or series;
> - the service on which the material is broadcast;
> - the time of broadcast; the likely size and composition of the potential audience and likely expectation of the audience; and
> - the effect of the material on viewers or listeners who may come across it unawares.

Ofcom requested formal comments from the Licensee on how the programme material complied with Rule 2.3.

Response

The Licensee explained that "the material ... was inappropriate and could have caused offence to listeners. [We] take complaints very seriously and apologise for

any offence caused by the broadcasting of this material". The Licensee explained that the presenter concerned had been suspended from his show until further notice and had been asked to complete further training on in-house policies regarding "Radio Law and Ethics". It added that it hoped "you can accept our sincere apologies and understand that for Ujima this is a very serious matter and will be dealt with accordingly".

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives. One of these objectives requires the application of standards that "provide adequate protection for members of the public from…offensive and harmful material".

Rule 2.3 states that material which may cause offence is justified by the context. The Rule specifically refers to "discriminatory treatment or language (for example on the grounds of… sexual orientation)."

In Ofcom's view the ident made clear that: the male presenter wished listeners to know that, when not working on Ujima radio, he would never wish to visit a gay bar; this was his emphatic view ("*Oh no, no, no, no, no"*); and, in Ofcom's opinion, to some extent his dislike of gay bars was a reason to listen to Ujima Radio and his programme (presumably because listeners would share or approve of his dislike). In the station ident, therefore, the presenter referred to bars regularly frequented by gay people in a pejorative way, and in Ofcom's view this was potentially offensive.

Ofcom went on to consider whether the material was justified by the context. As regards editorial content, Ofcom noted that this was a station ident included as part of an evening 'drive time' programme described on the station's website as: "Classic tracks, chat, travel updates, news, local events guaranteed to make you laugh and relax after a hard day." The comments were not therefore made in the context, for example, of a debate, discussion or documentary presenting a range of views about varying attitudes to sexual orientation and the reasons for these attitudes, and could not be justified in these circumstances on the basis of freedom of expression. Also, these views presented as part of a station ident were likely in Ofcom's view to cause a considerable degree of offence to listeners because they were gratuitous and their intent appeared homophobic[1]. They would not have been in keeping with the likely expectations of the audience for a programme of this nature and broadcast at this time – especially the expectation of listeners who came across this station ident unawares. The content was therefore not justified by the context and so Rule 2.3 was breached in this case.

In its comments the Licensee accepted that this was a "very serious matter", apologised to listeners, and drew Ofcom's attention to the disciplinary action taken against the presenter concerned and that the Licensee required him to complete further training. Ofcom however noted that previously in June 2009[2] the Licensee broadcast material hostile and pejorative towards the gay community and as a result Ofcom recorded a breach of Rule 2.3.

[1] See Ofcom's research, "Audience attitudes towards offensive language" (2010), for how the intent with which words are used influences their offensiveness eg pp15-16. (http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf)

[2] http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb135/Issue135.pdf

Ofcom takes the issue of discriminatory language or treatment on the basis of sexual orientation very seriously and notes this is the second breach of the Code regarding a similar issue for Ujima Radio. Ofcom expects the Licensee to review its compliance arrangements thoroughly as a result of this breach of the Code to ensure there are no further contraventions of a similar nature. We are putting the Licensee on notice that we will not hesitate to consider further regulatory action should similar breaches be recorded.

Breach of Rule 2.3

In Breach

Sponsorship of Khatron Ke Khiladi 4

Colors, 11 June 2011

Sponsorship of Balika Vadhu

Colors, 15 June 2011, 20:00

Introduction

Colors is a Hindi general entertainment channel broadcast on the Sky platform.

A complainant alerted Ofcom to the following sponsorship credits broadcast on the channel.

Sponsorship of *Khatron Ke Khiladi 4*

The programme *Khatron Ke Khiladi 4* had four sponsors. One of the sponsors was a company called Simple Call and the following sponsorship credit was broadcast around the programme:

Voiceover: *"Simple Call it's simple."*

On-screen text: *"Simple Call it's simple" and "www.simplecall.com or call us on* [phone number]*."*

Sponsorship of *Balika Vadhu*

The programme *Balika Vadhu* had three sponsors. One of the sponsors was a company called Southall Travel and the following sponsorship credit was broadcast around the programme:

Voiceover: *"Think Travel. Think Southall Travel."*

On-screen text: *"Worldwide flights and holidays. Southall Travel. Lines open 24 hours* [phone number]*. Think Travel, Think Southall Travel. www.southalltravel.co.uk."*

In addition, Ofcom noted that the credit included logos for the travel organisations ABTA and ATOL as well as The Sunday Times Top Track 250 logo.[1]

Another of the sponsors was called Claims Specialist and the following credit was broadcast around the programme:

Voiceover: *"Claims Specialist. Your first choice."*

On-screen text: *"YOUR FIRST CHOICE. CLAIMS SPECIALISTS. CALL NOW* [telephone number].

[1] Top Track 250 is the sister publication of Top Track 100, which identifies Britain's 100 private companies with the biggest sales. The league table ranks the 250 next biggest private companies, provided either sales or operating profits have increased in their latest available accounts (http://www.fasttrack.co.uk/fasttrack/leagues/top250supplement.html).

WWW.CLAIMSSPECIALISTS.CO.UK. FRANCHISES NOW AVAILABLE – CONTACT US FOR MORE INFO".

Ofcom considered the material raised issues warranting investigation under Rule 9.22(a) of the Code, which states:

> "Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor's products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement."

Response

Colors is owned and operated by Viacom18 Media Private Limited ("Viacom").

Viacom told Ofcom that on this occasion its compliance team in India had failed to check these credits with its UK compliance consultant.

Viacom said it is "genuinely embarrassed by this error" and that it has "taken this issue very seriously and [has] adopted appropriate corrective measures to ensure such an occurrence is not repeated.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with".

The EU Audiovisual Media Services (AVMS) Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is distinguishable from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, and that credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.

Sponsorship of *Khatron Ke Khiladi 4*

Ofcom considered that the line *"Simple Call it's simple"* which was included in the credit in voiceover and on-screen text was a claim about the ease of use of the sponsor's service and was therefore an advertising message.

In addition, the on-screen text *"call us on* [phone number]*"* directly invited the viewer to contact the sponsor and was therefore a clear call to action.

The advertising message and call to action included in this sponsorship credit caused it to breach Rule 9.22(a) of the Code.

Sponsorship of *Balika Vadhu* – Southall Travel sponsorship credit

Ofcom could find no editorial justification for the inclusion in the credit of the logos for the travel organisations ABTA and ATOL which are standard in advertising for companies within the travel industry. The inclusion of such logos is not subject to any mandatory requirement and, in Ofcom's view, served only to promote the impression of the sponsor being a reputable company. Similarly, Ofcom could find no editorial justification for the inclusion of The Sunday Times Top Track 250 logo which again served only to promote the impression of the sponsor being a reputable company.

Ofcom therefore also found the inclusion of the logos to be advertising messages in breach of Rule 9.22(a) of the Code.

Sponsorship of *Balika Vadhu* – Claims Specialist sponsorship credit

Ofcom considered that *"CALL NOW* [telephone number]*"* and *"FRANCHISES NOW AVAILABLE – CONTACT US FOR MORE INFO"* directly invited the viewer to contact the sponsor and were therefore clear calls to action. The sponsorship credit therefore breached Rule 9.22(a) of the Code.

Ofcom has published a number of findings in relation to sponsorship credits in recent years, and has made clear the need for broadcasters to exercise care to ensure that credits do not contain advertising messages. While Ofcom notes Viacom's apology for the breaches in this case, we are concerned about the circumstances in which these breaches occurred, and we do not expect a recurrence of similar compliance issues.

Breaches of Rule 9.22(a)

In Breach

The Rundown

ABS-CBN News Channel, 4 April 2011, 18:00

Introduction

ABS-CBN News Channel broadcasts news and lifestyle programming from the Philippines. The channel is broadcast on the Sky platform. During routine monitoring, Ofcom viewed *The Rundown* which is the channel's daily prime-time newscast.

Ofcom noted that two logos – for BLIMS Fine Furniture and Samsung – each appeared for a period of three seconds. The logo for BLIMS Fine Furniture also included the following text: *"defining lifestyles"* and the company's website address.

In response to enquiries from Ofcom, the broadcaster, ABS-CBN Europe Limited ("ABS-CBN") confirmed that, while ABS-CBN did not receive any consideration, the programme producer had received payment for the inclusion of the logos in the programme, i.e. the references had been product placed in the programme.

Ofcom therefore considered that the material raised issues warranting investigation under Rule 9.7 of the Code which states:

> "Programmes that fall into the permitted genres [films, series, sports and light entertainment programmes] must not contain product placement if they are:
>
> a) news programmes; or
> b) children's programmes".

We sought the broadcaster's comments under this rule.

Response

ABS-CBN said that the programme is a news programme made primarily for viewers other than the European/UK audience. It explained that the logos were inadvertently not removed from the programme before its broadcast in the UK. The broadcaster said it now takes steps to remove the logos from the programmes on its European feed.

ABS-CBN also told Ofcom that since being made aware of the content of these programmes it had taken the following steps to ensure compliance. It has:

- informed the relevant channel and programme producers of Ofcom's investigation, the relevant Code rules and the importance of ensuring compliance with these rules;
- set up a Steering Committee in which ABS-CBN and its "service provider for channel programming and programme sanitation" discuss proposed content which does not comply with the Code and devise ways to resolve these issues;
- employed a broadcasting consultant who conducted a seminar for ABS-CBN and its "service provider for channel programming and programme sanitation", and the relevant channel and programme producers. The consultant will also conduct a seminar in the Philippines which will be

attended by the company's service provider, programme and channel producers and members of the Steering Committee. The seminar will cover the Code rules and discuss various measures and techniques to ensure that the programmes which will be broadcast are compliant;

- installed equipment which assists programmers in securing a "clean feed" (i.e. free from on-screen product logos); and
- ensured that "the service provider for channel programming and channel sanitation" shall designate an account officer for the with ABS-CBN with the primary duties of co-ordinating with ABS-CBN, the Steering Committee, the service provider and channel and programme producers to ensure that they are well-informed and updated on the Code rules, and that issues with programming are raised and resolved prior to broadcast.

The broadcaster also requested a meeting with Ofcom to discuss the issues raised as a result of Ofcom's investigation into this programme and those programmes detailed on pages 40 to 53 of this Bulletin.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "the product placement requirements…are met in relation to programmes included in a television service (other than advertisements)".

Both the EU Audiovisual Media Services (AVMS) Directive and the Communications Act 2003 (as amended) prohibit product placement except in the permitted genres of films, series, sports and light entertainment programmes.

Rule 9.7 of the Code therefore prohibits product placement in news programmes. As stated in Ofcom's published guidance to this rule, "The prohibition on product placement in news covers all news programmes made for audiovisual media services (e.g. television channels and on-demand services) regardless of their country of origin".

In this case, the BLIMS Fine Furniture and Samsung logos were included in the news programme as a result of a product placement arrangement, in breach of Rule 9.7 of the Code.

Ofcom notes that there are a number of breaches recorded in this Bulletin in relation to programming broadcast on the ABS-CBN News Channel (see pages 40 to 53). Ofcom is extremely concerned at the apparent lack of compliance procedures which ABS-CBN had in place to ensure that the programmes it transmits complied with the Code. However, Ofcom welcomes the extensive steps which ABS-CBN has since taken to improve its compliance procedures and therefore does not expect a recurrence of such compliance failures.

Breach of Rule 9.7

In Breach

Balitang America

ABS-CBN News Channel, 4 April 2011, 19:00

Introduction

ABS-CBN News Channel broadcasts news and lifestyle programming from the Philippines. The channel is broadcast on the Sky platform. During routine monitoring, Ofcom viewed *Balitang America* which is the channel's 30-minute nightly news programme.

We noted that, during one news report about an unsolved double murder case, the studio presenter spoke to a reporter via a video link. A Skype logo appeared each time there was a full-screen shot of the reporter speaking. The logo appeared in the bottom right-hand corner of the screen for approximately 40 seconds.

The broadcaster confirmed that no payment or other valuable consideration had been received by the broadcaster, ABS-CBN Europe Limited ("ABS-CBN"), or the programme producer, or any person connected with either, for the inclusion of the Skype logo during *Balitang America*.

Ofcom therefore considered the material raised issues warranting investigation under Rule 9.5 of the Code which states:

> "No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:
>
> - the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
> - the manner in which a product, service or trade mark appears or is referred to in programming."

We sought the broadcaster's comments under this rule.

Response

ABS-CBN explained that the logo appeared embedded on the screen when the reporter was on air and was not intended as an advertising message. The broadcaster informed Ofcom that it now removes or obscures such embedded logos from its programmes.

ABS-CBN also told Ofcom that since being made aware of the content of these programmes it had taken the following steps to ensure compliance. It has:

- informed the relevant channel and programme producers of Ofcom's investigation, the relevant Code rules and the importance of ensuring compliance with these rules;
- set up a Steering Committee in which ABS-CBN and its "service provider for channel programming and programme sanitation" discuss proposed content which does not comply with the Code and devise ways to resolve these issues;

- employed a broadcasting consultant who conducted a seminar for ABS-CBN and its "service provider for channel programming and programme sanitation", and the relevant channel and programme producers. The consultant will also conduct a seminar in the Philippines which will be attended by the company's service provider, programme and channel producers and members of the Steering Committee. The seminar will cover the Code rules and discuss various measures and techniques to ensure that the programmes which will be broadcast are compliant;
- installed equipment which assists programmers in securing a "clean feed" (i.e. free from on-screen product logos); and
- ensured that "the service provider for channel programming and channel sanitation" shall designate an account officer for the with ABS-CBN with the primary duties of co-ordinating with ABS-CBN, the Steering Committee, the service provider and channel and programme producers to ensure that they are well-informed and updated on the Code rules, and that issues with programming are raised and resolved prior to broadcast.

The broadcaster acknowledged that it "may have failed to completely deal with all the issues raised" in a previous breach finding in relation to programmes on its channel.[1] However, it explained that it was now addressing these issues by increasing its efforts and applying additional resources to ensure compliance with the Code. The broadcaster also requested a meeting with Ofcom to discuss the issues raised as a result of Ofcom's investigation into this programme and those programmes detailed on pages 40 to 53 of this Bulletin.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with".

The EU Audiovisual Media Services (AVMS) Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is distinguishable from other parts of the programme service.

Rule 9.5 of the Code therefore requires that no undue prominence may be given in programming to a product, service or trade mark. This rule serves to ensure that programmes do not become vehicles for advertising.

In this case, Ofcom noted that the broadcaster stated it had not entered into a product placement arrangement to feature the Skype logo on screen. However, we considered that there was no editorial justification for the appearance of the logo during this report about an unsolved murder case. Ofcom therefore found the reference to be unduly prominent, in breach of Rule 9.5 of the Code.

On 13 September 2010, Ofcom found a breach of the Code for the inclusion of the Skype logo in *Balitang America* broadcast on 18 June 2010.[2] At the time, the

[1] See In Breach finding relating to *Balitang America* broadcast on 18 June 2010, published in Ofcom Broadcast Bulletin Issue 165:
http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb165/issue165.pdf

[2] See footnote 1.

broadcaster assured Ofcom that it was "actively seeking to ensure that it understood the requirements in the UK". It also explained that it was considering investment into specialist equipment which would allow it to distinguish between the feeds which it broadcasts in the UK and would enable it to filter out content which did not conform to Ofcom's rules. Alternatively, it stated that it was considering broadcasting alternative content in the UK where necessary.

Ofcom is therefore particularly concerned that an almost identical breach of the Code has occurred again within ten months.

Ofcom notes that there are a number of breaches recorded in this Bulletin in relation to programming broadcast on the ABS-CBN News Channel (see pages 40 to 53). Ofcom is extremely concerned at the apparent lack of compliance procedures which ABS-CBN had in place to ensure that the programmes it transmits complied with the Code. However, Ofcom welcomes the extensive steps which ABS-CBN has since taken to improve its compliance procedures and therefore does not expect a recurrence of such compliance failures.

Breach of Rule 9.5

In Breach

Cityscape

ABS-CBN News Channel, 4 April 2011, 19:30

Introduction

ABS-CBN News Channel broadcasts news and lifestyle programming from the Philippines. The channel is broadcast on the Sky platform. During routine monitoring, Ofcom viewed Cityscape, a lifestyle magazine show.

Segment regarding Alta Vista de Boracay Resort
We noted that in a 3 minute and 52 second segment, detailed information was provided about the Alta Vista de Boracay Resort in the Philippines, including information about the units at the resort which are available to purchase.

Segment regarding Human Nature/Love Minerals
In a later segment of the programme which lasted for approximately nine minutes, the presenter and the Marketing Director of Gawad Kalinga Community Development Foundation discussed products by a brand called Human Nature, and its new range of make-up called Love Minerals. Details of the product ingredients and prices were included, as well as where viewers could purchase the products.

In response to enquiries by Ofcom, the broadcaster, ABS-CBN Europe Limited ("ABS-CBN"), confirmed that, while ABS-CBN did not receive any consideration for airing the segments, the programme producer had received payment for the inclusion of the segments on the Alta Vista de Boracay Resort and the Human Nature/Love Minerals products, i.e. the references had been product placed in the programme.

We therefore considered that the material raised issues warranting investigation under the following Code rules:

Rule 9.8: "Product placement must not influence the content and scheduling of a programme in a way that affects the responsibility and editorial independence of the broadcaster."

Rule 9.9: "References to placed products, services and trade marks must not be promotional."

Rule 9.10: "References to placed products, services and trade marks must not be unduly prominent."

The Code requires that the inclusion of product placement in a programme is clearly signalled if the programme was produced or commissioned by the broadcaster or a person connected[1] with that provider. The broadcaster confirmed that the production company is an affiliate of ABS-CBN Europe Limited and is therefore a 'connected person'. Ofcom therefore also considered the material raised issues warranting investigation under the following Code rules:

Rule 9.14: "Product placement must be signalled clearly, by means of a universal neutral logo, as follows:

[1] The meaning of a "connected person" is set out in Section Nine of the Code.

a) at the beginning of the programme in which the placement appears;
b) when the programme recommences after commercial breaks; and
c) at the end of the programme."

Rule 9.3: "Surreptitious advertising is prohibited."

We sought the broadcaster's comments under these rules.

Response

ABS-CBN explained that "this type of advertiser-funded programming is common-place in the Philippines and acceptable in most parts of the World except the European Union. Unfortunately, we did not understand the implications of the unaltered feed from the channel producers being transmitted to our viewers in Europe. For this we apologise."

The broadcaster informed Ofcom that it had now removed similar paid segments on programmes broadcast in the UK.

ABS-CBN also told Ofcom that since being made aware of the content of these programmes it had taken the following steps to ensure compliance. It has:

- removed *Cityscape* and other similar lifestyle programming from the channel;
- informed the relevant channel and programme producers of Ofcom's investigation, the relevant Code rules and the importance of ensuring compliance with these rules;
- set up a Steering Committee in which ABS-CBN and its "service provider for channel programming and programme sanitation" discuss proposed content which does not comply with the Code and devise ways to resolve these issues;
- employed a broadcasting consultant who conducted a seminar for ABS-CBN and its "service provider for channel programming and programme sanitation", and the relevant channel and programme producers. The consultant will also conduct a seminar in the Philippines, which will be attended by the company's service provider, programme and channel producers and members of the Steering Committee. The seminar will cover the Code rules and discuss various measures and techniques to ensure that the programmes which will be broadcast are compliant;
- installed equipment which assists programmers in securing a "clean feed" (i.e. free from on-screen product logos); and
- ensured that "the service provider for channel programming and channel sanitation" shall designate an account officer for the with ABS-CBN with the primary duties of co-ordinating with ABS-CBN, the Steering Committee, the service provider and channel and programme producers to ensure that they are well-informed and updated on the Code rules, and that issues with programming are raised and resolved prior to broadcast.

The broadcaster also requested a meeting with Ofcom to discuss the issues raised as a result of Ofcom's investigation into this programme and those programmes detailed on pages 40 to 53 of this Bulletin.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "the product placement requirements…are met in relation to programmes included in a television service (other than advertisements)".

Both the EU Audiovisual Media Services (AVMS) Directive and the Communications Act 2003 (as amended) require that:

- product placement should not influence the content and scheduling of television programmes in such a way as to affect the responsibility and editorial independence of the broadcaster.
- programmes containing product placement shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;
- programmes containing product placement shall not give undue prominence to the products, services or trade marks concerned; and
- viewers are clearly informed of the existence of product placement in programmes; and surreptitious advertising is prohibited.

Rules 9.8, 9.9, 9.10, 9.14 and 9.3 of the Code reflect these requirements.

In this case, the broadcaster confirmed that, while ABS-CBN did not receive any consideration for airing the segments, the programme producer (a connected person) had received payment for the inclusion of the segments on the Alta Vista de Boracay Resort and the Human Nature/Love Minerals products, i.e. the references had been product placed in the programme.

Segment regarding Alta Vista de Boracay Resort

Ofcom noted that the references to the Alta Vista de Boracay Resort included a large number of images of the various parts of the resort and the following information provided about the units at the resort which are available to purchase:

Narrator:	*"Other amenities of Alta Vista de Boracay include a karaoke room, sports bar, a play area, a restaurant and a spa. A complete vacation package for those staying away from the busy life of the metro – even for just a little while. Alta Vista de Boracay is also the first and only condotel on the island. This means that you can acquire a unit in the resort, all amenities included of course!"*
Hotel's General Manager:	*"250* [units] *is operated by the hotel, 250* [units] *is unit available. Although out of 250 units in the hotel there are already a hundred who are enrolled, who are owner of the units already. We would like to offer the buyer of the unit on a better side of Boracay – quiet, in other words you can have all your time."*
Narrator:	*"With this, you can enjoy your stay in the better side of paradise, whenever you want."*
Hotel's General Manager:	*"There is a market for people who would like to have a residence in Boracay* [speech unclear] *guests of Boracay stay for two nights or three nights, or overnight, but there is still a part of the market who would like to own a house. If you have a Condominium that's available*

[speech unclear] *so even if they leave their unit here and go back home, they're comfortable that their units are safe."*

Narrator: *"So if you need to get away from the chaos of the city, breathe some fresh mountain air, walk barefoot on white sands then Alta Vista de Boracay is the perfect getaway for you."*
[www.altavistadeboracay.com.ph appears in on-screen text].

Ofcom considered that these references detailed a number of positive features of the resort, provided information to viewers on the availability of properties to buy within the resort, and gave contact details (the website address of the resort) to encourage viewers to contact the resort. Ofcom found that these references were clearly promotional, in breach of Rule 9.9 of the Code.

Further, Ofcom noted that 3 minutes and 52 seconds of this 30 minute programme were dedicated to this product placed item. Ofcom considered that the level of detail provided about the resort and the focus given to its positive attributes resulted in the item being of such a promotional nature that Ofcom also judged the references to the resort to be unduly prominent, in breach of Rule 9.10 of the Code.

Ofcom noted that the broadcaster had not sought to argue that there had been editorial justification for the inclusion of this item featuring the resort within the programme, rather that it had appeared in the programme solely as a result of a product placement arrangement. Ofcom therefore concluded that the product placement arrangement had influenced the content of this item in such a way as to impair the editorial independence of the broadcaster, in breach of Rule 9.8 of the Code.

Segment regarding Human Nature/Love Minerals

Ofcom noted that in this segment which lasted for approximately nine minutes, the presenter and the Marketing Director of Gawad Kalinga Community Development Foundation discussed Human Nature's products and in particular its new range of make-up called Love Minerals. Several of the products were set out on the table and the presenter and the guest interacted with the products. Below are some examples of the content included in the segment:

Guest: *"People would think that something that was 100% natural would be very, very expensive, but take a look at our lipstick, it's 100% natural, it does not contain carmine…"*

Presenter: *"Maybe we can talk about price range because we were saying that a lot of the non-chemical make-up in the market is very expensive. So let's start with maybe your foundation"*

Guest: *"Well our foundation, we're selling them a regular price is 425."*

Presenter: *"Very reasonable"*

Guest: *"It's very reasonable. It's very rare"*

Presenter: *"This is powder foundation right?"*

Guest: *"It's powder foundation. It's very rare to find a pressed powder format for a mineral make-up that is 100% natural. And we have it here and we have four shades…"*

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Presenter: *"Where exactly can we find this* [the products] *here? 'Cos a lot of times I know I get them as presents but I need to know where they're available"*

Guest: *"Well we have 16,000 dealers spread out all over the country. So if you cannot find a human nature dealer visit our website at www.humanheartnature.com [web address also appears in on-screen text] and there is an area there where you can find the contact details of dealers so you know who to go to…"*

*****

Presenter: *"I'm sure this will sell really well"*

Guest: *"Thank you very much"*

Presenter: *"So buy some of the products as well"*

Ofcom considered the references to the special ingredients of the products, details of where to purchase the products and prices and the presenters call to action to viewers to *"buy some of the products as well",* promoted the brand and the products. These references were clearly promotional, in breach of Rule 9.9 of the Code.

Further, Ofcom noted that approximately nine minutes of this 30 minute programme were dedicated to this product placed item. Ofcom considered that the level of detail provided about the brand and the specific products resulted in the segment being of such a promotional nature that Ofcom also judged the references to the products to be unduly prominent, in breach of Rule 9.10 of the Code.

Ofcom noted that the broadcaster had not sought to argue that there had been editorial justification for the inclusion of this item featuring the Love Minerals products within the programme, rather that it had appeared in the programme solely as a result of a product placement arrangement. Ofcom therefore concluded that the product placement arrangement had influenced the content of this item in such a way as to impair the editorial independence of the broadcaster, in breach of Rule 9.8 of the Code.

Signalling of the inclusion of product placement

In cases where a programme is produced or commissioned by the broadcaster or any person connected to the broadcaster, the inclusion of product placement must be signalled to the audience. Rule 9.14 requires that the product placement logo is broadcast at the beginning and end of such programmes and when returning to the programme after any commercial breaks.

In this case, the logo was not broadcast at any of the required points, so the audience was not made aware that the programme contained references to products which were included as a result of a commercial arrangement between the product provider and the programme producer. Ofcom therefore found the programme in breach of Rule 9.14 of the Code.

Further, because the audience was not made aware of the inclusion of product placement in the programme, Ofcom considered that the material amounted to surreptitious advertising of both the Alta Vista de Boracay Resort and Human Nature/Love Minerals. Ofcom therefore also found the programme in breach of Rule 9.3 of the Code.

Ofcom notes that there are a number of breaches recorded in this Bulletin in relation to programming broadcast on the ABS-CBN News Channel (see pages 40 to 53). Ofcom is extremely concerned at the apparent lack of compliance procedures which ABS-CBN had in place to ensure that the programmes it transmits complied with the Code. However, Ofcom welcomes the extensive steps which ABS-CBN has since taken to improve its compliance procedures and therefore does not expect a recurrence of such compliance failures.

Breaches of Rules 9.8, 9.9, 9.10, 9.14 and 9.3

In Breach

Umagang Kay Ganda

ABS-CBN News Channel, 4 April 2011, 22:00

Introduction

ABS-CBN News Channel broadcasts news and lifestyle programming from the Philippines. The channel is broadcast on the Sky platform. During routine monitoring, Ofcom viewed *Umagang Kay Ganda*, which according to the ABS-CBN website[1], is a programme which aims to "inspire its viewers by presenting information that they would want to listen to, with the main goal that the show's output will help its audience achieve their own personal goals."

Ofcom noted the following internal sponsorship credits for the 'Showbitz' and 'YouthTube' programme segments:

'Showbitz' segment sponsored by Silver Swan Chili Sauce
A sponsorship credit scrolled across the screen during the 'Showbitz' segment. The text stated: *"This portion* [of the programme] *is brought to you by Silver Swan Chili Sauce, the best in escabeche!"*

'Youth Tube' segment sponsored by Slenda
A sponsorship credit scrolled across the screen during the 'Youth Tube' segment. The text stated: *"This portion* [of the programme] *is brought to you by Slenda. Get that Slenda body, take Slenda. For more information on how to get a free copy of Slendance, text UKG Slenda Name, Add, Bday, Email and send to* [telephone number]*, or visit www.gonatural.com/ph".*

Ofcom considered that the material raised issues warranting investigation under Rule 9.22(b) of the Code which states:

> "Sponsorship credits ... must consist of a brief, neutral visual or verbal statement identifying the sponsorship arrangement. This can be accompanied by only a graphic of the name, logo, or any other distinctive symbol of the sponsor. The content of the graphic must be static and must contain no advertising messages, calls to action or any other information about the sponsor, its products, services or trade marks."

We sought the broadcaster's comments under this rule.

Response

ABS-CBN said that it accepted that the internal sponsorship credits were not compliant with the Code.

The broadcaster told Ofcom that it had now introduced an eight hour delay before *Umagang Kay Ganda* is aired in the UK. This will allow time for *Umagang Kay Ganda* to be edited to ensure that commercial references such as logos, non-compliant sponsorship credits and promotional items are removed.

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[1] http://www.abs-cbn.com/Weekdays/article/66/UKG/Umagang-Kay-Ganda.aspx

ABS-CBN also told Ofcom that since being made aware of the content of *Umagang Kay Ganda* it had taken the following steps to ensure compliance. It has

- removed *Umagang Kay Ganda* and other similar lifestyle programming from the channel as aired in Europe;
- informed the relevant channel and programme producers of Ofcom's investigation, the relevant Code rules and the importance of ensuring compliance with these rules;
- set up a Steering Committee in which ABS-CBN and its "service provider for channel programming and programme sanitation" discuss proposed content which does not comply with the Code and devise ways to resolve these issues;
- employed a broadcasting consultant who conducted a seminar for ABS-CBN and its "service provider for channel programming and programme sanitation", and the relevant channel and programme producers. The consultant will also conduct a seminar in the Philippines, which will be attended by the company's service provider, programme and channel producers and members of the Steering Committee. The seminar will cover the Code rules and discuss various measures and techniques to ensure that the programmes which will be broadcast are compliant;
- installed equipment which assists programmers in securing a "clean feed" (i.e. free from on-screen product logos); and
- ensured that "the service provider for channel programming and channel sanitation" shall designate an account officer for the with ABS-CBN with the primary duties of co-ordinating with ABS-CBN, the Steering Committee, the service provider and channel and programme producers to ensure that they are well-informed and updated on the Code rules, and that issues with programming are raised and resolved prior to broadcast.

The broadcaster acknowledged that it "may have failed to completely deal with all the issues raised" in a previous breach finding in relation to programmes on its channel.[2] However, it explained that it was now addressing these issues by increasing its efforts and applying additional resources to ensure compliance with the Code. The broadcaster also requested a meeting with Ofcom to discuss the issues raised as a result of Ofcom's investigation into this programme and those programmes detailed on pages 40 to 53 of this Bulletin.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with".

The EU Audiovisual Media Services (AVMS) Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is distinguishable from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming

[2] See In Breach finding relating to *Balitang America* broadcast on 18 June 2010, published in Ofcom Broadcast Bulletin Issue 165:
http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb165/issue165.pdf

advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(b) of the Code therefore requires that sponsorship credits broadcast during sponsored programmes must not contain advertising messages or calls to action, or any other information about the sponsor, its products, services or trade marks.

In this case, the internal sponsorship credits for the '*Showbitz'* segment contained an advertising message, i.e. *"Silver Swan Chili Sauce, the best in escabeche!".* The internal sponsorship credit for the YouthTube segment contained calls to action i.e. "*Get that Slenda body, take Slenda. For more information on how to get a free copy of Slendance, text UKG Slenda Name, Add, Bday, Email and send to* [telephone number]*, or visit www.gonatural.com/ph".*

These internal sponsorship credits were therefore clearly in breach of Rule 9.22(b) of the Code.

On 13 September 2010, Ofcom found breaches of the Code for non-compliant sponsorship credits broadcast on the ABS-CBN News Channel on 18 June 2010.[3] At the time, the broadcaster assured Ofcom that it was "actively seeking to ensure that it understood the requirements in the UK". It also explained that it was considering investment into specialist equipment which would allow it to distinguish between the feeds which it broadcasts in the UK and would enable it to filter out content which did not conform to Ofcom's rules. Alternatively, it stated that it was considering broadcasting alternative content in the UK where necessary.

Ofcom is therefore particularly concerned that an identical breach of the Code has occurred again within ten months.

Ofcom notes that there are a number of breaches recorded in this Bulletin in relation to programming broadcast on the ABS-CBN News Channel (see pages 40 to 53). Ofcom is extremely concerned at the apparent lack of compliance procedures which ABS-CBN had in place to ensure that the programmes it transmits complied with the Code. However, Ofcom welcomes the extensive steps which ABS-CBN has since taken to improve its compliance procedures and therefore does not expect a recurrence of such compliance failures.

Breaches of Rule 9.22(b)

[3] See footnote 2.

Resolved

Duran Duran: Video Killed the Radio Star

Sky Arts 1, 25 June 2011, 09:45

Introduction

Sky Arts 1 is a channel specialising in cultural content, including music, literature and films. The licence for Sky Arts 1 is held by British Sky Broadcasting Ltd ("Sky" or "the Licensee").

Ofcom received a complaint from a viewer who had been watching this programme with her eight year old niece. The complainant alerted Ofcom to the issue of the broadcaster transmitting on a Saturday morning at 09:45 excerpts from a music video which included various shots of topless women and of nudity, which the complainant considered "provocative, sexualised…and unacceptable for transmission before the watershed".

This documentary discussed the making of a number of music videos by the pop band Duran Duran in the 1980s. Extended clips of each music video were shown and discussed, in interviews, by two members of the band and other people involved. We noted that one of the music videos discussed in the programme was originally made and released in 1981 and was for the song 'Girls on Film'. Clips of this music video included various instances of topless female performers in a variety of sexualised situations. For example, we noted: two topless performers mud-wrestling; two topless performers pillow fighting; and a female performer taking off a fur coat in a provocative manner to expose her breast to camera. We also noted a shot of a fully naked female performer, in side-profile, writhing in a chair, while using a hairdryer to blow air over her body. This was immediately followed by a close up of an ice cube being rubbed against a female nipple.

Ofcom considered the material raised issues warranting investigation under the following Rules of the Code:

Rule 1.3: "Children must also be protected by appropriate scheduling from material that is unsuitable for them"; and

Rule 1.21: "Nudity before the watershed must be justified by the context".

We therefore asked Sky for its comments on how this material complied with these rules.

Response

Sky said that the excerpts from the music video showing topless women and of nudity were compliant with Rules 1.3 and 1.21 because they were appropriately scheduled and justified by the context.

By way of background, Sky stated that *Video Killed the Radio Star* was an acquired series about the making of music videos with commentary given by those who made them. The programme Ofcom was investigating was from the second series, was first shown on Sky Arts 1 on 6 July 2010, and had been shown seven times since without any complaints to Sky from viewers.

Regarding Rule 1.3, the Licensee said its editorial compliance team carefully considered the programme before deciding to allow it to be scheduled for pre-watershed broadcast on Sky Arts 1. The main factors Sky referred to as making the scheduling appropriate were:

- Sky Arts 1 is not a channel that is intended to appeal to children. The Licensee pointed to audience research figures showing that on this and the seven previous occasions when this episode had been shown pre-watershed on Sky Arts 1 no children were recorded as watching;

- the programme was part of a series which did not have an inherent appeal to children because it primarily focussed on bands from the 1980s such as Spandau Ballet and A-ha as well as Duran Duran. As a result it would have appealed to viewers "whose formative years was during the 1980s";

- the programme discussed the content of each Duran Duran video and extracts were included to illustrate the discussion. They were not included "on a standalone or gratuitous basis";

- the content would not have exceeded viewers' expectations because the channel attracts an adult audience which expects "stronger, more provocative material", and as part of a series the programme had an established base of viewers; and

- it was "well-known" that controversy surrounded the 'Girls on Film' video; and viewers were informed on the Sky electronic programme guide that this video was to be discussed.

The Licensee also said that the material complied with Rule 1.21. This was because the nudity in the extracts from the music video was justified by the context. Some of the most important contextual factors according to the Licensee were:

- the 'Girls on Film' is well-known for its controversy and the discussion in the programme placed the video in its historical and cultural context;

- the video clips were not gratuitous, were "fleeting", and were used sparingly, and to inform the viewer rather than be provocative or arousing; and

- there were no explicit scenes of sexual activity.

Sky concluded by saying that having been notified of Ofcom's investigation into this material it would not show this programme again in any pre-watershed slot until this case was concluded, and subject to Ofcom's guidance would make appropriate edits.

Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that "persons under the age of eighteen are protected".

In performing its duties, Ofcom must have regard to the need for standards to be applied "in the manner that best guarantees an appropriate level of freedom of

expression"[1]. The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998, which sets out the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority.

In reaching a decision in this case, Ofcom acknowledged the paramount importance attached to freedom of expression in the broadcasting environment. In particular, broadcasters must be permitted to enjoy the creative freedom to explore controversial and challenging issues and ideas, and the public must be free to view and listen to those issues and ideas, without unnecessary interference. The Code sets out clear principles and rules which allow broadcasters freedom for creativity, and audiences freedom to exercise viewing and listening choices, while securing the wider requirements in the Act.

Ofcom has also had regard to: the fact that music videos are an artistic and creative medium, which can and do sometimes contain challenging content which some may find offensive; and, that this programme was a serious documentary discussing the making of a number of music videos by a particular band, Duran Duran. However, Ofcom does have a statutory duty with regard to all programmes to ensure that under eighteens are protected.

Rule 1.3

Ofcom had to consider first whether this broadcast material was unsuitable for children. We noted that the clips included various instances of topless female performers in a variety of sexualised situations, as described in the Introduction, including in particular a shot of a fully naked female performer, in side-profile, writhing in a chair, while using a hairdryer to blow air over her body, and a close up shot of an ice cube being rubbed against a female nipple. In Ofcom's view, the cumulative effect of the clips of 'Girls on Film' featured in the programme was to convey a highly sexualised theme.

We took into consideration that the clips of 'Girls on Film' were used to illustrate serious points being made about the making of that music video, by some of the people involved in the production of the music video, in a documentary. However, we considered that this contextual factor did not mitigate the fact that the clips of 'Girls on Film' included content of a highly sexualised nature.

We also considered the descriptions of the content of 'Girls on Film' made by interviewees in the programme. We noted that the interviewees acknowledged the strength of the images included in the music video. For example, one of the band members, Simon Le Bon, variously described the music video as *"dead sexy"* and *"a sexy video"*. One of the co-directors of the music video, Kevin Godley, described the music video as *"soft porny"*. This interviewee also described what he perceived to be the band's rationale for making the music video:

> *"You want a film that people are going to talk about, to spread the word. Sex always does that - still".*

Taking account of all these factors, it was Ofcom's view that the content of this particular music video was not suitable for children.

[1] See Section 3(4)(g) of the Act.

Ofcom therefore went on to consider whether this material was appropriately scheduled so as to provide adequate protection to children from viewing this unsuitable material.

In Ofcom's view, the images contained in the clips of 'Girls on Film' conveyed a highly sexualised theme for the reasons set out above. We also noted that Sky Arts 1 is not a channel that traditionally attracts a high child audience. However, given that this programme was broadcast on a Saturday morning at 09:45, we considered the material was shown at a time when there was a material chance of children being in the audience, some unaccompanied. We took account of the audience figures provided by Sky but noted that where – as here – the audience is quite small (often below 100,000) it is difficult to judge the number of children in the audience accurately.

Ofcom noted that the impact of the images was reduced to some extent by the fact they were not at the very start of the programme and they were at times shown as part of a split screen. Also we had regard to the facts that the controversial nature of the video was relatively well-known, that the likely expectation of the audience was to some extent affected by the subject of the series overall (music videos from the 1980s), and the nature and reputation of the channel as appealing to adults.

Although the extracts from the video were used to illustrate the documentary, in Ofcom's opinion overall they were too extensive. Further, some of the shots were too sexualised (in particular the shot of a fully naked female performer, in side-profile, writhing in a chair, while using a hairdryer to blow air over her body, and the close up shot of an ice cube being rubbed against a female nipple). Therefore, Ofcom considered that, on balance, the material was not appropriately scheduled at 09:45 on a Saturday morning.

Rule 1.21

We noted that this programme included various instances of topless female performers engaging in various activities in a highly sexualised manner, as described above. We considered that there was some context provided by the fact that the images in question were broadcast to illustrate a serious music documentary shown on an arts channel aimed at an adult audience; and that the strength of the images was reduced by their being interspersed in split-screen style with interview clips. However, we cannot agree with Sky that the images were "fleeting".

Overall, on balance, Ofcom concluded that the context was insufficient to justify the broadcast of nude images in a sexualised setting, at 09:45 on a Saturday when there was a material chance of children being in the audience, some unaccompanied.

We noted however that, having been notified of Ofcom's investigation into this material, Sky immediately decided not to show this programme again in any pre-watershed slot until this case was concluded, and subject to Ofcom's guidance would make appropriate edits to the material. In view of these points, Ofcom considers this matter resolved.

Resolved

Resolved

Accidentally on Purpose

Channel 4, 30 May to 3 June 2011, 09:25

Introduction

Accidently on Purpose is an American sitcom about a woman who finds herself "accidentally" pregnant by a younger man.

A complainant alerted Ofcom to the broadcast of this series at a time when children were likely to be viewing (during the mornings of the week 30 May to 3 June 2011, a week when many schools were on holiday).

The programme that was the subject of the complaint included: a scene in which the main characters visited a gynaecologist and had a discussion about vaginas, dialogue in which a character refers to his ability to get an erection, and a discussion about a female character's breasts. Ofcom viewed other episodes broadcast between 30 May and 3 June 2011 and noted that these also contained sexual references and, in one episode, an implicit reference to drug use.

Ofcom considered the material raised issues warranting investigation under Rule 1.3 of the Code, which states:

> "Children must also be protected by appropriate scheduling from material that is unsuitable for them."

We therefore asked Channel 4 for its comments as to how this content complied with this Code Rule.

Response

Channel 4 assured Ofcom that it takes its obligations in respect of child welfare very seriously. It said that careful consideration is given to scheduling appropriate programmes at times when children are expected to be viewing so as to minimise any potential to offend and to protect children from unsuitable content.

Channel 4 explained that the series was originally scheduled at 22:00 on E4. It was then repeated at 16:00 on E4. For the purpose of the 16:00 repeat, Channel 4 made edits to the original version so that it was suitable for the earlier timeslot. The edited version of the series was subsequently scheduled at 09:25 on Channel 4.

Channel 4 said that it had reviewed the programme and was of the view that the individual segments complained of were, in isolation, appropriately scheduled and justified editorially. Any references in the programme to relationships, sex, sexuality or anatomy were discreet, inexplicit, ambiguous and vague and therefore unlikely to be understood by children. Nonetheless Channel 4 accepted that the overall tone of the programme was not suitable for scheduling at times when it is reasonably expected that children may be viewing. Given that children were on school holidays at the time of transmission, Channel 4 accepted that the scheduling was inappropriate in the circumstances.

Channel 4 considered that ordinarily the decision to schedule the programme and series at 09:25 would seem appropriate as children would not reasonably be expected to be viewing at this time. Channel 4 went on to say that it had a long history of broadcasting US sitcoms targeted at an older audience in this timeslot. However, Channel 4 said that it was a regrettable oversight that the scheduling of this series coincided with school half term break.

Channel 4 said that going forward it will ensure that the series as broadcast in the 09:25 timeslot is broadcast only when children are not likely to be watching, taking into consideration the different composition of viewers during school term break. It had also arranged refresher internal compliance training in respect of the issues raised by the complaint.

Decision

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

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them.

Having viewed the episodes of this series broadcast between 30 May and 3 June 2011 at 09:25 on Channel 4, Ofcom noted that they included a number of sexual references and, in one episode, an implicit reference to drug use. Ofcom considered that, although a number of the sexual references may not have been easily understood by children, these episodes did contain material whose overall tone was inappropriate if it was reasonably likely that children would be in the audience in fairly high numbers. We considered therefore that these programmes were potentially unsuitable for children.

Ofcom went on to consider whether these programmes were appropriately scheduled so as to protect child viewers. We noted first that these episodes were broadcast in the morning during a week when many schools were on holiday and therefore it was likely that there would be a materially higher number of children in the audience.

Channel 4 however: has accepted that it was a "regrettable oversight" to schedule this series during a school half term break; in future will only broadcast this series when children are not likely to be watching; and, has organised additional internal compliance training in response to Ofcom's concerns. We therefore consider this matter resolved.

Resolved

Resolved

America's Next Top Model

Sky Living HD, 9 April 2011, 10:00

Introduction

America's Next Top Model is an American reality series in which contestants compete in various tasks and photo shoots to win a modelling contract with an international modelling agency.

During this episode of the series, Miss Jay, the 'runway coach', advised contestants on how to perfect their catwalk on various surfaces, while also handling various accessories. In giving feedback to one contestant on how she performed this task, Miss Jay said:

> *"Michelle, you're walking like you have spina bifida on the right side of your body"*.

Miss Jay then walked in an exaggerated style as if to mimic the contestant's walk.

Ofcom received one complaint from a viewer who considered that the comment was offensive. The complainant said that this comment was "disgusting" and "a derogatory insult to those who live with the challenges of disability."

We considered this complaint raised issues under the following rule of the Code:

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,... discriminatory treatment or language (for example on the grounds of ... disability ...)."

We therefore wrote to British Sky Broadcasting Limited ("Sky"), which holds the licence for Sky Living HD, and asked how this material complied with Rule 2.3.

Response

Sky explained that *America's Next Top Model* is now in its fifteenth series on Sky Living HD. This particular episode, taken from the fourth series, was first transmitted on Living TV in 2005. Sky explained that the episode had been complied for broadcast at the time by the Living TV compliance team and had subsequently been repeated many times on Living TV and Sky Living.

Sky noted that *America's Next Top Model* is part of a well-established international series featuring a regular host and regular fashion experts. It added that Miss Jay has appeared in the series since its inception as both a judge and the 'runway coach'. Sky commented that "[o]ver the many series of this format, both the contestants and viewers have been accustomed to Miss Jay's often outlandish turn of phrase."

Sky stated that it "recognises the potential for offense [sic] that can be caused by such comments" and said that the team who complies the programme "has been made aware of the issue and the need for sensitivity has been reiterated." It added,

"[a]ccordingly, the offending comment has been removed from the programme for future transmissions."

Sky concluded by explaining that "it is never our intention to offend our audience and we sincerely regret that this occurred in this case."

Decisions

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives. One of these objectives requires the application of standards that "provide adequate protection for members of the public from…offensive and harmful material". Rule 2.3 of the Code requires that in applying generally accepted standards, broadcasters must ensure that material which may cause offence is justified by the context.

Ofcom considered first whether the material was potentially offensive; and, if so, whether the offence was justified by the context. Context includes for example: the editorial content of the programme, the likely expectation of the audience and the degree of harm or offence likely to be caused by the inclusion of any material.

The comments and actions of Miss Jay - criticising the catwalk style of one of the contestants and linking it with spina bifida - had the clear potential to be understood as ridiculing those with spina bifida, a serious physical disability. In Ofcom's view it therefore had the potential to offend.

We went on to consider the context of this material. In terms of the editorial content of the programme, Ofcom took into account that *America's Next Top Model* is a reality programme in which contestants compete to win a modelling contract with an international modelling agency. As part of the programme's format, the contestants are judged - sometimes harshly - by a panel of experts from the fashion industry (such as ex-models, photographers and magazine editors). We acknowledge that the comments made by the contestants and judges are not scripted and the programme aims to portray an accurate reflection of critical comments made by participants.

Concerning the likely expectation of the audience for this programme, Ofcom took into consideration that *America's Next Top Model* is a long-running, well established American reality series now in its fifteenth series. We noted Sky's explanation that Miss Jay, who has appeared in the series since its inception as a judge and runway coach, is well known for her "outlandish turn of phrase." We therefore considered that regular viewers of the series would have been well aware that Miss Jay's comments are at times frank, and may have the potential to cause offence. However, we considered that even regular viewers of the programme would not have expected a critical remark from Miss Jay with the potential to be understood as ridiculing people with a serious physical disability like spina bifida.

As regards the degree of harm or offence likely to be caused by the remark, Ofcom noted that the comment by Miss Jay was not aimed at a particular individual with a disability, nor was it used aggressively. However, it could be seen as ridiculing people in society with a particular disability. This impression was reinforced by Miss Jay imitating in a slightly exaggerated way the manner in which contestant had walked. The comments and actions of Miss Jay therefore had the potential to cause considerable offence, especially to those with disabilities.

Ofcom concluded that, on balance, there was insufficient context to justify the offence likely to be caused by the comments made by, and actions of, Miss Jay during the programme. The broadcast therefore breached generally accepted standards.

However, Ofcom notes Sky's sincere regret that this incident occurred and its immediate decision to remove the offensive comment from the programme for future transmissions. Ofcom also welcomes the action taken by Sky to remind its compliance team of the need for sensitive treatment of broadcast comments relating to disability. In light of these actions taken by Sky, Ofcom considers this matter resolved.

Resolved

Resolved

Fifth Gear

Channel 5, 8 April 2011, 19:30

Introduction

Fifth Gear is a weekly motoring magazine programme.

Each programme features a viewer competition with a multiple choice question. Entrants must submit their answer – a), b), or c) – via premium rate ("PRS") telephone calls or text messages. Calls are charged at £1.53 and text messages at £1.50, plus users' standard network rate in each case. There is also a free entry route by post.

In this episode, viewers were invited to enter the competition for a chance to win an Audi TT with £1000 worth of petrol and insurance. The competition question was as follows:.

> *"Which of the following was a famous World War Two bomber aircraft?"*

The three possible answer options were given as:

> *"a) Manchester*
> *b) Lancaster*
> *c) Doncaster".*

Ofcom received a complaint from a viewer who said that both a) and b) were correct answers and therefore the competition may have confused viewers or unfairly excluded a number of entrants who had answered correctly.

Ofcom considered the case raised issues warranting investigation under Rule 2.13 of the Code, which states:

Rule 2.13 "Broadcast competitions and voting must be conducted fairly"

We therefore sought formal comments from Channel 5 Broadcasting Limited ("Channel 5" or "the Licensee") under this rule.

Response

The Licensee said that this competition attracted in excess of 30,000 entries by telephone, text message and post.

It explained that "premium rate competitions are supplied either by internal teams at Channel 5 or the Production Company. They then go through two further checks to confirm their accuracy. All checkers are briefed to confirm not only the correct answer, but also to check the "wrong" answers." Although the broadcaster argued that the Manchester bomber was "probably not considered famous", it acknowledged that the question checking process on this occasion "was not sufficiently thorough".

The broadcaster said that in the three days following transmission of the programme, its Customer Services team was contacted by a number of viewers that had identified

that the competition had two correct answers, a) and b). Recognising that "viewers who were accustomed to our [its] competitions having only one correct answer might be confused by our [the] error", it "immediately considered how best to resolve the issue in a way that ensured the competition was conducted fairly and that no entrant was disadvantaged." Channel 5 therefore decided to accept all entries that submitted "a" or "b" as the answer. It added that this course of action was communicated to viewers who had contacted its Customer Services team about the issue.

Channel 5 stated that it took its responsibilities to viewers very seriously, particularly when inviting them to pay to enter its competitions and that "as a result, this incident was brought to the attention of all relevant personnel who were reminded of the importance of checking all details thoroughly in order mitigate this risk in the future."

Decision

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

These objectives are reflected in, among other rules, Rule 2.13, which requires that audience competitions must be conducted fairly.

In this case, Channel 5 broadcast a competition in which there were two possible correct answers. Although the Licensee sought to argue that the Manchester bomber was "probably not considered famous", we noted that it had accepted that both the Manchester and Lancaster bombers were potentially correct answers to the competition.

Ofcom was concerned that had viewers not alerted Channel 5 to the issue, entrants who submitted answer a) would have been excluded unfairly from the prize draw.

However, Ofcom acknowledged that the competition was not designed intentionally to confuse or mislead viewers and noted the Licensee's decision to include all entrants that answered either a) or b) in the draw so that all correct entrants stood a chance of winning. We also noted the reminder issued to relevant staff regarding the importance of thoroughly checking all details of broadcast competitions.

Given the broadcaster's remedial action to ensure this competition was conducted fairly, we consider the matter resolved. However, we do not expect a recurrence of a similar compliance issue involving basic elements of a premium rate viewer competition such as question checking.

Resolved

Advertising Scheduling cases

In Breach

Advertising minutage

Channel 5, 5 August 2011, 23:00

Introduction

Rule 4 of the Code on the Scheduling of Television Advertising ("COSTA") states:

> "time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes."

Channel 5 Broadcasting Ltd. ("Channel 5" or "the Licensee") informed Ofcom that on 5 August 2011 it had broadcast three minutes and eight seconds more advertising in one clock hour than permitted under COSTA.

Ofcom considered the case raised issues warranting investigation under Rule 4 of COSTA and therefore sought formal comments about this matter from Channel 5 under this rule.

Response

Channel 5 explained that this incident had occurred when a recently installed broadcast suite at its playout company failed to play a ten minute programme towards the end of the 23:00 clock hour, resulting in a transmission failure. The transmission controller tried to recover transmission and in doing so accidently played the next commercial break (scheduled for the 24:00 clock hour). This commercial break was therefore aired within the 23:00 clock hour and resulted in that hour's advertising totalling 15 minutes and eight seconds.

Channel 5 said that its playout company had apologised for the error and was reviewing its breakdown procedure. Channel 5 assured us that it would be running COSTA training for the playout company staff as well as its own. The Licensee also pointed out that as a result of the error, the 24:00 clock hour contained no advertising, as the commercial break played at the end of the 23:00 hour was the only one scheduled for the following hour. Consequently, it had not exceeded its daily average[1] advertising minutage limit.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content which it considers best calculated to secure a number of standards objectives. One of these objectives is that "the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with".

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[1] COSTA Rule 4(a)(i) also imposes limits on the amount of advertising that public service channels can broadcast over the entire day, stipulating that: "on public service channels, time devoted to television advertising and teleshopping spots must not exceed an average of 7 minutes per hour for every hour of transmission time across the broadcasting day".

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA.

In this case, Ofcom found that the amount of advertising broadcast on Channel 5 was in breach of Rule 4 of COSTA.

Ofcom acknowledged that Channel 5 had notified Ofcom of this issue, and had taken steps to improve compliance awareness at its playout company and among its own staff as a result of this incident. We also noted that Channel 5 transmitted no advertising in the 24:00 hour and that it had not exceeded its daily average limit for advertising minutage on that day.

Nevertheless, Ofcom noted that this was the second incident in just three months relating to COSTA compliance on Channel 5[2] and we therefore remind the Licensee of the importance of complying with COSTA at all times.

Breach of Rule 4 of COSTA

[2] See Ofcom's Broadcast Bulletin 182, which can be found here: http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb182/obb182.pdf

In Breach

Breach findings table

Code on the Scheduling of Television Advertising compliance reports

Rule 4 of the Code on the Scheduling of Television Advertising ("COSTA") states**:**

> "... time devoted to television advertising and teleshopping spots on any channel must not exceed 12 minutes."

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Sky Sports News	2 July 2011, 17:00 7 August 2011, 12:00	COSTA Rule 4	Ofcom noted, during monitoring, that Sky Sports News exceeded the permitted advertising allowance by 64 seconds in one clock hour on 2 July 2011 and by two minutes on 7 August 2011. Sky explained that in both instances, the live programming Production team triggered the last break at the incorrect time. Neither incident resulted in an overrun of the day's total allowance. **Finding: Breach**

Resolved

Resolved findings table

Code on the Scheduling of Television Advertising compliance reports

Rule 4 of the Code on the Scheduling of Television Advertising ("COSTA") states**:**

> "... time devoted to television advertising and teleshopping spots on any channel must not exceed 12 minutes."

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Sky Atlantic	22 June 2011, 12:00	COSTA Rule 4	Ofcom noted, during monitoring, that Sky Atlantic exceeded the permitted advertising allowance by six seconds in one clock hour. Sky explained that this was a result of a programme overrun earlier in the day, when the Transmission Controller missed the subsequent alert from the system in place to notify staff of extra commercial time, which in turn caused a slippage of advertising minutage from one clock hour into another. However, said Sky, the transmission day as a whole did not exceed the allowed amount of commercial minutage. Sky assured Ofcom that this was a genuine error and that compliance staff had been reminded of the necessity to remain compliant with COSTA**.** **Finding: Resolved**

Access Services Cases

In Breach

Life

FX, 1 July 2011, 15:00

Introduction

FX is a general entertainment channel the licence for which is held by Fox International Channels (UK) Limited ("Fox" or the "Licensee").

A complaint from a viewer alerted Ofcom to the issue of an episode of *Life* broadcast on the 1 July 2011 on FX not carrying subtitles as advertised. Ofcom therefore asked Fox if subtitles were in fact included in this programme. However, the Licensee was unable to retrieve a recording of the programme to verify if subtitles were included.

Given the Licensee's failure to provide recordings, Ofcom considered the case raised issues warranting investigation under General condition 9 (1) of FX's Television Licensable Content Service ("TLCS") licence, which states that the licensee shall:

> "ensure that the provision of the Code on Subtitling, Signing and Audio-description [the Ofcom Code on Television Access Services] are observed in the provision of a Licensed Service."

Paragraph 36.2 of the Code on Television Access Services says that broadcasters to whom the code applies:

> "shall make and retain a recording in sound and vision in a form acceptable to Ofcom of every programme included in the service for a period of 60 days from the date of its broadcast, and provide a copy of the recording for examination and reproduction on request by Ofcom."

Ofcom sought the Licensee's comments under the Code on Television Access Services.

Response

Fox acknowledged that it had failed to make and retain a recording of the relevant programme and so was unable to provide this to Ofcom.

Fox assured Ofcom that it takes its responsibilities to adhere to the Ofcom codes and its licence conditions very seriously and in particular recognised the importance of providing recordings to enable Ofcom to perform its statutory duties effectively. The Licensee said it was sorry that it was not able to provide the evidence of its compliance with the Code on Television Access Services on this occasion.

Fox stated that all its play-out facilities, including off air recordings, are contracted to a third party. Fox said that the loss of the recording resulted from a server fault caused by human error, and that its contractor had confirmed that processes have been put in place to prevent any future recurrence of the problem.

Decision

Ofcom notes that Fox takes seriously its responsibility to make and retain recordings and to provide these to Ofcom forthwith on request. As Fox acknowledged, the ability to retrieve copies of content is vital for Ofcom to carry out its statutory functions in relation to access services for the sensory impaired. Although we welcome the action Fox has taken to prevent a repeat of this compliance failure, Ofcom considers this to be a serious and significant breach of the Code on Television Access Services.

Breach of Paragraph 36.2 of the Code on Television Access Services

In Breach

Breach of Licence Condition

OnFM, 14, 16, 18 and 19 June 2011

Introduction

OnFM is a community radio station providing a service for the people of Hammersmith, west London, and has a particular focus on serving the local Irish community as well as other ethnic groups. It has been broadcasting since May 2008 and the output is presented by volunteers. The licence is held by OnFM Ltd ("the Licensee").

OnFM's licence includes as an annex a 'key commitments' document which sets out what the radio station is required to broadcast (which is based on the promises made by the station in its original application for the licence). The key commitments include a description of the programme service, social gain (community benefit) objectives (such as training provision), arrangements for access for members of the target community, opportunities to participate in the operation and management of the service, and accountability to the community. In the programming section it says that "daytime output overall will typically comprise 40% music and 60% speech" and "by the end of the first 12 months on air, the service will typically be live, for at least 8 hours per day".

Ofcom has been corresponding with the Licensee since November 2010 regarding the station's broadcast output and its compliance with its 'key commitments' following a complaint from a listener.

After listening to broadcast output provided by the station (we requested recordings covering two days of output in a specified week which we monitored to ascertain the level of key commitment delivery), the Licensee was found in breach of its licence for failing to deliver its key commitments, specifically the two key commitments listed above. This breach was recorded in the Broadcast Bulletin published on 21 February 2011[1].

In May 2011, as a follow-up to the licence breach finding published in February, and to ascertain whether the Licensee was delivering its key commitments, we asked for recordings of the station's output for two full 24-hour periods during the week proceeding 5 May 2011. This request unfortunately coincided with a period between two Bank Holidays and the Licensee considered that the output during this period was not representative of its usual output.

We accepted the Licensee's explanation and in June 2011 we asked for recordings to be provided instead for Thursday 16 June and Sunday 19 June 2011. On receipt of the recordings, the Licensee asked us to have regard to two further days of output, which it provided, as it found that on Thursday 16 June the station suffered a technical failure, which had not been picked up by station operatives at the time, which resulted in no output being broadcast for over twelve hours on that day.

[1] http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb176/issue176.pdf

Ofcom therefore considered four days' output provided by the station. Our analysis of this output indicated that the Licensee was (again) not delivering its live output commitment or its promise to broadcast 60% speech programming during the day. Specifically:

- on Tuesday 14 June the speech requirement was met in only four hours of daytime output;
- on Thursday 16 June the speech requirement was met in only one hour of daytime output with no live programming broadcast at all;
- on Saturday 18 June the speech requirement was met in only five hours of daytime output and only two hours of live output was broadcast; and
- on Sunday 19 June the speech requirement was met in only two hours of daytime output, and only three hours of programming was broadcast live.

On this basis, Ofcom again wrote to the Licensee to ask how it considered its output complied with the licence condition relating to key commitments delivery. Condition 2(4), contained in Part 2 of the Schedule to the licence, states that:

> "The Licensee shall ensure that the Licensed Service[2] accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period."

Response

The Licensee said that its shortcomings had been addressed and that an overhauled schedule had been implemented, resulting in the station "consistently meeting the required speech to music ratio and the live content. This is happening not only on average over a long period but day by day". Further, the Licensee said that "it was unfortunate that spot checks did not make for a real picture of what the OnFM team is producing."

The Licensee provided analysis and recordings of a week's output (5-11 August) that it said indicated that the station was now delivering fully against its key commitments on a daily basis. It is the licensee's intention to provide similar analysis and recordings of output on a weekly basis for eight consecutive weeks.

Decision

Community radio stations are, under the terms of The Community Radio Order 2004, defined as local radio stations provided primarily for the good of members of the public or for a particular community, rather than primarily for commercial reasons. They are also required to deliver social gain, be run on a not-for-profit basis, involve members of their target communities and be accountable to the communities they serve.

Any organisation applying for a community radio licence is required to set out proposals as to how it will meet these various statutory requirements. If it is awarded a licence, its proposals are then included in the licence so as to ensure their continued delivery. As referred to above this part of a community radio station's licence is known as the 'key commitments', and it is designed to ensure that each Licensee continues to provide the service for which it has been licensed.

[2] The service that the station is licensed to provide, as described in its 'key commitments'.

By failing to provide the required live output of eight hours per day and 60% speech in daytime programming, the Licensee was not providing the service as described in its key commitments, and therefore is in breach of the licence condition referred to above. Ofcom has therefore formally recorded this breach by the Licensee.

Ofcom is concerned that a station that has been on-air for over three years continues to under-deliver its key commitments. However, Ofcom welcomes the reassurances the Licensee has offered as part of its representations and the steps it is taking to improve its compliance and delivery of its key commitments.

With regard to live programming and for the avoidance of doubt, Ofcom considers live programming to be content that is broadcast at the same time as it is being made. (We accept that some live programmes may include some pre-recorded material, such as short features.)

We are continuing our dialogue with the Licensee regarding its general compliance with its licence conditions and with its 'key commitments', and will monitor its output again in due course. The Licensee has been put on notice that continued non-compliance with its key commitments may result in further regulatory action being taken.

Breach of Licence Condition 2(4) in Part 2 of the Schedule to the community radio licence held by OnFM Ltd (licence number CR074)

Fairness and Privacy Cases

Upheld

Complaint by Mr A

Strangeways, ITV1, 23 May 2011

Summary: Ofcom has upheld this complaint of unwarranted infringement of privacy in the programme as broadcast by Mr A.

The programme looked at efforts made by the prison authorities to rehabilitate inmates through education and training to help them find employment when released. Footage of a visit by a group of potential employers being shown around the prison kitchens was included in the programme. Shown in the background of this footage was Mr A, a prison officer at the time.

Mr A complained to Ofcom that footage of him was broadcast in the programme without his consent.

Ofcom found that Mr A had a legitimate expectation of privacy and that there was no public interest justification for the significant intrusion into Mr A's privacy by the inclusion of the unobscured footage of him in the programme as broadcast. Ofcom therefore found that Mr A's privacy was unwarrantably infringed in the programme as broadcast.

Introduction

On 23 May 2011, ITV1 broadcast an edition of *Strangeways*, a series of programmes about HMP Manchester. Formerly known as "Strangeways", HMP Manchester is the United Kingdom's largest high security prison and the programmes sought to give an insight into prison life from the viewpoint of both prison inmates and prison officers.

This edition looked at the efforts made by the prison authorities to rehabilitate inmates through education and training to help them find employment when released. Footage of a visit by a group of potential employers being shown around the prison kitchens was included in the programme. The visitors were shown talking to prison staff and meeting some of the inmates who had gained qualifications and hoped to be considered for future employment. Mr A was a prison officer at HMP Manchester at the time and he was shown unobscured, albeit briefly and in the background, in the footage of the visit to the prison kitchens. Although Mr A was not named or otherwise referred to in the programme, he was identifiable.

Following the broadcast of the programme, Mr A complained to Ofcom that his privacy was unwarrantably infringed in the broadcast of the programme.

The Complaint

Mr A complained that his privacy was unwarrantably infringed in the programme as broadcast in that footage of him was included in the programme without consent.

Mr A said that he was filmed on several occasions by the programme makers during the normal course of his duties and that he was unequivocal in informing the programme makers that he did not want to be shown on television under any circumstances unless his privacy was protected by pixilation.

By way of background to the complaint, Mr A said that his ethnicity rendered him easily identifiable and that the unobscured footage of him in the programme made him concerned for his and his family's personal safety.

ITV's statement

In summary, ITV responded to Mr A's complaint by stating that the programme makers had relied heavily on the agreement and support of the prison authorities and of individual prison officers in its making.

It said that the programme makers were extremely conscious throughout filming and editing of the need to ensure that all prison officers who were filmed inside the prison and featured in the programme had given their consent to be shown. All other officers had their features obscured. ITV said that it acknowledged that any prison officer who had indicated to the production that they did not wish to be identified should therefore have been obscured. ITV said that the programme had been cleared for broadcast on the explicit understanding with the programme makers that any prison officer who had asked not to be identified would be obscured in the final edited programme.

ITV said that it was therefore extremely concerned when it became aware of Mr A's complaint to Ofcom. An investigation by ITV revealed that it had been know to the programme makers that Mr A was among the prison officers that had indicated that they did not wish to be identified in the programme. Unfortunately, a mistake had been made at the editing stage of the production. ITV said that the appearance of Mr A in the prison kitchen had simply not been spotted during the editing process, as he was standing at the back of a crowd of civilians, and his face and uniform had not been recognised. His face was therefore not obscured.

ITV said that both it and the programme makers had apologised to Mr A for the error made at the editing stage of the programme making process. ITV said that it took the privacy and security of prison officers very seriously and therefore appreciated and sympathised with Mr A's concerns for his and his family's personal safety. It said that once the error was realised, the programme was taken down from ITV's on-demand "Catch Up" service and the programme was re-edited to obscure Mr A's face.

ITV said that it fully accepted that although Mr A had consented to be filmed in the prison kitchen at the time, he had a reasonable expectation that his face would not be shown in the programme, having made clear that he did not wish to be identified. Although he was only shown briefly at the rear of a crowd of people, his face was visible, and that he could have been identified from his clothing by some viewers as a prison officer, although he was not prominently featured in the scene. ITV further accepted that in the light of his prior request not to be identified, Mr A's privacy was unwarrantably infringed in the broadcast of the programme by the inclusion of footage that had not been suitably edited to obscure his features.

Decision

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

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the

principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

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

This is reflected in how Ofcom applies Rule 8.1 of the 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 reaching its decision, Ofcom considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and written submissions from both parties.

Ofcom first considered Mr A's complaint that his privacy was unwarrantably infringed in the programme as broadcast in that footage of him was shown in the programme without his consent.

Ofcom had regard to 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 had regard to Practice 8.8 which states that in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations, separate consent should normally be obtained before filming or recording and for the broadcast from those in sensitive situations (unless not obtaining consent is warranted).

In considering whether or not Mr A's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which he could have legitimately expected that footage of him would not be included in the programme without his consent.

Ofcom noted that Mr A appeared very briefly in the programme and was shown standing among a group of people. While the footage was brief and Mr A was not the focus of the footage, nevertheless Mr A's face was visible. In Ofcom's view, Mr A was identifiable from the footage.

Ofcom considered that the footage of Mr A did not reveal any conduct or action that could be regarded as being private or sensitive in nature. However, it considered that the circumstances in which he was filmed (namely in a prison, which in itself is a sensitive environment and having been assured by the programme makers that his face would not be broadcast) amounted to Mr A having a legitimate expectation of privacy in relation to the broadcast of unobscured footage of him in a television programme without his consent.

Ofcom noted that while Mr A had consented to be filmed for the programme, it also noted that Mr A had made it clear to the programme makers that he did not want unobscured footage of him to appear in the programme as broadcast. Ofcom acknowledged that the broadcaster accepted that Mr A had indicated to the programme makers that he did not want to be shown in the programme and that the programme makers had mistakenly omitted to obscure Mr A's face from the

programme as broadcast. Therefore, Ofcom considered that Mr A had not given his consent for unobscured footage of him to be included in the programme as broadcast.

Having found that Mr A had a legitimate expectation of privacy in relation to the broadcast of the unobscured footage of him in the programme without his consent, Ofcom went on to consider the broadcaster's competing right to freedom of expression and the need for broadcasters to have the freedom to broadcast matters of genuine public interest without undue interference. In this respect, Ofcom considered whether there was sufficient public interest to justify the intrusion into Mr A's privacy in the broadcast.

Ofcom considered that there was a genuine public interest in the programme's examination of the prison authorities' attempt to rehabilitate prison inmates by providing education and training to help them gain employment on release. However, Ofcom considered that the broadcaster's right to freedom of expression to include the unobscured footage of Mr A in the circumstances particular to this case did not outweigh Mr A's right to privacy in such circumstances.

Therefore, Ofcom concluded that there was no public interest justification for the significant intrusion into Mr A's privacy by the inclusion of the unobscured footage of him in the programme as broadcast. Ofcom therefore found that Mr A's privacy was unwarrantably infringed in the programme as broadcast.

Accordingly, Ofcom has upheld Mr A's complaint that his privacy was unwarrantably infringed in the programme as broadcast.

Upheld

Complaint by Mrs Melanie Purdie

News, Forth 1 Radio, 25 February 2011

Summary: Ofcom has upheld this complaint of unwarranted infringement of privacy made by Mrs Melanie Purdie.

Forth One Radio ("Forth One") broadcast a news item that named the victim of a suspected murder that had taken place that morning and named the victim as Mr Lee Duncan. Mr Duncan's family had not been informed of his death at that stage.

Mrs Melanie Purdie, Mr Duncan's sister, complained that her privacy was unwarrantably infringed in the broadcast of the programme.

Ofcom found that, although the programme makers checked with the local police, it was not clear that the next of kin had been informed of Mr Duncan's death and that the naming of him as the victim before Mrs Purdie had been informed of his death was an unwarranted infringement of her privacy.

Introduction

On 25 February 2011, Forth One Radio ("Forth One"), which broadcasts in Edinburgh, the Lothians and Fife, broadcast a news programme at 14:00 hours that included an item which reported on a suspected murder that had taken place that morning and named the victim as Mr Lee Duncan.

Following the broadcast of the programme, Mrs Melanie Purdie, Mr Lee Duncan's sister, complained to Ofcom that her privacy was unwarrantably infringed in the programme as broadcast.

The Complaint

Mrs Purdie's case

In summary, Mrs Purdie complained that her privacy was unwarrantably infringed in the programme as broadcast in that the item was included in the news programme at 14:00 hours but that she and her mother had not been informed by the police of Mr Duncan's murder at that time. Mrs Purdie said that Mr Duncan's body had been found at 10:30 hours on the morning of the broadcast and that she and her mother had found out as a result of a friend hearing the news item and informing them of it.

By way of background, Mrs Purdie said that she had discussed the matter with the police officers investigating the case and that they had said that, at the time of the broadcast, Mr Duncan's name had not been released into the public domain.

Forth One's case

Forth One said that they sympathised with Mrs Purdie, understood her anger and upset at how she and her family found out about Mr Duncan's death and apologised for any additional upset Forth One may have caused. However, they believed that they had followed correct procedures and that the news team at Forth One had followed good journalistic practice.

Forth One said that the reporter who was covering the story as it was breaking was given the name of the victim at the scene of the crime by a man claiming to be his "best friend". The reporter relayed the information to the news desk and the "late desk" editor contacted the Lothian & Borders Police Press Office. The Press Office informed the Forth One late desk editor that he would "not be wrong" to go with the name. At no time did the Press Office intimate that the family had not been informed of Mr Duncan's death or suggest that the information should not be used on air. The Forth One late desk editor and the deputy head of news discussed the situation and decided that, given the prominence of the story locally, it was in the public interest to name the victim. Forth One said that the programme makers made this decision in good faith, having at no time been asked by the police not to name the victim. Forth One said that, in these circumstances, having been given the information by someone at the scene, the programme makers carried out appropriate checks and expected that by the afternoon bulletin the victim's family would have been informed. They regretted that this was not the case and said that they believed that in cases like this it was appropriate for them to take their guidance from police sources and particularly from police press officers. They also said that it was their understanding that other Edinburgh-based media outlets had also named Mr Duncan either on-air or on websites, also after having had his name confirmed by police.

Forth One said that they would continue to support the efforts of Lothian & Borders Police and Mrs Purdie to find the person/persons responsible for Mr Duncan's death.

Decision

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

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

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

Ofcom considered the complaint that Mrs Purdie's privacy was unwarrantably infringed in the programme as broadcast in that the item was included in the news programme before she and her mother had been informed of Mr Duncan's murder by the police.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the 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 complaint, Ofcom had regard to Practice 8.18 of the Code. Practice 8.18 states that broadcasters should take care not to reveal the identity of a person who has died or of victims of accidents or violent crimes, unless and until it is clear that the next of kin have been informed of the event or unless it is warranted.

Ofcom first noted the wording of the item broadcast at 14:00 hours, which said:

> *"The discovery of a body at a flat in central Edinburgh is being treated as suspicious. The man, named locally as Lee Duncan, was found in a property in Lauriston Place just before 11 this morning. Police are at the scene and say enquiries are on-going".*

Ofcom also noted that at this time Mrs Purdie and her mother had not been informed of Mr Duncan's death.

In considering whether Mrs Purdie's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which she could have expected that her brother would not be named in a broadcast before his family had been informed of his death. As the Code makes clear, broadcasters should take care not to reveal the identity of a victim such as Mr Duncan unless and until it is clear that the next of kin have been informed of the death or unless it is warranted.

In the circumstances of this case, Ofcom took the view that Mrs Purdie had a legitimate expectation that her brother would not be identified until after she and her mother had been informed of his death.

Ofcom noted that the Forth One reporter was informed of Mr Duncan's name by someone he encountered at the scene of the crime. The programme makers then, quite properly, made checks with the local police Press Office. In Ofcom's view, the Press Office's comment that it would "not be wrong" to go with the name did not amount to an unequivocal statement that it was acceptable to name the victim. Ofcom also noted that the police Press Office did not inform the programme makers that Mr Duncan's family had not been informed of his death nor suggest that the information should not be used on air. In these circumstances, Ofcom considered that it was not clear that the next of kin had been informed of Mr Duncan's death and therefore his name should not have been broadcast unless it was warranted.

With regard to privacy, "warranted" has a particular meaning. Where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, the infringement is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy.[1]

Ofcom noted that Forth One stated that it decided that, given the prominence of the story locally, it was in the public interest to name the victim. However Ofcom considered that, in the circumstances of this case, the mere prominence of the story locally was not sufficient to outweigh Mrs Purdie's right to privacy.

Accordingly, Ofcom has upheld Mrs Purdie's complaint of unwarranted infringement of privacy in the broadcast of the programme.

[1] Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

Upheld in Part

Complaint by Mr Timothy Hawley

The Prison Restaurant, BBC1, 26 April 2011

Summary: Ofcom has upheld in part a complaint of unwarranted infringement of privacy in the making and broadcast of the programme by Mr Timothy Hawley.

The programme looked at "The Clink" restaurant located within HMP High Down, Surrey. The restaurant, part of a rehabilitation scheme, aimed to reform prison inmates by providing an opportunity to qualify as fully trained chefs and waiters with a view to gaining employment when released. While most of the programme focused on the restaurant and the prison kitchens, images of the prison itself and various aspects of prison life were also shown. Included in these images was brief footage of Mr Hawley being escorted under restraint by two prison officers along a corridor.

Mr Hawley complained to Ofcom that his privacy was unwarrantably infringed in the making of the programme and in the programme as broadcast.

Ofcom found that:

- The public interest in obtaining material for use in the programme outweighed Mr Hawley's expectation of privacy in relation to being filmed. Ofcom therefore found that there was no unwarranted infringement of privacy in the making of the programme.

- However, there was no public interest justification for the significant intrusion into Mr Hawley's privacy by the inclusion of the unobscured footage of him in the programme as broadcast. Ofcom therefore found that Mr Hawley's privacy was unwarrantably infringed in the programme as broadcast.

Introduction

On 26 April 2011, BBC1 broadcast *The Prison Restaurant*, a programme that looked at "The Clink" restaurant located within HMP High Down, Surrey. The restaurant, part of a rehabilitation scheme, aimed to reform prison inmates by providing them with an opportunity to qualify as fully trained chefs and waiters with a view to gaining employment when released.

Most of the programme focused on the restaurant and the prison kitchens; however images of the prison itself and various aspects of prison life were also shown. Towards the end of the programme, the commentary stated that the prison would have to reform prisoners with less money in the future and was followed by a montage of images of prison life. Forming part of that montage was footage of the complainant, Mr Timothy Hawley, being escorted along a corridor by two prison officers who held his arms in restraint. Although the footage of Mr Hawley was brief, his face was not obscured and he was identifiable. He was not named or otherwise referred to in the programme.

Following the broadcast of the programme, Mr Hawley complained to Ofcom that his privacy was unwarrantably infringed in the making of the programme and in the programme as broadcast.

The Complaint

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

a) He was filmed being restrained in his cell and escorted to the segregation unit by prison officers without consent. Mr Hawley said at no time during the filming was his consent sought from the programme makers.

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

b) Unobscured footage of him being escorted to the segregation unit under restraint was included in the programme without consent.

   By way of background to the complaint, Mr Hawley said that he was on remand at the time of filming. He said that he suffered from mental illness and that being recognised by people has caused him embarrassment and has resulted in him not wanting to leave his home.

The BBC's case

In summary, the BBC responded to the complaint that Mr Hawley's privacy was unwarrantably infringed in the making of the programme.

a) The BBC said that the circumstances in which Mr Hawley was filmed made it impossible for the programme makers to secure his consent prior to or at the moment of filming. He had blocked the observation panel of his cell and refused to exit it. The BBC said that prison staff had invited the programme makers to film their management of the incident. It said that there had been no way for the programme makers to have given Mr Hawley advance notice of their intention to film him. The BBC said that it believed that there was a strong public interest in the work of prison officers in managing such incidents and the reality of life in prison for both prisoners and staff. It said that the decision to film without prior consent from Mr Hawley was therefore justified.

In summary, the BBC responded to the complaint that Mr Hawley's privacy was unwarrantably infringed in the programme as broadcast.

b) The BBC said that the programme makers said that they had discussed the nature of the filming and the purpose of the programme with Mr Hawley immediately following this incident and that he gave his verbal consent, and was happy to be included in the programme. It said that they also noted that Mr Hawley did not raise any concerns at the time of filming or subsequently, despite the fact that they were visible and approachable in the prison for several months following the filming and were in his presence on several occasions during that time.

   Nevertheless, the BBC accepted that written consent should have been obtained from Mr Hawley. It said that a system had been in place to ensure that all those featured had completed consent forms and approximately 250 such forms were checked against the individuals in the programme during the editing process. Regrettably, in the case of Mr Hawley, a mistake was made. The BBC said that it believed this to be the only such instance in the programme and the result of human error. The BBC said that the programme makers had expressed their

sincere regret regarding this oversight and, in response to the complaint, the programme had been edited and Mr Hawley's identity obscured.

Decision

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

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

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

This is reflected in how Ofcom applies Rule 8.1 of the 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 reaching its decision, Ofcom considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and written submissions from both parties.

a) Ofcom first considered Mr Hawley's complaint that his privacy was unwarrantably infringed in the making of the programme in that he was filmed without his consent.

Ofcom also had regard to Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with the person's consent or be otherwise warranted and Practice 8.8 which states that in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations, separate consent should normally be obtained before filming or recording and for the broadcast from those in sensitive situations (unless not obtaining consent is warranted).

In considering whether or not Mr Hawley's privacy was unwarrantably infringed in the making of the programme, Ofcom first considered the extent to which he could have legitimately expected that he would not be filmed being restrained and escorted to a segregation unit.

Ofcom noted from the footage included in the programme that Mr Hawley was filmed being escorted along a prison corridor under restraint by two prison officers. Ofcom also noted from the submissions from the parties that Mr Hawley had also been filmed restrained by prison officers in his cell. Ofcom took note too that it appeared that Mr Hawley had been filmed openly and that the programme makers had not concealed the fact that they were filming him.

In these circumstances, Ofcom took the view that the programme makers had filmed Mr Hawley while he was in a vulnerable state and in a situation that was sensitive. It therefore considered that the filming of Mr Hawley was intrusive and that he would have had a legitimate expectation that he would not be filmed for a television programme in the circumstances.

Given this conclusion, and in accordance with Practice 8.8, Ofcom then assessed whether the programme makers had secured Mr Hawley's consent for the footage of him to be filmed. Ofcom acknowledged that the programme makers had the consent of the prison authorities to film within the prison and had been invited by prison authorities to film the management of the incident involving Mr Hawley. Ofcom noted that the programme makers did not obtain Mr Hawley's consent to film him.

Taking all the above factors into account, Ofcom considered that Mr Hawley had a legitimate expectation of privacy in relation to being filmed and that filming took place without the programme makers securing his prior consent.

Ofcom went on to consider the broadcaster's competing right to freedom of expression and the need for broadcasters to have the freedom to gather information and film incidents in making programmes without undue interference. In this respect, Ofcom considered whether there was sufficient public interest to justify the intrusion into Mr Hawley's privacy by filming him in the particular circumstances.

Ofcom considered that there was a genuine public interest in the programme's examination of the prison authorities' attempt to rehabilitate some of the prisoners by providing training and experience of working in a restaurant. It also considered that there was also a legitimate public interest justification for the programme to film other aspects of prison life and how the prison authorities dealt with difficult situations, therefore enhancing the public understanding of prison life. In particular, Ofcom considered that the public interest in filming the work of prison officers in circumstances which illustrated the challenges faced by them when confronted with an incident where a prisoner has to be restrained and segregated was significant.

Ofcom noted that the programme makers had obtained the consent of the prison authorities to film in the prison generally (and the incident involving Mr Hawley) and that the public interest in filming the material was significant (see above). However, Ofcom also noted that while the programme makers had later sought consent from those filmed, including Mr Hawley, to the inclusion of that material in the broadcast programme, they had not obtained his prior consent before filming him. In the particular circumstances of this case, Ofcom considers that the programme makers were not in a position to have obtained Mr Hawley's prior consent to filming of him, but that there was a genuine and significant public interest in filming the material without having secured Mr Hawley's individual consent. In such circumstances, Ofcom takes the view that it would be undesirable, ordinarily, for programme makers to be unduly constrained in circumstances such as these where they would be unable to obtain consent because it could not be gained from those involved prior to filming taking place.

Having taken into account all the factors above, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and to receive information and ideas without interference, in these particular circumstances,

outweighed Mr Hawley's legitimate expectation of privacy in relation to being filmed without his consent.

Ofcom therefore found that there was no unwarranted infringement of Mr Hawley's privacy in the making of the programme.

b) Ofcom considered Mr Hawley's complaint that his privacy was unwarrantably infringed in the programme as broadcast in that footage of him was broadcast without his consent.

In considering whether or not there had been an unwarranted infringement of Mr Hawley's privacy in the broadcast of the programme, Ofcom considered the extent to which Mr Hawley could have legitimately expected that the footage of him being escorted under restraint by two prison officers would not be broadcast without his consent. Ofcom had regard to 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 had regard to Practice 8.8 of the Code (see Decision head a) above).

Ofcom noted that Mr Hawley appeared very briefly (approximately three seconds) towards the end of the programme. The programme showed footage of him being escorted down a corridor by two prison officers who restrained his arms. Mr Hawley's face was not obscured in anyway and he was, in Ofcom's view, identifiable from the footage.

In these circumstances, Ofcom took the view that the footage broadcast showed Mr Hawley while he was in a vulnerable state and in a situation that was sensitive. It therefore considered that the broadcast of this footage was intrusive into Mr Hawley's privacy and that he would have had a legitimate expectation that it would not be included in a television programme without his consent.

Ofcom noted from the BBC's submission that the programme makers said that Mr Hawley had given his verbal consent after they had filmed the incident. However, the broadcaster accepted that the programme makers should have secured Mr Hawley's written consent for the footage of him to be included in the programme as broadcast. While Ofcom acknowledged the BBC's submission that the failure of the programme makers to secure Mr Hawley's written consent had been human error, given the nature of the footage shown and the particular sensitive situation it depicted, Mr Hawley's consent should have been obtained prior to broadcast.

Having found that Mr Hawley had a legitimate expectation of privacy in relation to the broadcast of the footage of him in the programme, Ofcom went on to consider the broadcaster's competing right to freedom of expression and the need for broadcasters to have the freedom to broadcast matters of genuine public interest without undue interference. In this respect, Ofcom considered whether there was sufficient public interest to justify the intrusion into Mr Hawley's privacy in the broadcast.

Ofcom again considered that there was a genuine public interest in the programme's examination of the prison authorities attempt to rehabilitate some of the prisoners by giving them training and experience of working in a restaurant. It also considered that there was also a legitimate public interest justification for the programme to broadcast footage of other aspects of prison life and how the

prison authorities dealt with difficult situations. However, Ofcom considered that the broadcaster's right to freedom of expression to include the unobscured footage of Mr Hawley in a vulnerable state and sensitive situation being escorted along a corridor under restraint by two prison officers without his prior consent did not outweigh Mr Hawley's right to privacy in such circumstances.

Therefore, on balance, Ofcom concluded that that there was no public interest justification for the significant intrusion into Mr Hawley's privacy by the inclusion of the unobscured footage of him in the programme as broadcast. Ofcom therefore found that Mr Hawley's privacy was unwarrantably infringed in the programme as broadcast.

Accordingly, Ofcom has upheld Mr Hawley's complaint that his privacy was unwarrantably infringed in the programme as broadcast. However, Ofcom did not uphold Mr Hawley's complaint that his privacy was unwarrantably infringed in the making of the programme.

Not Upheld

Complaint by Mr Gareth Walsh

Dispatches: Tabloids' Dirty Secrets, Channel 4, 7 February 2011

Summary: Ofcom has not upheld this complaint of unfair treatment made by Mr Gareth Walsh.

Tabloids' Dirty Secrets examined issues surrounding 'The News of the World' phone hacking scandal.

The programme investigated whether such practices were being used by papers other than 'The News of the World' and suggested that they may not have been confined to the tabloids. It included an interview with Ms Tessa Jowell, former Olympics Minister. The programme said that in 2006 she was the subject of a *"media storm"* when business dealings between her husband, Mr David Mills, and Mr Silvio Berlusconi, the Italian Prime Minister, were revealed by the press. Ms Jowell said in interview that 'The Sunday Times' Newspaper contacted her accountant. The programme said that the 'The Sunday Times' wished to discuss Ms Jowell and her husband's tax affairs. When their accountant said that this would contravene client confidentiality, the accountants received the following text message from a 'Sunday Times' journalist:

> *"We… can keep your name out of print only if you co-operate in discussing any mention of Jowell to revenue"*.

The programme said that the accountant refused to co-operate with this request and subsequently their name appeared in an article.

The programme then said:

> *"The journalist was home news reporter, Gareth Walsh"*.

In summary, Ofcom found that:

- the broadcaster had taken reasonable care in presenting these material facts and allegations, namely the allegation that Mr Walsh had intended to intimidate Ms Jowell's accountant into giving him information in his pursuit of a story.

- the programme makers took all reasonable measures to try and give Mr Walsh an appropriate and timely opportunity to respond to the allegations in the programme.

Introduction

On 7 February 2011, Channel 4 broadcast an edition of its current affairs documentary series *Dispatches.* This edition, titled *Tabloids' Dirty Secrets,* examined issues surrounding what was known at the time of 'The News of the World phone hacking scandal'[1] after the issue of phone hacking by newspaper journalists attracted

[1] A series of events relating to the use by 'The News of the World' of private investigators to gain access illegally to the mobile phone messages of a variety of people of interest to the newspaper. The newspaper's editor, Andy Coulson, resigned from that position in January

headlines at that time following further allegations about this practice and the resignation of Mr Andy Coulson from his position as Director of Communications at Downing Street.

The programme investigated whether such practices were being used by newspapers other than 'The News of the World' and suggested that they may not have been confined to the tabloids. It included an interview with Ms Tessa Jowell, former Olympics Minister in the previous Labour Government. The programme said that in 2006 she was the subject of a *"media storm"* when business dealings between her husband, Mr David Mills, and Mr Silvio Berlusconi, the Italian Prime Minister, were revealed by the press. Ms Jowell said in interview that 'The Sunday Times' Newspaper contacted her accountant. The programme said that the 'The Sunday Times' wished to discuss Ms Jowell and her husband's tax affairs. When their accountant said that this would contravene client confidentiality, the accountants received the following text message from a 'Sunday Times' journalist:

> *"We… can keep your name out of print only if you co-operate in discussing any mention of Jowell to revenue".*

The programme said that the accountant refused to co-operate with this request and subsequently their name appeared in an article.

The programme then said:

> *"The journalist was home news reporter, Gareth Walsh".*

Ms Jowell said that this was *"very clear evidence of the willingness of newspapers in pursuit of a story to cross the boundary between what is acceptable and what is lawful and what is unacceptable".*

The programme then said that News International, the proprietor of 'The Sunday Times', *"declined to comment".*

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

The Complaint

Mr Walsh's case

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

a) It alleged that he had behaved in an 'unacceptable manner' and may have suggested that he had 'acted illegally' in his capacity as a newspaper journalist.

b) He was not contacted ahead of broadcast and offered a right of reply.

   Mr Walsh said that no attempt was made to contact him directly. He said that the only attempt to contact him indirectly was seven hours ahead of broadcast, via an

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2007. Several weeks later the newspaper's royal correspondent, Clive Goodman, was jailed for four months for offences relate to these illegal activities.

employer he had not worked with for almost four years and did not mention that he was to be named in the programme.

Channel 4's response

a) Channel 4 accepted that the programme had alleged that Mr Walsh had in his capacity as a journalist working for 'The Sunday Times' acted in an "unacceptable manner". Channel 4 said that before including the allegations the programme makers collected together compelling evidence that Mr Walsh's conduct was intended and had the effect of intimidating Ms Jowell's accountant into co-operating with him. It said that the programme makers spoke at length with the accountant who provided a detailed account of Mr Walsh's dealings with her in March 2006, together with copies of the original text messages sent by Mr Walsh to her.

Channel 4 said that it was clear from the overwhelming evidence the programme makers have, that Mr Walsh did threaten the accountant by saying that she was likely to become a subject of the newspaper's article. It said that Mr Walsh's suggestion was that in return for her agreeing to discuss any mention of Ms Jowell to the Inland Revenue (which he was made aware would breach client confidentiality), he would keep her name out of the newspaper. Channel 4 provided to Ofcom a statement made by Ms Jowell's accountant which contained transcribed text messages she had received on her mobile phone. It said that on any reasonable assessment of the evidence provided by Ms Jowell's accountant, Mr Walsh's conduct was in breach of his duty under the Press Complaints Commission ("PCC") Code to maintain the highest journalistic standards and was in direct contravention of the PCC Code rules that "Journalists must not engage in intimidation, harassment or persistent pursuit".

Channel 4 said that the programme did not allege that Mr Walsh had acted illegally. However, it said, in light of the evidence provided by Ms Jowell's accountant, there is no doubt that she considered that Mr Walsh was trying to blackmail her and intimidate her by threatening to publish a negative article about her unless she gave him information about her clients. Channel 4 said that any implication in the programme that Mr Walsh had acted unlawfully was entirely justified based on the incontrovertible evidence of Ms Jowell's accountant and his contravention of the PCC Code.

Channel 4 said that it should be noted that to date Mr Walsh has not denied sending the texts or their content.

b) Channel 4 said that on 7 February 2011 an email addressed to News International's Corporate Affairs and Communications Manager was sent by the programme makers at 12.39pm. Channel 4 said that the letter clearly set out the nature of the allegations against the newspaper owned by News International and Mr Walsh. Channel 4 said that the email made clear that the programme would make reference to the interview which included the text message that named Mr Walsh and clearly requested that the email should be forwarded to Mr Walsh. Channel 4 said that given News International were Mr Walsh's employer at the time of the incident and that he was working under their auspices, it was entirely appropriate to send the right to reply to the company and to ask them to forward the email to him and invite both the paper and journalist to respond to the allegations.

Channel 4 said that the programme makers were aware that Mr Walsh had taken voluntary redundancy from the newspaper in 2007. It said that they could not find a currently publicly available contact for him. Channel 4 said that the programme makers did locate an article from 'The Sunday Times' dated 22 August 2010 which included a by-line indicating that Mr Walsh had provided additional reporting on the article. Channel 4 said that in the absence of any other contact details for Mr Walsh, it was also reasonable for the programme makers to have asked his former and most recent employer, as far as they were aware, to forward the email to him. Channel 4 said that it was also reasonable to assume that News International would have his most recent contact details. It also said that News International gave no indication that they were unable or unwilling to pass the email to Mr Walsh, and the programme makers had no reason to believe that the letter had not been passed to him.

Channel 4 said that it acknowledged that the right to reply email was issued on the day of transmission. It said that the editorial decision to name Mr Walsh was only made on the day of broadcast following confirmation from Ms Jowell's accountant that she had found the original text messages on an old mobile phone. Channel 4 said that as soon as the evidence was discovered and verified the right to reply email was drafted and issued to News International. It said that given the lateness in the discovery of the texts, News International and Mr Walsh were given an appropriate and timely opportunity to respond by a 15:00 deadline that day. Channel 4 said that no response was received by 15:00 at which time the programme makers were in the edit making final changes to the programme. Channel 4 said that the programme makers then chased News International at just past 15:30 and received from the response, "We will not be making any response to the below".

Channel 4 said that the programme makers, acting in good faith and unaware that the email had not been passed to Mr Walsh, believed that the reference to "we" was intended to include News International and Mr Walsh. It said that since News International had given no indication that they had not forwarded the response to Mr Walsh the programme makers had no reason to question that the email was a joint response declining to comment.

Channel 4 said that it acknowledged it was unfortunate that News International, for whatever reason, did not pass the email to Mr Walsh. However, it said, Channel 4 acted in good faith and were completely unaware until after transmission of the programme that Mr Walsh had not received the right to reply email.

Mr Walsh's comments

a) Mr Walsh said that because the programme was called *"Tabloids' Dirty Secrets"* and was largely about allegations of phone hacking by the tabloid publication 'The News of the World', any references to him were out of context as he had never written for a tabloid. Mr Walsh said that the programme also failed to point out to viewers the wider context in which his contact with Ms Jowell's accountant took place or the findings of 'The Sunday Times' investigation into Ms Jowell and her husband which led to this contact.

Mr Walsh said that Channel 4 had submitted that he had intended to intimidate Ms Jowell's accountant, but had not produced any evidence that any of his approaches to her were "intended to intimidate".

As regards Channel 4's suggestion that he had breached the PCC Code, Mr Walsh said made three points:

i) that neither the programme nor Channel 4 mentioned the circumstances in which Mr Walsh was making his enquiries or point out that a public interest argument might apply in this case;

ii) regarding harassment, persistent pursuit and that journalists must not "persist in questioning, telephoning, pursuing or photographing individuals once asked to desist", Mr Walsh said that as soon as Ms Jowell's accountant had made it clear that she did not want him to contact her again, he made no further attempt to do so; and

iii) despite a period of 5 years elapsing, no one has taken the opportunity to make a complaint to the PCC about his conduct.

b) As regards the right to reply, he said that Channel 4 reached the conclusion that Mr Walsh was a current contributor to the newspaper on the basis of one "additional reporting" by-line over a period of almost four years. Mr Walsh said that it may have been "reasonable" of Channel 4 to approach 'The Sunday Times' in an attempt to contact him, but it made no attempt to ascertain whether its email had reached him in the very brief time window provided. Mr Walsh said that instead, the production team simply assumed it had.

In addition, Mr Walsh said that he did not know the contact at 'The Sunday Times' that Channel 4 used and he said that it was therefore unlikely the contact would know him either. He also said that Sunday newspapers' editorial staff have a Tuesday to Saturday working week, therefore on the day of transmission, a Monday, nobody at 'The Sunday Times' would have been readily available to handle Channel 4's request.

Channel 4's response

a) Channel 4 did not accept Mr Walsh's assertion that references to him in the programme were out of context and such were misleading or risked leaving viewers with an unfairly negative impression of his professional conduct.

Regarding Mr Walsh's assertion that Ms Jowell's accountant did not provide any evidence that Mr Walsh intended to intimidate her; Channel 4 said that, by his own admissions Mr Walsh is an experienced journalist and he would therefore have been well aware that his text message ("Understand your difficulty but we need to talk. Can keep your name out of print only if you co-operate in discussing any mention of Jowell to Revenue. G. Walsh.") was likely to have been understood by Ms Jowell's accountant as a threat that if she did not co-operate he would name her in the paper.

Channel 4 said that it noted that Mr Walsh again did not deny his conduct in this matter. Regarding harassment, Channel 4 said that it had not alleged that Mr Walsh harassed Ms Jowell's accountant. Its only reference to harassment is when discussing the PCC Code provisions, which deal with a number of prohibited matters including intimidation. Channel 4 said that the central allegation against Mr Walsh is that of intimidation.

Channel 4 said that Mr Walsh suggests that his conduct towards Ms Jowell's accountant fell within the public interest exception to the PCC Code and by

inference was therefore justifiable and acceptable. Channel 4 said that Mr Walsh failed to acknowledge that Ms Jowell's accountant is neither a public figure nor indeed was she the subject of the criminal investigation or the allegations of impropriety which were directed at Ms Jowell and Mr Mills. Channel 4 did not dispute that there was a legitimate public interest in the investigation into Ms Jowell and Mr Mills. Channel 4 said that this did not, in the absence of any evidence of wrongdoing, extend to their professional advisors, simply by virtue of their proximity to Ms Jowell and Mr Mills. Channel 4 also said that Ms Jowell's accountant not choosing to make a complaint to the PCC does not mean that the strength of upset she felt is any less nor does it absolve Mr Walsh of his unprofessional conduct.

b) Channel 4 said that the fact remains that the information Mr Walsh has given about his relationship with 'The Sunday Times' was not known to the programme makers at the time the right to reply letter was sent to News International for forwarding to Mr Walsh. Channel 4 said that it was clear that an article with Mr Walsh's by line, dated August 2010 did exist and that the programme makers acted in good faith in relying on that as evidence that he was still writing for the paper and that therefore they would be in a position as his employers to contact him.

Decision

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

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

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

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

a) In considering Mr Walsh's complaint that the programme alleged that he had behaved in an unacceptable manner and may have suggested that he had acted illegally, Ofcom had regard to Practice 7.9 which states that before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that: material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Ofcom's consideration of Mr Walsh's opportunity to contribute to the programme will be dealt with under head b) below.

Ofcom first examined what the material facts relating directly to Mr Walsh in the programme were. In doing so, it considered the relevant transcript from the programme. It read:

Presenter: *"But is it only the tabloids we should be worrying about? In 2006 Tessa Jowell was subject to a media storm when her husband's David Mills business dealings with Silvio Berlusconi became front page news. She recounts a disturbing story."*

Ms Jowell: *"At the time of this firestorm, media frenzy about me, another newspaper The Sunday Times, er texted my"*

Presenter: *"Another News International newspaper"*

Ms Jowell: *"A News International newspaper, texted my accountant"*

Presenter: *"The paper wished to discuss Tessa Jowell and her husband's tax affairs. When the accountant said that this contravenes client confidentiality they received the following text: 'We…can keep your name out of print only if you co-operate in discussing any mention of Jowell to Revenue'. The accountant refused and their name subsequently appeared in an article. The journalist was home news reporter Gary Walsh."*

Ms Jowell: *"That is very clear evidence of the willingness of newspapers in pursuit of a story to cross the boundary between what is acceptable and what is lawful and what is unacceptable."*

Presenter: *"News international declined to comment"*

Ofcom took the view that the programme alleged that Mr Walsh had contacted Ms Jowell's accountant in order to ask her for information about Ms Jowell's tax affairs, and intimidated her by warning that he would publish her name in a pending 'Sunday Times' article if she did not co-operate. Ofcom noted that Channel 4 accepted that the programme alleged Mr Walsh had in his capacity as a journalist working for 'The Sunday Times' acted in an "unacceptable manner" and that its central allegation was of intimidation.

It is not for Ofcom to decide whether this constituted a breach of the PCC Code or was illegal. Instead, Ofcom has to decide whether the broadcaster had taken reasonable care in presenting the allegation it did.

With specific reference to Practice 7.9 of the Code Ofcom considered what steps the broadcaster took when it examined the basis upon which the programme made this allegation. Ofcom noted that the programme included an interview with Ms Jowell, the account given by Ms Jowell's accountant together with a record of the text messages sent to her. Ofcom noted that Ms Jowell's accountant said that when Mr Walsh initially rang her, the accountant picked up and spoke to someone who identified himself as a journalist. She then hung up the phone and afterwards her phone rang "a couple more times from the same number", but she decided that she would not answer it.

Ofcom noted that Ms Jowell's accountant's statement indicates that she then received the following text messages from Mr Walsh:

> "Dear [*name redacted*] in your letter to Inland Revenue re Mills of May 04 you, on the face of it, appear to have made a false declaration re. source of funds. As a result you are likely to become subject of Sunday Times article. To discuss, please call…" timed and dated: 14:06:05, 3 March 2006.
>
> "Gareth Walsh, home news reporter, The Sunday Times. You hung up on me when I called 45 minutes ago." timed and dated: 14:18:32, 3 March 2006.

Ofcom noted that Ms Jowell's accountant said that she then sent a reply to Mr Walsh which said that she would not talk to him because all of her clients are afforded the same degree of confidentiality. Mr Walsh then replied:

> "Understand your difficulty but we need to talk. Can keep your name out of print only if you co-operate in discussing any mention of Jowell to Revenue. G.Walsh" timed and dated: 16:26:17, 3 March 2006.

Ofcom noted that Mr Walsh did not deny this course of events occurred.

Ofcom interpreted this evidence to demonstrate that Mr Walsh had contacted Ms Jowell's accountant, in pursuit of a story. He wished to get information from her, which she had obtained in the course of providing professional financial advice to Ms Jowell. After Ms Jowell's accountant explained that she was prevented from giving Mr Walsh the information he wanted, Mr Walsh responded by stating that he could only prevent publishing her name (in a national newspaper) if she provided him with the information he sought. Ofcom noted in particular the final text message sent by Mr Walsh, set above, which stated "[…] Can keep your name out of print only if you co-operate […]".

Ofcom found that the broadcaster had taken reasonable care in presenting the material facts and allegations, namely the allegation that Mr Walsh had intended to intimidate Ms Jowell's accountant into giving him information in his pursuit of a story as it was clearly based on the documentary evidence from Ms Jowell's statement and various text messages.

Ofcom therefore found no unfairness in this regard.

b) Ofcom then considered Mr Walsh's complaint that he was not contacted ahead of broadcast and offered a right to reply. In doing so, it had regard to Practice 7.11 which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Following on from head a) above, Ofcom considered that the allegation contained in the programme was significant, namely, that Mr Walsh had contacted Ms Jowell's accountant in order to ask her for information about Ms Jowell's tax affairs, and, intimidated the accountant by warning that he would publish her name in a pending 'Sunday Times article' if she did not "discuss any mention of Jowell to Revenue".

In such circumstances, Ofcom took the view that the programme makers should have given Mr Walsh an appropriate and timely opportunity to respond to this serious allegation. Ofcom noted that the programme makers had attempted to offer Mr Walsh an opportunity to respond. The question was therefore whether this was done in an appropriate and timely way.

Ofcom noted that the programme makers sent an email to News International on 7 February 2011 (the day of transmission) at 12:39. Ofcom noted that in this email the programme makers set out the substantive allegations that were to be made against News International and Mr Walsh, in particular it noted the following paragraph:

> "Please could you forward to Gareth Walsh, we understand that he is no longer staff News International but his name still appears as a byline in the paper".

Having received no response, the programme makers sent another email to News International at 15:37, to ask if they intended to respond. Four minutes later, News International responded, "We will not be making any response to the below."

When considering the appropriateness of this opportunity to respond, Ofcom noted that News International is the proprietor of 'The Sunday Times' and that Mr Walsh was acting in the course of his employment with them when he contacted Ms Jowell's accountant in 2006. However, Ofcom also noted that the programmer makers were aware that Mr Walsh had taken voluntary redundancy from 'The Sunday Times' in 2007. Ofcom noted Channel 4's submission that it did not have contact details for Mr Walsh, nor were any publicly available. It also noted that Channel 4 submitted that the programme makers had located an article from 'The Sunday Times' dated 22 August 2010 which included a by-line indicating that Mr Walsh has provided additional reporting on the article. Ofcom also noted Channel 4's submission that it assumed, in good faith, that "we" in News International's response meant both News International and Mr Walsh.

In such circumstances, Ofcom took the view that it was reasonable for the programme makers to approach News International to provide an opportunity to respond, particularly because it seemed there was no other way of contacting him, as no public contact details were available and that the allegation related to Mr Walsh's behaviour when he was a News international employee. Furthermore, after sending an email to News International which specifically requested for the email to be forwarded to Mr Walsh, and ultimately receiving a response from News International which stated that "we will not be making any response", it was reasonable for the programme makers to understand this to include Mr Walsh.

As regards timeliness, Ofcom noted that the email was sent at 12:39 (over seven hours before the programme was to be broadcast) and set a deadline of under three hours. Ofcom further noted that 37 minutes after this deadline had passed, the programme makers contacted News International again to ask if they intended to respond. Ofcom noted that the original email asked for a response to one incident, namely Mr Walsh's investigation of Ms Jowell and in particular one text message that Mr Walsh had sent. Ofcom further noted that the programme makers did ultimately receive a response to their email, and that this stated that no response was to be made. Taking account of all the specific circumstances of this case, including that the request for a response was contained to a specific issue and a specific text message, Ofcom took the view that the opportunity to respond was appropriate and timely.

Ofcom found that the programme makers took all reasonable measures to try and give Mr Walsh an appropriate and timely opportunity to respond to the allegations in the programme.

Ofcom therefore found no unfairness in this regard.

Accordingly, Ofcom has not upheld Mr Walsh's complaint of unfair treatment in the programme as broadcast.

Not Upheld

Complaint by Mrs Allison Noble on her own behalf and on behalf of Ms Charlotte Noble (her daughter)

UTV Live, UTV, 17 February 2011

Summary: Ofcom has not upheld this complaint of unwarranted infringement of privacy in the making and broadcast of the programme made by Mrs Allison Noble on her own behalf and on behalf of Ms Charlotte Noble (her daughter).

On 11 February 2011 six people were killed in an air crash at Cork in the Irish Republic. On 17 February 2011 *UTV Live* included a report about the funerals of two of the victims of the air crash, Captain Michael Evans and Mr Richard Noble. The programme included footage of Mr Noble's funeral and a picture of Mr Noble with his wife and daughter. Both Mrs Allison Noble and Ms Charlotte Noble were clearly identifiable.

Mrs Noble complained that her privacy and that of her daughter was unwarrantably infringed in the making and the broadcast of the programme in that UTV obtained and broadcast a private family photograph without Mrs Noble's consent and the programme broadcast footage of her late husband's funeral without her consent.

In summary, Ofcom found that:

- the means of obtaining material was appropriate and proportionate in all the circumstances and that the family photograph was relevant to the subject matter of the programme;

- the broadcaster had complied with the conditions set for the filming of Mr Noble's funeral; and

- the broadcaster's right to freedom of expression outweighed the right to privacy of the complainant and the complainant's daughter because the photograph contained no other private information and was relevant to the programme.

Introduction

On 11 February 2011 six people were killed in an air crash at Cork in the Irish Republic. On 17 February, UTV broadcast *UTV Live*. It included a report about the funerals of two of the victims of the air crash, Captain Michael Evans and Mr Richard Noble.

Mr Noble was described as a *"successful businessman who loved his wife and daughter"*. Footage was shown of the hearse carrying Mr Noble's coffin arriving at the funeral ceremony. While the programme was describing Mr Noble's life a picture of Mr Noble with his wife and daughter were shown. Both Mrs Allison Noble and Ms Charlotte Noble were clearly identifiable. The programme showed Mr Noble's coffin being carried into the church, and showed Mrs Allison Noble and Ms Charlotte Noble following. It then described Ms Charlotte Noble's address to the ceremony as:

> *"poignantly describing how much she loved him adding she never knew what a special father she had until he was gone."*

Following the broadcast of the programme, Mrs Allison Noble complained to Ofcom on her own behalf and on behalf of her daughter, Ms Charlotte Noble, that their privacy was unwarrantably infringed in the making of the programme and in the programme as broadcast.

The Complaint

In summary, Mrs Noble complained that her privacy and that of her daughter was unwarrantably infringed in the making of the programme in that:

a) UTV obtained a private family photograph without Mrs Noble's consent.

   By way of background, Mrs Noble said that she acknowledged that the photograph was on Facebook but she was very strict with her privacy settings and that this particular family album could only be viewed by her and a select number of friends.

In summary, Mrs Noble complained that her privacy and that of her daughter was unwarrantably infringed in the programme as broadcast in that:

b) The programme broadcast footage of her late husband's funeral without her consent.

   By way of background, Mrs Noble said that UTV had not sought permission to film, "unlike the BBC who had been courteous enough" to request her permission.

c) A family photograph clearly showing Mr Noble, Mrs Allison Noble and Ms Charlotte Noble was broadcast.

   By way of background, Mrs Noble said that no permission for this had been sought and that one official photograph of her husband had been released by his company and this was the only photograph relevant to the coverage. Mrs Noble said that this exposed two vulnerable females, one of whom was a minor (14 years old) and that the broadcast was could be viewed for days afterwards on UTV's internet on-demand service.

UTV's response

In summary and in response to the complaint of unwarranted infringement of privacy in the making of the programme, UTV said that:

a) It came into possession of a family photograph without the explicit consent of Mrs Noble, but that the circumstances in which the programme makers obtained this photograph did not constitute an invasion of Mrs Noble's privacy.

   UTV said that on Thursday 10 February 2011 one of its reporters received a phone call from a contact saying that they believed one of the victims was named Richard Noble. The person contacted the reporter again on 11 February 2011 to confirm this.

   UTV said that it asked their contact if they had any contact details for the Noble family but they did not. While in no way challenging Mrs Noble's submission that her privacy settings were "very strict" and that the "…family album could only be viewed by her and a select number of friends", UTV said that it would have

expected close friends to have had contact numbers for the family. UTV said that their contact would not describe themselves as a "close friend of the family". UTV said that it then asked their contact where they might get a picture of Richard Noble. The contact suggested Facebook, as they were a "friend" of Allison Noble's on Facebook and subsequently forwarded the photo in question to UTV.

UTV said that it had given an undertaking to the contact not to reveal their identity and that therefore it was unable to provide further information on the source of the picture. However, UTV confirmed that it did not access Mrs Noble's Facebook account at any time and that the photo was obtained by a person with permitted access to it.

In summary and in response to the complaints of unwarranted infringement of privacy in the programme as broadcast, UTV said that:

b) UTV strongly denied Mrs. Noble's claim that it did not have permission to film the funeral, having gone through the usual procedure at the funeral location to ensure that it had permission to film and that it did not intrude on family grief. UTV said that it had significant experience of covering funerals at the crematorium where the funeral took place and were well aware that arrangements were specified by the local council's press office. It said that it had followed this process countless times over many years without any previous complaints.

UTV said that its forward planning producer rang the council press office on the day before the funeral and spoke to one of the council's most experienced press officers.

She explained that she had spoken to the manager of Roselawn Crematorium, who had advised her of the conditions for filming Mr Noble's funeral, which were that:

1. There would be no access to the audio feed from the service.

2. There would be two camera positions, at a discreet distance from the front door, from where the media could film the arrivals of the hearse and members of the congregation.

UTV said that it had assumed based on its previous dealings with the crematorium that these conditions had been agreed with the family through their undertaker. It said that it was not notified of any other specific instructions or conditions.

UTV said that, according to the information log of the council's press office, the manager of the crematorium had spoken to the undertakers handling the funeral, who had confirmed to the crematorium that the family was happy for the funeral to be filmed, at a distance from the front door, and that no audio feed would be provided to the media.

UTV said it understood that the BBC and RTE both made similar inquiries and were provided with the same information. It said that, as the funeral was attended by the First Minister and Deputy First Minister, there was significant additional media interest.

UTV said that when its producer and the camera operator arrived at the crematorium for the funeral, there were two photographers already in place. It said that the media agreed amongst themselves to stay well back from the front door as requested.

UTV said that, while waiting for the service to begin, one of the mourners approached the media. He appeared to be representing the family and relayed their desire that there should be no filming at the end of the service. This request was agreed by all the media present. UTV left the funeral long before the end of the service.

UTV said that it operated throughout within the guidelines set down by the crematorium, the council and then by the request of the person attending the service that approached the media. It said that all of its filming took place outside.

UTV said that it fully complied with the conditions of the permission to film and that it was implicit that that the permission allowed for footage shot at the funeral to be broadcast.

c) UTV acknowledged that it broadcast the photograph referred to under head a) showing Mr and Mrs Noble and their daughter Charlotte. However, UTV said that it did not breach the family's privacy, as the photograph did not contain any private information, but merely showed Mrs Noble and her daughter with Mr Noble in an innocuous holiday snap.

UTV said that Mrs Noble had given permission for the media to film at the funeral and that images of the family were already being used by UTV and other media with Mrs Noble's approval. It said that no additional privacy attached to the photograph and its broadcast did not reveal any additional information of a private nature.

By way of explaining the editorial justification for including the picture, UTV said that when the reporter saw the pictures of the Noble funeral for the first time, she was particularly struck by the emotion of the shot of Mrs Noble and daughter going into the crematorium with the coffin and the poignancy of Miss Charlotte Noble's tribute to her father. The reporter felt that it would be appropriate to illustrate the closeness between father and daughter by using the family photograph.

UTV said that as soon as it became aware of the additional stress to the complainant, it had removed the photograph from the UTV website.

Decision

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

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

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

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

This is reflected in how Ofcom applies Rule 8.1 of the 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.

a) Ofcom first considered Mrs Noble's complaint that a private family photograph had been obtained by UTV without her consent.

In considering this particular head of complaint, Ofcom had regard for Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with the person's consent or be otherwise warranted. It also had regard to Practice 8.9 of the Code which states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

Ofcom first considered whether Mrs Noble and her daughter had a legitimate expectation of privacy in relation to the obtaining of the photograph. It noted that Mrs Noble said that she had placed the photograph on Facebook, but that it was subject to "very strict" privacy settings and could only be viewed by her and a select number of friends. Ofcom noted that UTV had obtained the photograph through a contact who was a Facebook "friend" of Mrs Noble. Ofcom took the view that because Mrs Noble had placed the photograph on Facebook - a social networking site - and granted her "friends" access to it, the privacy of the photograph was significantly compromised. Ofcom considered that by placing privacy settings on the photograph that this would have afforded Mrs Noble some expectation of privacy, but only to a limited degree. However, in Ofcom's view it does not follow that she should then have anticipated that the photograph would fall into the hands of a television broadcaster.

Taking all of the above factors into account, Ofcom took the view that the manner in which UTV obtained the picture constituted a limited intrusion of privacy.

As consent had not been obtained, Ofcom then considered, in accordance with Practice 8.9 of the Code, whether this limited intrusion of privacy was warranted and whether the means of obtaining this material was proportionate in all the circumstances and in particular to the subject matter of the programme. Ofcom noted that the photograph related to the news item, and was obtained by someone with permitted access to the photograph on Facebook. It further noted that the photograph did not result in the obtaining of any other personal information beyond the image itself. Ofcom further considered whether the photograph was relevant to the subject matter of the programme and took into account UTV's submission that it was struck by the closeness of the Noble family when covering Mr Noble's funeral. Ofcom took the view that as the report was about Mr Noble's funeral and in doing so provided a background of his

professional and family life, the photograph of Mr Noble with his family was relevant.

Taking these factors into account, Ofcom took the view that because the means of obtaining Mrs Noble's photograph was appropriate and proportionate in all the circumstances and relevant to the subject matter of the programme, that this infringement of privacy was warranted.

Ofcom has therefore not upheld Mrs Noble's complaint of unwarranted infringement of privacy in the making of the programme.

b) Ofcom then considered Mrs Noble's complaint that her privacy and that of her daughter was unwarrantably infringed in the programme as broadcast in that footage of her late husband's funeral was obtained without her consent.

In considering this particular head of complaint, Ofcom had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. It also had regard to Practice 8.16 of the Code which states that broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place, where that results in an infringement of privacy, unless it is warranted or the people concerned have given consent. Also, in relation to the complaint on Ms Charlotte Noble's behalf, Ofcom had regard to Practice 8.21 which states that where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from: a parent, guardian or other person of eighteen or over in loco parentis; and wherever possible, the individual concerned; unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

Ofcom first assessed whether Mrs Noble and her daughter had a legitimate expectation of privacy in relation to the inclusion of footage of Mr Noble's funeral.

With reference to Practice 8.16 of the Code, Ofcom noted that Mrs Noble and Ms Charlotte Noble were suffering from a personal tragedy. As regards the complaint on Ms Charlotte Noble's behalf, and with regard to Practice 8.21 of the Code, Ofcom noted that Ms Charlotte Noble was 14 years old at the time of broadcast and that particular attention must be paid to the privacy of people under sixteen.

Ofcom took the view that the circumstances were such that the broadcasters should have sought consent from the Noble family or those acting on its behalf.

To this end, Ofcom noted UTV's submission that the Noble family had given the media permission to film at Mr Noble's funeral. Ofcom then considered what conditions had been set for the media when covering Mr Noble's funeral and what steps UTV had taken in establishing that it had permission to film at the funeral. It noted that the media arrangements for the funeral were being relayed to broadcasters by the local council's press office and that UTV had contacted this office the day before the funeral took place. The council's press officer then advised UTV on the conditions for filming at the funeral. Ofcom noted that: the council had been advised by the manager of the crematorium that the family were happy for the funeral to be filmed at a distance from the front door and that no audio feed would be provided to the media; the undertakers had given this

information to the crematorium; and, one of the mourners approached the media outside the crematorium before the ceremony and asked that they did not film the end of the service.

Ofcom therefore examined what footage was broadcast in the programme and assessed whether UTV had complied with the conditions broadcast given to it.

Ofcom noted that the programme showed the hearse carrying Mr Noble's coffin to the ceremony, the First and Deputy First Ministers attending the funeral and then the coffin being carried into the church, with Mrs Allison Noble and Ms Charlotte Noble following. It did not show the end of the service. Ofcom also noted that the report did not contain any audio from the ceremony, but did report on what was said and in particular described Ms Charlotte Noble's address.

Having examined the conditions set by the Noble family and compared them against the footage broadcast by UTV, Ofcom found that the broadcaster had worked within the conditions set, and only showed footage that they had been allowed to, having taken reasonable steps to obtain prior consent.

In such circumstance, Ofcom found that prior consent was obtained and therefore Ofcom has not upheld Mrs Noble's complaint of unwarranted infringement of privacy in the programme as broadcast.

c) Ofcom finally considered the complaint that a family photograph clearly showing Mr Noble, Mrs Allison Noble and Ms Charlotte Noble was broadcast.

In doing so Ofcom again had regard to Practice 8.5 and Practice 8.16 of the Code. Also, in relation to Ms Charlotte Noble's complaint, Ofcom had regard to Practice 8.21.

Ofcom first examined whether Mrs Noble and Ms Noble had a legitimate expectation of privacy in relation to this photograph. It did so with reference to its finding under decision head a) above.

Ofcom first noted that the photograph clearly showed the complainant and Ms Charlotte Noble and that they were therefore identifiable. In addition, Ofcom took into account that the photograph was broadcast on the day of Mr Noble's funeral and so a very sensitive time for both who were suffering from a personal tragedy.

However, Ofcom noted that the photograph was placed on Facebook, a social networking site, albeit with privacy settings applied and considered, as set out under decision head a) above, and that this meant that the privacy of the photograph was compromised to some extent. On this point, Ofcom noted that Mrs Allison Noble and Ms Charlotte Noble were filmed outside the funeral and that an official photograph of Mr Noble had been released by his employer. Ofcom considered that no private or sensitive information was disclosed by the broadcast of the photograph of the family. Ofcom therefore considered that the broadcast of this photograph constituted a limited intrusion into the private lives of Mrs Allison Noble and Ms Charlotte Noble.

Having found that Mrs Allison Noble and Ms Charlotte Noble had a limited expectation of privacy in relation to the broadcast of the photograph and that no consent was obtained, Ofcom then went on to weigh their right to privacy against the broadcaster's competing right to freedom of expression and the audience's right to receive information and ideas without unnecessary interference. Ofcom

again referred to its finding in head a). Ofcom considered this family picture was relevant to the programme because it reported on Mr Noble's funeral and included his professional and family background. Ofcom considered that because no personal or sensitive information was disclosed as a result of the broadcast of the photograph, this favoured the broadcaster's right to freedom of expression.

With specific reference to Ms Charlotte Noble's privacy and Practice 8.21 of the Code, Ofcom then took the view that because this concerned a holiday photograph of the family which did not contain any personal or sensitive information, that the photograph which included Ms Charlotte Noble (a minor) was 'uncontroversial' and that her 'participation' in the programme was minor. Ofcom found that it was therefore not incumbent on the programme makers to obtain the consent of Ms Charlotte Noble's mother before including the photograph in the programme. Ofcom took the view that the photograph was uncontroversial, relevant to the programme and did not contain any other personal private information. When weighed against the limited intrusion into Mrs Allison Noble's and Ms Charlotte Noble's privacy; that, on balance, the broadcast of the photograph was proportionate and warranted in the circumstances.

Ofcom has therefore not upheld Mrs Noble's complaint of unwarranted infringement of privacy in the programme as broadcast.

Accordingly, Ofcom has not upheld Mrs Allison Noble's complaint of unwarranted infringement of privacy in the making of the programme and in the programme as broadcast made on her own behalf and on behalf of Ms Charlotte Noble.

Not Upheld

Complaint by Mr James Neilson

Mary Portas: Secret Shopper, Channel 4, 9 February 2011

Summary: Ofcom has not upheld this complaint of unwarranted infringement of privacy made by Mr James Neilson.

In this edition of *Mary Portas: Secret Shopper*, in which the presenter, Ms Mary Portas, works with well known British brands and high street stores to *"give shoppers the service they deserve"*, Ms Portas was looking at the service provided by estate agents. Ms Portas visited a branch of Currell estate agents in London and discussed some of the concerns she had heard from consumers about estate agents. The conversation was filmed openly and brief footage from it was included in the programme as broadcast, including some footage of Mr Neilson, director of Currell.

Mr Neilson complained that his privacy was unwarrantably infringed in the making and the broadcast of the programme.

In summary, Ofcom found the following:

- As the filming took place openly in an estate agents' office, to which members of the public had access, and given that Mr Neilson engaged in a discussion with the programme makers, was aware he was being filmed and made no objections at the time, Ofcom found that he had no legitimate expectation of privacy in the making of the programme.

- In view of Mr Neilson's conduct and demeanour when the footage was filmed and the type and duration of content that was shown Ofcom found that Mr Neilson had no legitimate expectation of privacy in the programme as broadcast.

Introduction

On 9 February 2011, Channel 4 broadcast an edition of *Mary Portas: Secret Shopper*, in which the presenter, Ms Mary Portas, works with well known British brands and high street stores to *"give shoppers the service they deserve"*. In this edition Ms Portas was looking at estate agents and worked with a north London estate agency, Martyn Gerrard, to look at ways they could improve their services to clients.

During the making of the programme, Ms Portas and a group of people were filmed entering the premises of a number of estate agents, including a branch of Currell in London, in order to ask them about their practices. Some of this footage was broadcast in the closing sequence of the programme, along with a voiceover commentary about the responses received. This included brief footage on three occasions of Mr James Neilson, the Director of Currell (amounting to approximately five seconds in total). Mr Neilson was shown, unobscured, in the premises of Currell, along with some of his colleagues. Although Mr Neilson was speaking during one of these clips, his voice could not be heard above the voiceover. Mr Neilson was not named nor identified in any other way.

Following the broadcast of the programme, Mr Neilson complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast and that his privacy

was unwarrantably infringed during the making of the programme and in the programme as broadcast**.**

The Complaint

Mr Neilson's case

In summary, Mr Neilson complained that his privacy was unwarrantably infringed during the making of the programme in that:

a) He was filmed inside his office, whilst working and without his consent. He said that when the film crew arrived, he was on a call to a client whilst in his own office and the crew pointed a camera in his face and a boom microphone over his head.

Mr Neilson also complained that his privacy was unwarrantably infringed in the programme as broadcast in that:

b) The footage filmed without his consent was then broadcast, also without his consent.

Channel 4's case

In summary, Channel 4 responded to the complaint that Mr Neilson's privacy was unwarrantably infringed during the making of the programme as follows:

a) In response to the complaint that Mr Neilson was filmed in his office, whilst working and without his consent, Channel 4 said that Mr Neilson's office was a public space in the sense that any member of the public could have entered the office while Mr Neilson was at work and interacted with him.

   Channel 4 said that this was not a case where a private conversation conducted behind closed doors in an office had been covertly filmed. Nor was it a case where the nature of a conversation conducted in a public space dictated a reasonable expectation of privacy.

   Channel 4 also said that the untransmitted footage made clear that at no time did Mr Neilson give any intimation that he was troubled in any way by the stunt. He appeared to all who were present to take the experience well and he engaged animatedly with the production team. Mr Neilson had given no intimation to the effect that he was upset by the prospect of the broadcast or his participation in it.

b) Channel 4 then responded to the complaint that footage of Mr Neilson was included in the programme without his consent.

   Channel 4 said that the aim of the programme was to identify failings in the customer service provided to British retail consumers across various industries, to demonstrate how appropriate and effective customer service could be implemented without seriously impacting on profits, to empower consumers to demand appropriate customer service and to send a message to the bosses of market leaders that good customer service ought to be the norm in the UK. Channel 4 said that the filming in Currell's premises was appropriate, entirely in accordance with the aim of the programme and in the public interest.

Channel 4 said that, for the reasons given in its response to the complaint at head a) above, there was no breach of Mr Neilson's privacy. Channel 4 also said that there was no way for the programme makers or the broadcaster to know that Mr Neilson had taken or would take exception to the broadcast of the footage obtained in his office and that he had not indicated that he did not wish to be included in the broadcast. Both the production company and the broadcaster took the view that he had consented to the broadcast of the footage. Channel 4 said that it was not necessary that a person sign a written consent form in order to show that consent was given, but that where, as in this case, an adult was confronted with a camera and was filmed, and during the course of the filming the adult co-operated, participated and gave no indication of any lack of consent, consent was implied if not express.

Channel 4 also said that the untransmitted footage made it clear that Mr Neilson understood that he was being filmed for broadcast and consented to that course.

Decision

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

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

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

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the 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.

a) Ofcom considered the complaint that Mr Neilson's privacy was unwarrantably infringed in the making of the programme in that he was filmed inside his office, whilst working and without his consent.

In considering this head of complaint, Ofcom took into account Practice 8.5 of the Code, which says that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted.

In considering whether Mr Neilson's privacy was unwarrantably infringed in the making of the programme, Ofcom first considered the extent to which he could have legitimately expected that he would not be filmed at his place of work, and whether his consent was required.

Ofcom viewed the untransmitted footage and noted that Ms Portas and a small group of other people, two of whom were dressed as sharks, entered Currell. Ofcom considered the location of the filming, namely the front office or reception area of an estate agents' office to which members of the public had access. Ofcom also noted that Ms Portas and the programme makers visited the office openly, set out the reasons for their visit and filmed openly.

Ofcom noted Channel 4's position that it was clear from the untransmitted footage that Mr Neilson was not troubled by the filming, took the experience well and engaged animatedly with Ms Portas and the programme making team. Ofcom also noted that Mr Neilson said that he had not given his consent to be filmed at his place of work.

The untransmitted footage showed Ms Portas saying to Mr Neilson and a colleague of his that she wanted to talk to them about estate agents. She said that many customers didn't trust estate agents and thought they were *"sharks"*. Mr Neilson and his colleague listened and responded to Ms Portas' points. Before she left, Ms Portas thanked them for listening and Mr Neilson said:

"Thank you for coming in, uninvited...".

Ms Portas responded by saying:

"I don't need to be invited into an estate agents, do I?"

Having viewed this footage, Ofcom considered that, although the visit was good natured, Mr Neilson did not appear entirely comfortable and noted Mr Neilson's reference to Ms Portas and her team having attended the office uninvited.

Ofcom further noted that Ms Portas did explain that she was looking at estate agents and that there appeared to be an assumption that Mr Neilson and his colleague would be aware of her work, but they were not given any specific explanation as to the purpose the filming. Ofcom considered that it would have been helpful if the programme makers had given more information about why they were filming.

Ofcom also noted that Mr Neilson did not ask the programme makers to stop filming during his conversation with them.

In Ofcom's view, while Mr Neilson appeared not to have given explicit consent to the filming, it was not unreasonable for the programme makers to interpret his actions as amounting to implicit consent to the filming.

In any case, Ofcom's view is that the circumstances in which Mr Neilson was filmed were such that his consent was not required.

Taking into account the factors above, in particular the location of the filming and the fact that Mr Neilson engaged in a discussion with the programme makers, Ofcom did not consider that Mr Neilson had a legitimate expectation of privacy in the circumstances in which the footage was filmed. Given this conclusion it was

not necessary for Ofcom to consider whether any intrusion into Mr Neilson's privacy was warranted.

Ofcom therefore found no unwarranted infringement of Mr Neilson's privacy in the making of the programme.

b) Ofcom considered the complaint that Mr Neilson's privacy was unwarrantably infringed in the programme as broadcast in that the footage filmed without his consent was then broadcast without his consent.

Ofcom took into consideration Practice 8.6 of the Code, which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether Mr Neilson's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which he could have legitimately expected that the footage of him at his place of work would not be broadcast, and whether his consent was required.

Ofcom noted the closing sequence of the programme, in which Ms Portas was shown visiting a number of estate agents' offices, with a small group of people, some of whom were dressed as sharks. This included brief footage on three occasions of Mr Neilson, amounting to approximately five seconds in total. Although Mr Neilson was speaking during one of these clips, his voice could not be heard above the voiceover commentary. While his face was shown unobscured in the programme, Mr Neilson was neither named nor identified in any other way and was filmed amongst a group of colleagues

Notwithstanding that the voiceover included in the footage suggested Mr Neilson, (whose voice was not heard in the programme), may have been responding to Ms Portas' statements about why consumers were dissatisfied with the service given by some estate agents, Ofcom took the view that the broadcast footage of Mr Neilson did not amount to information that could be regarded as either private or sensitive in nature.

Ofcom also noted that while Mr Neilson said that he had not given his consent for footage of him to be included in the broadcast programme, he did not raise objections with the programme makers at the time. Given that there was no expectation of privacy in the filming of the broadcast content (for the reasons set out under decision head a) above), Ofcom considered that his prior consent was not required for its broadcast.

Taking into account all the factors above, Ofcom therefore did not consider that Mr Neilson had a legitimate expectation of privacy in relation to the broadcast footage. Given this conclusion it was not necessary for Ofcom to consider whether any intrusion into Mr Neilson's privacy was warranted.

In these circumstances, Ofcom found no unwarranted infringement of Mr Neilson's privacy in the programme as broadcast.

Accordingly, Ofcom has not upheld Mr Neilson's complaint of unwarranted infringement of privacy in the making and the broadcast of the programme.

Not Upheld

Complaint by Miss Kelly Loveridge

Coppers, Channel 4, 1 November 2010

Summary: Ofcom has not upheld this complaint of unwarranted infringement of privacy made by Miss Loveridge.

This programme looked at the work of police officers and the variety of situations and people they come across, from the officers' perspective. This episode focused on the police custody suite and included footage of people who had been arrested and were being processed in the custody suite. The complainant, Miss Kelly Loveridge, was filmed in a custody suite and footage of her was included in the programme.

Miss Loveridge complained to Ofcom that her privacy had been unwarrantably infringed in the making and broadcast of the programme.

In summary Ofcom found the following:

Miss Loveridge's privacy was not unwarrantably infringed in the making of the programme or in the subsequent broadcast of the programme as her legitimate expectation of privacy in relation to the filming and the broadcast were outweighed by the public interest in showing the police dealing with the incident**.**

Introduction

On 1 November 2010, Channel 4 broadcast an edition of *Coppers*, a series of programmes looking at the work of police officers across England from their own perspective. This edition focused on the work of a police custody suite and included footage of people who had been arrested and were being processed in the suite.

One of the people shown in the programme was Miss Kelly Loveridge. She was shown at the custody suite desk, having been arrested, answering questions from the police officer as follows:

Police Officer: "Do you have any dependencies to drink or drugs".

Miss Loveridge: "Yeah drugs".

Police Officer: "Drugs?"

Miss Loveridge: "Heroin".

Following the broadcast of the programme, Miss Loveridge complained to Ofcom that her privacy was unwarrantably infringed during the making of the programme and in the programme as broadcast.

The Complaint

Miss Loveridge's case

In summary, Miss Loveridge complained that her privacy was unwarrantably infringed in the making of the programme in that:

a) She had told the programme makers that she did not want to be filmed. She said that the filming took place in, what was, to all intents and purposes, a confidential environment where people were detained in police custody, having been arrested, and offences were investigated.

Miss Loveridge also complained that her privacy was unwarrantably infringed in the programme as broadcast in that:

b) She had told the programme makers that she did not want to take part in any way in the programme and yet her image was shown during the broadcast programme. Miss Loveridge commented that while she was not interviewed, she was seen in the programme when her image could quite easily have been pixelated out.

Channel 4's case

In summary, Channel 4 responded to the complaint that Miss Loveridge's privacy was unwarrantably infringed during the making of the programme as follows:

a) Channel 4 said that the principal aim of filming observationally in the custody suite was to capture genuine interactions between the police and the criminals and suspected criminals who came to the custody suite on a "normal" day. It was important to ensure that the production team could film in confidence continuously to gather as fair and accurate a representation of the day as possible with minimal interruption. The production team were filming inside the custody suite with the full consent and cooperation of the responsible police authority. Channel 4 stated that the programme makers were aware and accepted that Miss Loveridge did not consent to being filmed or for images of her to be broadcast as part of the programme. Channel 4 said that Miss Loveridge was brought into the custody suite having been arrested on suspicion of shoplifting and that, during the filming, she identified herself as a known recidivist criminal offender and a heroin addict. She was therefore precisely the type of person frequently encountered by those who worked in the custody suite. Channel 4 said that the programme makers had "quite rightly" decided to continue filming even though Miss Loveridge had made it clear that she did not consent to being filmed.

   Channel 4 did not accept that the custody suite was a "confidential environment" and stated that Miss Loveridge's status as a recidivist offender meant that she was not filmed in a "sensitive situation" and that, therefore, she did not have a legitimate expectation of privacy in relation to the filming. Channel 4 argued that even if Miss Loveridge did have a legitimate expectation of privacy, the decision to keep filming was in the public interest and therefore warranted.

In summary Channel 4 responded to Miss Loveridge's complaint that her privacy was unwarrantably infringed in the broadcast of the programme as follows:

b) Channel 4 accepted that, as Miss Loveridge had refused to consent to being filmed, she may have had a limited expectation of privacy in relation to the broadcast of the footage of her in the programme. However, Channel 4 argued that her expectation of privacy was not legitimate when taking into account her status as a recidivist criminal offender, who was filmed as part of a public interest programme on policing in Britain.

Channel 4 stated that if Miss Loveridge did have a legitimate expectation of privacy, any infringement of her privacy in the broadcast would have been warranted. Channel 4 said that before the programme makers had decided to broadcast footage of Miss Loveridge, the police had confirmed that she had been found guilty of both the shoplifting offences for which she had been investigated on the day of filming and had received a curfew order and a suspended sentence. Channel 4 said that Miss Loveridge's convictions were therefore now a matter of public record and that there would be no restriction in reporting her conviction and indentifying her by name, in pictures or filmed footage. Channel 4 also stated that Miss Loveridge was featured only very briefly in the programme as broadcast and that she was not named and nor were her address or criminal history (besides her admission that she was a heroin user) revealed. Nor was she shown in distress or doing anything else which could be said to be of a private nature.

Channel 4 said that there was a public interest in a programme examining the work of the police behind the scenes of an arrest and in developing the viewing public's understanding of the range of people and situations dealt with by the police. Channel 4 argued that any intrusion into Miss Loveridge's privacy was wholly warranted by being in the clear public interest.

Decision

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

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

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

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to focus on the comparative importance of the specific rights in the particular circumstances of the case. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

a) Ofcom considered Miss Loveridge's complaint that her privacy was unwarrantably infringed in the making of the programme.

Ofcom took into consideration Practice 8.5 of the Code, which states that any infringement of privacy in the making of a programme should be with the person's

consent or be otherwise warranted. Ofcom also had particular regard to Practice 8.8 of the Code which states that when filming in potentially sensitive places (including prisons and police stations), separate consent should normally be obtained before filming those in sensitive situations, unless not obtaining consent is warranted.

Ofcom noted from the footage included in the programme that Miss Loveridge, having been arrested, was filmed at the custody suite desk answering questions from the police officer, as follows:

Police Officer: *"Do you have any dependencies to drink or drugs".*

Miss Loveridge: *"Yeah drugs".*

Police Officer: *"Drugs?"*

Miss Loveridge: *"Heroin".*

Ofcom considers that the custody suite of a police station is an area to which public access is severely restricted. Ofcom also took the view that the officer's questions to Miss Loveridge were of a personal nature. Taking these factors into account, Ofcom took the view that programme makers had filmed Miss Loveridge not only in a sensitive place but also in a sensitive situation. Ofcom therefore considered that Miss Loveridge had a legitimate expectation of privacy in relation to being filmed at the custody suite.

Having found that Miss Loveridge had a legitimate expectation of privacy in relation to the filming, Ofcom went on to weigh the broadcaster's competing right to freedom of expression and the need for broadcasters to have the freedom to gather information and film incidents in making programmes without being unduly constrained, as well as the audience's right to receive information and ideas without unnecessary interference.

Ofcom noted that Channel 4 accepted that Miss Loveridge had not given her consent to be filmed and therefore, Ofcom went on to consider whether there was a sufficient public interest to justify the intrusion into Miss Loveridge's privacy without having obtained prior consent. In Ofcom's view, the manner in which the police deal with potential criminals in custody suites and the situations that arise whilst in custody suites was a matter of genuine public interest.

Ofcom considered that it would be undesirable ordinarily for programme makers to be unduly restricted in circumstances such as the present case, where programme makers are filming as people are brought into the custody suite. Ofcom also recognised that the programme makers had obtained the consent of the police authorities to film in the custody suite and the public interest in filming the material was significant. Having taken into account all the factors above, Ofcom considered that the broadcaster's right to freedom of expression and to receive and impart information and ideas without interference outweighed Miss Loveridge's legitimate expectation of privacy in being filmed without her consent.

Ofcom therefore found that there was no unwarranted infringement of Miss Loveridge's privacy in the making of the programme.

b) Ofcom considered Miss Loveridge's complaint that her privacy was unwarrantably infringed in the programme as broadcast in that her image was seen when it could have been pixelated out.

Ofcom took into consideration Practice 8.6 of the Code, which states that if the broadcast of the 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.

Ofcom first considered the extent to which Miss Loveridge had a legitimate expectation that her image and the exchange with the custody officer would not be broadcast.

Ofcom noted that Miss Loveridge featured in the programme for no more than 10 seconds. It noted that her face was partially obscured for some of the broadcast and that when her face was shown in profile and was identifiable, the shot was very brief. In addition, Ofcom noted that Miss Loveridge's answers to the custody officer's questions, as set out under decision head a) above, were barely audible. However, Ofcom considered that the nature of the information disclosed in the exchange between Miss Loveridge and the custody officer was sensitive and personal to her. Ofcom therefore considered that Miss Loveridge had a legitimate expectation that this exchange would not be broadcast to a wider audience, particularly when taking into account the fact that Miss Loveridge had not consented to the filming or the broadcasting.

Having found that Miss Loveridge had a legitimate expectation of privacy in relation to the broadcast, Ofcom went on to weigh the broadcaster's competing right to freedom of expression and the public interest in examining the work of the police and the audience's right to receive information and ideas without unnecessary interference. Ofcom considered whether, in the circumstances, there was a sufficient public interest to justify the intrusion into Miss Loveridge's privacy without her consent.

Ofcom noted the fact that it was confirmed to the broadcaster, prior to the broadcast of the programme that Miss Loveridge had subsequently been found guilty of the shoplifting offences that were being investigated on the day that the producers filmed her. Ofcom therefore considered that the footage of Miss Loveridge served to illustrate the narrator's statement that *"most crimes were drug related"* and considered that the use of her case as an example was important in highlighting the sometimes inextricable link between crime and drugs and the type of people and situations that the police had to deal with. In Ofcom's view these were matters of genuine public interest, which outweighed the intrusion into Miss Loveridge's privacy.

Ofcom therefore found that there was no unwarranted infringement of Miss Loveridge's privacy in the broadcast of the programme.

Accordingly, Ofcom has not upheld Miss Loveridge's complaint of unwarranted infringement of privacy in either the making or broadcast of the programme.

Not Upheld

Complaint by Mr Liam McCarthy

Love Thy Neighbour, Channel 4, 3 March 2011

Summary: Ofcom has not upheld this complaint of unjust or unfair treatment made by Mr Liam McCarthy.

Channel 4 broadcast an edition of *Love Thy Neighbour*, a series of programmes in which twelve couples competed to win a cottage in the village of Grassington in the Yorkshire Dales by trying to attract the votes of village residents. During one section of the programme Mr Liam McCarthy was shown having a drink in one of the village pubs.

Mr McCarthy complained that he was treated unfairly in the programme as broadcast.

In summary, Ofcom found that Mr McCarthy was not unfairly portrayed as a local resident with racial prejudices and was not treated unfairly in respect of the fact that his image was included in the programme as broadcast without his consent.

Introduction

On 3 March 2011, Channel 4 broadcast an edition of *Love Thy Neighbour,* a series of programmes in which twelve couples compete to win a cottage in the village of Grassington in the Yorkshire Dales by trying to win the votes of village residents. In this edition two couples - Philip and Simone, and Steve and Nicky - and their children spent a week in the village to meet the villagers and to try to gain their votes. The couples were introduced to the village in one of the local pubs. During this section of the programme, several of the villagers discussed how local residents would react to the fact that Philip and Simone were black, given that Grassington's population was largely white.

The programme showed a local woman saying: *"This is not a multi-cultural village and I don't know that they'll* [Philip and Simone] *get a good reception. I think they might have, you know, difficulties with that... and I think that's unfair"*. The programme cut away from the woman as she said the word *"unfair"* and showed a shot of Mr Liam McCarthy and his wife (who were visiting the area) having a drink in the pub. It then showed Philip in the foreground with Mr McCarthy visible in the background as Philip started to say: *"Being black is not something we are trying to be, it's who we are, we've got a lot of work to do now. I mean you can't rest on any type of laurels because we don't know how people have responded to what we've said"*. Mr McCarthy's face was clearly visible in the foreground of the picture for six seconds.

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

The Complaint

Mr McCarthy's case

In summary, Mr McCarthy complained that he was treated unjustly or unfairly in the programme as broadcast in that he was portrayed as a local resident with racial prejudices. Mr McCarthy said that he was deeply offended by the manner in which his image was used, without consent, in the programme.

By way of background, Mr McCarthy said that prior to his appearance in the programme there had been several interviews with local residents regarding the potential racial tension that may or may not exist should Simone and Philip, an Afro-Caribbean couple, win the contest. He explained that he and his wife were on holiday in the village at the time of filming and added that his appearance was introduced with the following quote from a local resident: *"It is not a multi-cultural village and I don't know that they'll* [Simone and Philip] *get a good reception. I think they might have, you know, some difficulties and I think that's unfair"*.

Channel 4's case

Before responding to the specific elements of this complaint, Channel 4 said that the series provided a platform for contestants and villagers to come to understand other people's lives and explored notions of heritage and custom and, in a very broad way, examined the myths and truths about "the ways" of rural British folk. It added that the contestants came from various ethnic, educational and urban backgrounds and that by being asked to choose between them the villagers had to confront their personal prejudices as well as their notions of what Grassington could or would cope with or respond well to. Channel 4 indicated that the same was true for the contestants and that this juxtaposition gave the viewer an insight into the realities of rural life and the ways in which attitudes of urban folk did or did not differ with those of rural of folk

In summary Channel 4 responded to Mr McCarthy's complaint of unfair treatment, which it treated as comprising two distinct issues, as follows.

With regard to the complaint that his image was used without consent, the broadcaster said that the filming that occurred when Mr McCarthy visited the pub in Grassington was open and obvious to all who were in the pub. It indicated that given the process of setting up the equipment and the fact that, after an introductory speech, the couples in the contest to win the cottage talked about their experience of being filmed, anyone in the pub would have understood that overt filming was taking place and that any person in the pub could have been filmed. Channel 4 also said that the programme makers had prominently displayed a filming notice (a copy of which was provided to Ofcom) and that Mr McCarthy had not approached any member of the production team to indicate that he did not wish to be included in any broadcast.

Channel 4 then turned to Mr McCarthy's complaint that he was unfairly portrayed in that the programme suggested he was as a local resident with racial prejudices.

It said that the section of the programme in which Mr McCarthy was included reflected the reception that Philip and Simone received in the village pub after they had formally introduced themselves. In addition, having acknowledged that this section of the programme indicated that some residents expected one of the families to have a potentially difficult time, Channel 4 argued that there was nothing about the language or images in this section which suggested that particular people in the

village, including the complainant, were racist, potentially racist or held racial prejudices.

Channel 4 acknowledged that it was possible that viewers may have assumed that Mr McCarthy was a resident of the village, but said that nothing turned on that. It said that, viewed as a whole, the programme was quite clear about whether there were or were not members of the Grassington community who held views which might be described as racially prejudiced and that Mr McCarthy was not portrayed as such a person. The broadcaster added that even if it was possible that a reasonable viewer might have formed a fleeting impression that Mr McCarthy might be a Grassington resident who was racially prejudiced, the remainder of the programme would have dispelled that view.

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 in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

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

Ofcom considered whether the broadcaster's actions were consistent with its obligation to avoid unjust or unfair treatment of individuals in programmes as set out in Rule 7.1 of the Ofcom Broadcasting Code ("the Code"). In doing so it paid particular regard to Practice 7.9 of the Code, which states that when broadcasting a factual programme broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom considered first Mr McCarthy's complaint that he was unfairly portrayed as a local resident with racial prejudices.

Ofcom noted that the relevant section of the programme showed a local woman saying:

> *"This is not a multi-cultural village and I don't know that they'll* [Philip and Simone] *get a good reception. I think they might have, you know, difficulties with that... and I think that's unfair"*.

The programme cut away from this woman as she said the word *"unfair"* and showed Mr McCarthy and his wife having a drink in the pub. It then showed Philip in the foreground, with Mr McCarthy visible to the side and slightly behind him, as Philip started to say:

"Being black is not something we are trying to be, it's who we are, we've got a lot of work to do now. I mean you can't rest on any type of laurels because we don't know how people have responded to what we've said".

Ofcom noted that Mr McCarthy's face was clearly visible in the foreground of the picture for six seconds.

During this section of the programme three of the village residents, including the woman quoted above, indicated that they thought Phillip and Simone might have a difficult time being accepted by at least some people in the village as a result of their ethnicity and the fact that the people of Grassington had little or no experience of interacting with people from cultural and ethnic backgrounds that were different to their own. Ofcom recognised that viewers might have concluded that Mr McCarthy, who although not named or referred to in the programme was identifiable, was a local resident rather than a visitor to the village.

However, in Ofcom's opinion viewers of the programme would have understood that the comments indicating that Philip and Simone might have some difficulty being accepted because of their ethnicity were the personal opinions of the three local residents who made them and not a statement that all the residents of Grassington were racist.

In particular, Ofcom noted that neither the comments of the local woman which were shown immediately prior to the image of Mr McCarthy nor those of the other two local residents which preceded them, indicated that that Mr McCarthy himself held any racist views. Rather, in Ofcom's opinion, viewers of this footage would have regarded Mr McCarthy as simply one of many customers in the pub who might have been local to the area.

Finally, Ofcom observed that the rest of the programme made clear that the concerns of these three local residents, that Philip and Simone might have difficulty being accepted by the village because of their ethnicity, proved to be unfounded: Philip and Simone were shown winning that week's round of the contest by securing more votes from local residents than the other couple who were both of white ethnicity.

Taking account of the factors noted above Ofcom concluded that the programme did not imply that Mr McCarthy was a local resident with racial prejudices. It therefore found that he was not portrayed unfairly in the programme as broadcast in this respect.

Ofcom then looked at Mr McCarthy's complaint that he was treated unfairly in that his image was used without consent.

Ofcom observed that from the submissions made by both parties that it was clear that Mr McCarthy was not invited to contribute to the programme.

In addition, while it was clear to Ofcom, from Channel 4's submission, that the programme makers did not specifically seek consent from Mr McCarthy for his inclusion in the programme, it was equally clear that the filming of the footage, which included Mr McCarthy, took place in the open. It would have been apparent to the pub's customers, including Mr McCarthy, that it was taking place. Also the programme makers posted a notice about the filming in the pub which indicated that filming was taking place for a Channel 4 documentary series about life in Grassington; and, that if anyone did not wish to be filmed they should make themselves known to a member of the production team. Taking these points into

account, Ofcom took the view that should Mr McCarthy have wished to he could have taken steps – notably approaching one of the programme makers – to have ensured that he was not filmed and/or included in any subsequent broadcast.

In light of these factors, Ofcom found that Mr McCarthy was not treated unfairly in respect of the fact that his image was included in the programme as broadcast without his consent.

Accordingly, Ofcom has not upheld Mr McCarthy's complaint of unfair treatment in the broadcast of the programme.

Not Upheld

Complaint by Mr Laurence Mackenzie

Newsline, BBC Northern Ireland, 4 March 2011

Summary: Ofcom has not upheld this complaint of unfair treatment made by Mr Laurence Mackenzie.

The programme reported on the crisis in Northern Ireland that followed burst water pipes during the Christmas period in 2010 and in particular the failure of Northern Ireland Water Limited ("NI Water") to deal effectively with its customers. One of the presenters said that Mr Mackenzie, Chief Executive of NI Water at the time of the crisis, had been *"forced to resign"*.

Mr Mackenzie complained to Ofcom that he was treated unfairly or unjustly in the programme as broadcast.

In summary, Ofcom found that:

- it was likely that viewers would have understood the phrase *"forced to resign"* as meaning that, following the series of events outlined by the newsreaders, Mr Mackenzie decided to offer his resignation, rather than that pressure had been put on his to resign; and

- Ofcom therefore found no unfairness to him.

Introduction

On 4 March 2011, BBC Northern Ireland broadcast an edition of its television news programme *Newsline*. The programme included a report on the serious problem which affected a significant number of household around Christmas in Northern Ireland, when water pipes burst, leaving many homes without mains water supply. The two presenters explained that a report by the utilities regulator had found that failure to communicate with customers had been at the heart of the problems experienced by consumers. The presenters said that neither the Northern Ireland Water Limited ("NI Water") call centre nor the website had been able to cope with the volume of customers trying to contact the company. One of the presenters stated that the Chief Executive of NI Water had been *"forced to resign"*. Mr Laurence Mackenzie had been the Chief Executive at the time of the crisis.

The programme included footage of in interview with Mr Trevor Haslett, the interim Chief Executive of NI Water.

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

The Complaint

Mr Mackenzie's case

In summary, Mr Mackenzie complained that he was treated unfairly in the programme as broadcast in that the news item reported unfairly and inaccurately that

he had been *"forced to resign"* from his position as Chief Executive of Northern Ireland Water Limited.

Mr Mackenzie said that the decision to resign had been entirely his and that no pressure had been put on him to resign. He had resigned because he took personal responsibility for the water shortages that impacted on customers in late December 2010. Mr Mackenzie stated that the use of the word "forced" suggested that he had acted other than with integrity and he categorically denied that he was "forced to resign".

The BBC's case

In summary, the BBC said in response to the complaint of unfair treatment that it did not dispute that Mr Mackenzie's decision to resign was his own or claim that his resignation was the result of any coercion, but said that the use of the phrase "forced to resign" was a legitimate description of Mr Mackenzie's reaction to the events preceding his resignation.

The BBC said that Mr Mackenzie's resignation followed criticism of NI Water's handling of the crisis by the Minister for Regional Development (the department responsible for NI Water), which described it as "shambolic", "ineffective" and "not fit for purpose". In addition the Minister had referred to the crisis as "completely unacceptable communication and customer service, anything but satisfactory." Further, the Northern Ireland Executive had also refused to say, when asked, that Mr Mackenzie should not resign. The BBC said that the Minister had said on 31 December 2010 that "the people who have to take us through this issue are the people currently based in NI [Water]" and that the investigation would need to identify where blame lay for the crisis and as such "people will be held accountable".

The BBC also referred to a Press Association report on 4 January, 2011, which said:

> "Tens of thousands of people in Northern Ireland are still without water in their homes and the head of the company behind the crisis has been urged to resign, according to reports".

The BBC said that Sky news subsequently reported that:

> "The announcement by the province's supplier comes as its chief executive is expected to step down over his organisation's mishandling of the region's water crisis. Laurence Mackenzie has come under intense criticism after Northern Ireland Water failed to cope with the public outcry for information and is accused of bungling efforts to help stricken families".

The BBC also referred to articles in the Daily Mail, the Belfast Telegraph and on Sky news, which followed the announcement of Mr Mackenzie's resignation, all of which referred to Mr Mackenzie's decision to resign as being made "under increasing pressure" and to him "probably having no choice".

The BBC argued that nothing short of Mr Mackenzie's resignation would have been perceived as satisfying the requirements of accountability and that the phrase "forced to resign" was therefore an accurate reflection of the situation which left Mr Mackenzie with no tenable alternative, irrespective of how the decision to resign was taken.

Decision

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

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

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

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

In considering the complaint, Ofcom also had regard to Practice 7.9 of its Code which states that, before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom noted that the programme introduced the item by saying *"More now on the failure of NI water to deal with the Christmas burst pipes crisis."* The presenters then explained the story as follows:

Newsreader 1: *The utility regulator report criticised the company's handling of it and revealed that 450,000 customers had been affected. Failure to communicate with customers was at the heart of the problem and the report tells us why that happened.*

Newsreader 2: *NI Water predicted the thaw, but when it came on Boxing Day they had just fourteen staff in the call centre and there were 6,000 calls. Most people didn't get through.*

Newsreader 1: *Two days later at the height of the crisis there were fifty staff in the call centre, but they were swamped by more than 400,000 calls.*

Newsreader 2: *The contingency plan was an appeal for volunteer staff, but that brought in just thirteen new call handlers.*

Newsreader 1: *And although there were 210 lines into the call centre none of them was dedicated to outgoing calls, making essential communication very difficult.*

Newsreader 2: *To cap it all, the company website could cope with only 20,000 hits a day. As people flocked to it for information the site's security shut traffic out, assuming it was a cyber attack. It took three days to sort that out.*

After reporting the details of the crisis and issues faced by the customers, the first newsreader then went on to state:

> *"Following all that the Chief Executive of NI Water was forced to resign from his post".*

The item then featured an interview with the interim Chief Executive of NI Water, Mr Haslett. He responded to questions of how a "handful of call centre staff" were going to cope with the number of calls it had received during this incident and how the company were preparing to improve their systems.

Ofcom noted that in the period of just under a month between Mr Mackenzie's resignation and the broadcast, a number of newspaper reports had also discussed the "pressures to resign" that Mr Mackenzie was facing and referred to his resignation in similar terms to those used in the broadcast.

In Ofcom's view the main focus of the *Newsline* item was on the mishandling of the crisis and the steps being taken to avoid similar events, with only a very brief mention of Mr Mackenzie's resignation being included.

Ofcom noted that the newsreader used the words *"forced to resign"* immediately after the explanation of all the problems that NI Water encountered and considered that nothing in the report specifically suggested that Mr Mackenzie had been prevailed upon or forced by anyone to offer his resignation. Taking all the relevant circumstances into account, Ofcom considered that reasonable viewers would have understood from the reference that, following the series of very significant problems at NI Water over the Christmas period 2010 outlined by the newsreaders, Mr Mackenzie had decided voluntarily to offer his resignation from his position as Chief Executive of NI Water.

Taking the above factors into account, Ofcom was satisfied that the facts had been presented in a way that was not unfair to Mr Mackenzie.

Accordingly, Ofcom has not upheld Mr Mackenzie's complaint of unfair treatment in the broadcast of the programme.

Not Upheld

Complaint by Mr Jagdeep Singh

Religious Relay from Gurdwara, Kohinoor Radio 97.3FM, 25 September 2010

Summary: Ofcom has not upheld this complaint of unfair treatment made by Mr Jagdeep Singh.

This edition of *Religious Relay from Gurdwara* included a speech by the elected President of the Gurdwara[1], Mr Mohinder Singh Sangha. Mr Sangha said that "a lot of cleverness/craftiness has been used here in interpreting the accounts from 2004 to 2007". Mr Sangha said that at the end of the 2007 calendar year, the balance set out in the accounts was £254,000, when in actual fact it was £97,725. Mr Sangha said that the £254,000 figure represented adding together all the balances from 2004, 2005, 2006 and 2007. He said that this "is not accounting practice and is misleading". He then said that when his committee came to office in December 2008 the balance was overdrawn by £11,927. Mr Sangha said:

> "From 2006-08 Bhai Jagdeep Singh from Mann group who at present is on the other side was the Treasurer [of the Gurdwara], and for the first two years he was the Assistant Treasurer, so he is more aware of any losses that have been made".

In summary, Ofcom found overall, the inclusion of Mr Sangha's comments in the programme did not portray Mr Singh in a way that was unfair to him.

Introduction

Kohinoor Radio 97.3 FM ("Kohinoor" or the "broadcaster") is an Asian community radio station broadcasting in Leicester. Kohinoor broadcasts a daily programme from the Gurdwara, between 19:20 and 20:20. It consists of evening prayers, religious hymns, lectures, Sikh history and public information.

On 25 September 2010, Kohinoor broadcast an edition of *Religious Relay from Gurdwara*. It included a speech by the elected President of the Gurdwara, Mr Mohinder Singh Sangha. In his speech he announced that the Gurdwara elections were to be held the following day, 26 September 2010. The two parties involved were the "Sher Group" and the "Baj group". Mr Sangha said that he had received some letters regarding the congregation and two points of concern had arisen from them. The first regarded a trustee's letter the second regarded the accounts for the congregation.

As regards the trustee letter, Mr Sangha said that one trustee had not been impartial during his tenure and that this was improper.

As regards the accounts, Mr Sangha said that *"a lot of cleverness/craftiness has been used here in interpreting the accounts from 2004 to 2007"*. Mr Sangha said that at the end of the 2007 calendar year, the balance set out in the accounts was £254,000, when in actual fact it was £97,725. Mr Sangha said that the £254,000 figure represented adding together all the balances from 2004, 2005, 2006 and 2007. He said that this *"is not accounting practice and is misleading".* He then said that

[1] A Sikh place of worship

when his committee came to office in December 2008 the balance was overdrawn by £11,927. Mr Sangha said:

> *"From 2006-08 Bhai Jagdeep Singh from Mann group who at present is on the other side was the Treasurer, and for the first two years he was the Assistant Treasurer, so he is more aware of any losses that have been made".*

Mr Sangha said that in 2009 the *"income changed considerably"*. He said that all gift aid donations had been made public, regardless of how much they were. Because of the income of the Gurdwara growing, the congregation no longer needed a loan to carry out extension work on the building. He said:

> *"So all this has been used by the others as an election stunt* [i.e. in internal elections at the Gurdwara] *to defame us...So I plead with all the congregation and those listening on the radio that the figure of £254,000 in the letters is a political stunt that should be ignored. So the cost of the outside building project of £258,618 has been met by donations from the congregation, gift aid and other collections".*

Following the broadcast of the programme, Mr Jagvinder Singh complained on behalf of his brother, Mr Jagdeep Singh to Ofcom that he was treated unjustly or unfairly in the programme as broadcast and that his privacy was unwarrantably infringed in the programme as broadcast.

The Complaint

In summary, Mr Jagdeep Singh complained that he was treated unjustly or unfairly in the programme as broadcast in that Mr Sangha used the programme to blame Mr Singh for the mishandling of accounts. Mr Singh, as Treasurer did not have authority to issue any cheque or authorise any transaction. Constitutionally, the Committee members should sign off cheques.

By way of background, Mr Singh said that this reference to his brother gave him a bad name.

Kohinoor's case

Kohinoor said that it has a daily broadcast live from the Gurdwara every evening between 7.00pm and 8.20pm. It said that this programme has been ongoing since January 2009. Kohinoor said that in this program there are religious hymns and prayers, community affairs updates and public information.

Kohinoor said that the management committee(s) of the Gurdwara have been made aware of the stations and Ofcom's broadcasting guidelines and requested that they keep within those parameters in the live broadcasts.

With regards to the material broadcast in the programme on 25 September 2010, Kohinoor said that it should be noted that the President Mr Sangha was addressing the congregation and informing them of updates that were in the interest of the members regarding the elections that were to be held on the following day.

Kohinoor said that it has spoken with Mr Sangha, the President, and other members of the Gurdwara, regarding the content of the broadcast on 25 September 2010.

Kohinoor said that in the broadcast there was no mention or reference of any kind by Mr Sangha that Mr Jagdeep Singh had mishandled the accounts. It said that the reference made was "Mr Jagdeep Singh was Treasurer and that he should be aware of any losses" over the period while he was in office.

Kohinoor said that in no way was Mr Singh given a bad name or denigrated by being mentioned as the Treasurer. It said that there was no mention in the broadcast that accounts were mishandled by anyone. Kohinoor said that clarification was given about income, expenditure, loss and profit from the period 2004 to present and no one was blamed as there has been no reference to any mishandling of accounts. Kohinoor said that there appears to be some incorrect understanding of what was said in the broadcast.

Kohinoor said that it does not get involved in local political issues and merely provides public information.

Decision

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

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

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

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

Ofcom considered whether Mr Jagdeep Singh was treated unjustly or unfairly in the programme as broadcast in that Mr Sangha used the programme to blame Mr Singh for the mishandling of accounts.

Ofcom noted that the programme concerned the live broadcast of a Gurdwara meeting. Ofcom took the view that these facts would have been clear to listeners.

Ofcom noted that the following was said about Mr Singh in the programme:

> *"From 2006-08 Bhai Jagdeep Singh from Mann group who at present is on the other side was the Treasurer, and for the first two years he was the Assistant Treasurer, so he is more aware of any losses that have been made".*

Ofcom noted that the report stated that Mr Singh was either the Assistant Treasurer or Treasurer from 2006 to 2008, that he was part of the Mann Group, and that because of his positions held in this period, that he should have been aware of any losses that had been made.

Ofcom noted the context these comments came in. It noted that Mr Sangha had said that account balances had been *"misleading"* because the figure given - £254,000 - was the total figure made up of the balance figure for each year (2004, 2005, 2006 and 2007), and that this was not normal accounting practice. Ofcom further considered Mr Sangha's assertion that the figure of £254,000 was a *"political stunt"*.

Ofcom took the view that the speech did not blame Mr Singh for the mishandling of accounts. Instead, it said that because Mr Singh was Assistant Treasurer and subsequently Treasurer during the relevant period and so he should have been aware of any losses that were being made. Ofcom took the view that this was a fair assertion made given the obvious financial responsibilities an Assistant Treasurer and Treasurer has. Ofcom noted that Mr Singh has not disputed that the accounts were presented in the way Mr Sangha described in his speech.

As regards Mr Singh's complaint that he did not have authority to issue any cheque or authorise any transaction, Ofcom took the view that Mr Sangha's speech did not refer to any specific payments being issued or authorised, but instead referred to the general state of the accounts, and that Mr Singh as Assistant Treasurer and Treasurer should have been aware of any losses that had been made.

Ofcom took into account that this complaint concerned the daily, live broadcast from the Gurdwara and noted the service such content provides to local communities. It further considered that, as a result, listeners would have been aware that the programme was a live broadcast of Mr Sangha's speech from the Gurdwara meeting and, thus, that the views expressed were his own. Ofcom took the view that Mr Sangha's comments stated that Mr Singh, because of the positions he held on the committee should have been aware of the state of the Gurdwara's accounts. Ofcom found that that did not amount to an allegation of wrongdoing on Mr Singh's part or an accusation of blame for the apparent discrepancies highlighted by Mr Sangha. It considered that in the context that the comments were made, listeners would have been able to form their own opinion of Mr Singh and the veracity or otherwise of Mr Sangha's comments. Given these factors, Ofcom considered that, overall, the inclusion of Mr Sangha's comments in the programme did not portray Mr Singh in a way that was unfair to him.

Ofcom therefore found no unfairness in this regard.

Accordingly, Ofcom has not upheld Mr Singh's complaint of unfair treatment in the programme as broadcast.

Not Upheld

Complaint by Mr David Bunce

Destination Weddings: Santorini, Wedding TV, 3 March 2011

Summary: Ofcom has not upheld this complaint of unwarranted infringement of privacy in the programme as broadcast from Mr David Bunce.

The programme included interviews with representatives of the companies that arranged weddings on the island of Santorini. Footage of a number of weddings that had taken place at different venues on the island were shown as a slide show accompanying the audio of the ongoing interviews. One of the weddings included in the programme was that of Mr David Bunce. Video footage and still photographs of him, his wife and members of their families were shown, albeit briefly, several times in the programme.

Mr Bunce complained to Ofcom that his privacy was unwarrantably infringed in the programme as broadcast in that footage his wedding was shown without his consent.

In summary, Ofcom found that Mr Bunce did not have a legitimate expectation of privacy in relation to the broadcast of the photographs and video footage of his wedding included in the programme, as he had given his explicit consent for the material to be used in the programme.

Introduction

On 3 March 2011, Wedding TV broadcast an edition of *Destination Weddings: Santorini*, a series of programmes in which different wedding venues abroad are explored. This edition focused on the Greek island of Santorini and featured interviews with wedding planners, hotel and venue managers and *"newlywed"* couples.

The programme included interviews with representatives of the companies that arranged weddings on the island. Footage of a number of weddings that had taken place at different venues on the island were shown as a slide show accompanying the audio of the ongoing interviews. One of the weddings included in the programme was that of the complainant, Mr David Bunce, who was married in Santorini in August 2009. Video footage and still photographs of him, his wife and members of their families were shown, albeit briefly, several times in the programme.

Following the broadcast of the programme, Mr Bunce complained to Ofcom that his privacy was unwarrantably infringed in the programme as broadcast.

The Complaint

Mr Bunce's case

In summary, Mr Bunce complained that his privacy was unwarrantably infringed in the programme as broadcast in that footage of his wedding was included in the programme as broadcast.

By way of background to the complaint, Mr Bunce said that he had made it clear to Planet Holidays Limited ("Planet Holidays"), the holiday company that arranged the

wedding, that he did not want any footage or photographs of his wedding to be used for "any marketing, advertising or television production" purposes. Mr Bunce said that he was a police officer and so did not want his family and friends being identified by the use of footage and photographs taken at his wedding. Mr Bunce said that he was upset and distressed to discover that footage and photographs of his wedding had been broadcast without his permission and without any contact from Planet Holidays about it.

Wedding TV's case

In summary Wedding TV responded to Mr Bunce's complaint that his privacy was unwarrantably infringed in the programme as broadcast, as follows.

Wedding TV informed Ofcom that it produced and broadcast the programme and that Planet Holidays and Weddings in Style were sister companies, both of which contributed to the programme. As contributors, Weddings in Style and Planet Holidays provided Wedding TV with footage of weddings they had organised on the island to use in the programme.

Wedding TV said that it broadcasts wedding photographs and videos that are provided to it by wedding photographers and videographers who either asked the wedding couple to sign over all rights to the photographs or videos or to sign a release form giving permission for the material to be used. Wedding TV said that it required a copy of the appropriate consent from the photographer or videographer before it included any material in its programmes. It said that it was always willing to remove material from programmes if couples changed their minds at a later date or their circumstances changed.

Wedding TV said that in Mr Bunce's case the wedding photographer, who was from Weddings in Style, had provided it with a copy of an agreement signed by Mr Bunce in which he agreed to their request to use the wedding footage in future publications or advertisements relating to "their" wedding programme. As such, Mr Bunce's wedding was included in the programme. Wedding TV provided Ofcom with a copy of the release form signed by Mr Bunce and dated 30 August 2009, which was two days after his wedding.

Decision

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

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

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

Ofcom considered the complaint that Mr Bunce's privacy was unwarrantably infringed

in the programme as broadcast in that the programme included footage of his wedding without his consent.

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

This is reflected in how Ofcom applies Rule 8.1 of the Ofcom's Broadcasting Code ("the Code"), which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted. Ofcom also had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not Mr Bunce's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which he could have legitimately expected that the footage of his wedding would not be broadcast without his consent.

Ofcom noted that a series of photographs and video footage of Mr Bunce's wedding were shown in the programme. It appeared to Ofcom that the photographs and video footage had been taken and filmed openly and with the willing participation of Mr Bunce and his guests. Ofcom noted that although Mr Bunce's face was unobscured in the photographs and video footage which rendered him identifiable, the photographs and video footage were each shown briefly in the programme (i.e. for approximately four seconds).

Ofcom recognised that the nature of the information (i.e. photographs and video footage of Mr Bunce's wedding) disclosed in the programme was information that may be understood to be personal and may therefore attract some expectation of privacy. Ofcom considered that Mr Bunce would have legitimately expected that photographs and video footage of his wedding would not to be broadcast to a wider audience without his consent.

Ofcom noted that Mr Bunce said in his complaint that he had not given his consent for the photographs and video footage to be used in the programme and that he had written to Planet Holidays to state that he did not want any footage or photographs of his wedding to be used for "any marketing, advertising or television production" purposes. While Mr Bunce was unable to provide Ofcom with any documentary material to support his assertion, Wedding TV provided Ofcom with a copy of the consent form that had been signed by Mr Bunce on 30 August 2009 (two days after his wedding). In particular, Ofcom noted that the consent form stated that:

> "By signing this consent form, you thereby give Weddings in Style authorisation to keep your photograph(s) on file, giving us (as well as your Tour Operator) permission to use your photograph(s) in future publications or advertisements relating to our weddings programme. On behalf of all of us at Weddings in Style, we thank you for your consent and wish you a truly happy married life".

Ofcom considered that not only had the programme makers appreciated that Mr Bunce's consent was required in order to use the photographs and video footage of

his wedding in a television broadcast, but that they had also sought and obtained his explicit consent to use the material.

Therefore, taking all the factors above into account, Ofcom did not consider that Mr Bunce had a legitimate expectation of privacy in relation to the broadcast in the programme of the photographs and video footage of his wedding. It was satisfied that Mr Bunce had given his consent for the material to be included "in future publications or advertisements relating to our [the broadcaster's] weddings programme" and that Wedding TV was entitled to rely on it. Given this conclusion, it was not necessary for Ofcom to consider whether any intrusion into Mr Bunce's privacy was warranted.

Ofcom therefore found that there was no unwarranted infringement of Mr Bunce's privacy in the programme as broadcast and has not upheld the complaint in this respect.

Accordingly, Ofcom has not upheld Mr Bunce's complaint of unwarranted infringement of privacy in the programme as broadcast.

Other Programmes Not in Breach

Up to 22 August 2011

Programme	Broadcaster	Transmission Date	Categories
Cougar Town	Sky Living Loves	29/07/2011	Television Access Services
CSI: Crime Scene Investigation	Channel 5	16/07/2011	Television Access Services
Dumb and Dumber	Channel 5	26/06/2011	Offensive language
Eden Hotel	Viasat 3	06/04/2011	Generally accepted standards
Elite TV	Filth	26/05/2011	Participation TV - Offence
Nittileaks	Kanal 5	13/06/2011	Race discrimination/offence
Regular Show	Cartoon Network	14/05/2011	Scheduling
Star Trek: Enterprise	Sky Atlantic	18/07/2011	Television Access Services
The Wright Stuff	Channel 5	23/06/2011	Race discrimination/offence
This Morning	ITV1	07/06/2011	Materially misleading
Various	B4U	09/06/2011	Offensive language
Various	Music India	09/06/2011	Offensive language

Complaints Assessed, Not Investigated

Between 2 and 22 August 2011

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
118 118's sponsorship of ITV Movies	ITV4	03/08/2011	Crime	1
118 118's sponsorship of ITV Movies	ITV1	15/08/2011	Crime	1
118 118's sponsorship of ITV Movies	ITV2	n/a	Crime	1
5 News at 5	Channel 5	29/07/2011	Animal welfare	2
5 News at 5	Channel 5	12/08/2011	Crime	5
8 Out of 10 Cats	Challenge TV	25/07/2011	Generally accepted standards	1
8 Out of 10 Cats	Channel 4	12/08/2011	Generally accepted standards	1
A Clockwork Orange	ITV4	12/08/2011	Generally accepted standards	1
Adventure Time	Cartoon Network	01/08/2011	Violence and dangerous behaviour	1
Advertising minutage	Syfy	10/06/2011	Advertising minutage	1
Advertising scheduling	Various	n/a	Advertising scheduling	1
Amber Sound	Amber Sound	09/08/2011	Generally accepted standards	1
BBC News	BBC News Channel	26/07/2011	Generally accepted standards	1
BBC News at Six	BBC 1	11/08/2011	Under 18s - Coverage of sexual and other offences	1
BBC News at Ten	BBC 1	10/08/2011	Race discrimination/offence	1
Big T's Country Show	Downtown Radio	21/07/2011	Offensive language	1
Brainiac Science Abuse	Sky HD1	13/08/2011	Generally accepted standards	1
Britain's Got Talent	ITV1	04/06/2011	Sexual material	94
Britain's Got Talent	ITV1	05/06/2011	Sexual material	9
Capital Breakfast With Johnny and Lisa	Capital FM	04/08/2011	Gender discrimination/offence	1
Case Histories	BBC 1	06/06/2011	Generally accepted standards	1
Casualty	BBC 1	13/08/2011	Race discrimination/offence	10
Celebrity Big Brother's Bit on the Side	Channel 5	18/08/2011	Generally accepted standards	1
Celebrity Big Brother's Bit on the Side	Channel 5	18/08/2011	Harm	1
Celebrity Come Dine With Me	More4	29/07/2011	Offensive language	2
Celebrity Juice	ITV1	02/08/2011	Sexual material	1
Channel 4 News	Channel 4	01/08/2011	Race discrimination/offence	1

Channel 4 News	Channel 4	08/08/2011	Race discrimination/offence	1
Channel 4 News	Channel 4	11/08/2011	Due accuracy	1
Channel promotions	Comedy Central	10/08/2011	Hypnotic and other techniques	1
Channel promotions	Comedy Central	01/08/2011	Hypnotic and other techniques	1
Cherry's Parenting Dilemmas	BBC 3	08/08/2011	Under 18s in programmes	1
Christian O'Connell Breakfast Show	Absolute Radio	10/08/2011	Generally accepted standards	1
Classroom Secrets	BBC 1	14/07/2011	Under 18s in programmes	1
Come Dine With Me	More4	05/08/2011	Race discrimination/offence	1
Come Dine with Me	Channel 4	19/08/2011	Scheduling	1
Coppers	Channel 4	11/08/2011	Disability discrimination/offence	2
Coronation Street	ITV1	29/07/2011	Generally accepted standards	1
Coronation Street	ITV1	08/08/2011	Generally accepted standards	1
Coronation Street	ITV1	19/08/2011	Generally accepted standards	1
Cowboy Builders	Channel 5	28/07/2011	Religious/Beliefs discrimination/offence	1
Daybreak	ITV1	05/08/2011	Gender discrimination/offence	1
Daybreak	ITV1	10/08/2011	Crime	1
Dispatches	Channel 4	11/07/2011	Due impartiality/bias	50
Doctors	BBC 1	03/08/2011	Race discrimination/offence	5
EastEnders	BBC 1	05/08/2011	Harm	1
EastEnders	BBC1	09/08/2011	Harm	1
EastEnders Omnibus	BBC 1	07/08/2011	Generally accepted standards	1
ELP Live at the Isle of Wight	Sky Arts 1	03/08/2011	Nudity	1
Embarrassing Bodies	Channel 4	29/06/2011	Materially misleading	1
Emmerdale	ITV1	06/06/2011	Suicide and self harm	1
Emmerdale	ITV1	07/06/2011	Suicide and self harm	46
Emmerdale	ITV1	27/07/2011	Nudity	1
Emmerdale	ITV1	10/08/2011	Generally accepted standards	1
Escape to the Country	BBC 2	01/08/2011	Outside of remit / other	1
Everybody Hates Chris	5*	05/08/2011	Scheduling	1
F1: Grand Prix	BBC / Sky	n/a	Outside of remit / other	1
F1: Grand Prix	BBC / Sky	n/a	Outside of remit / other	1
Fox News	Fox News	03/08/2011	Due impartiality/bias	1
Freaky Eaters	Really	08/08/2011	Harm	1
Friends	E4	15/08/2011	Sexual material	1
Futurama	Sky1	29/07/2011	Offensive language	1
Geordie Finishing School	BBC 3	27/07/2011	Generally accepted	1

for Girls			standards	
Glee	E4	11/08/2011	Sexual material	1
Greg James	BBC Radio 1	15/08/2011	Sexual material	1
Harry Potter and the Goblet of Fire	ITV1	06/08/2011	Offensive language	3
Harry Potter and the Order of the Phoenix	STV	13/08/2011	Scheduling	1
Harry Potter and the Prisoner of Azkaban	ITV1	30/07/2011	Scheduling	1
Hollyoaks	Channel 4	01/08/2011	Sexual material	7
Hollyoaks	E4	05/08/2011	Generally accepted standards	1
Hollyoaks	Channel 4	12/08/2011	Generally accepted standards	1
Iain Dale	LBC 97.3FM	27/07/2011	Generally accepted standards	1
Iain Dale	LBC 97.3FM	15/08/2011	Generally accepted standards	1
Ian Collins	Talksport	16/08/2011	Due impartiality/bias	1
Islamic Documentary	DM Digital	01/08/2011	Advertising/editorial distinction	1
ITV News and Weather	ITV1	08/08/2011	Violence and dangerous behaviour	1
ITV News and Weather	ITV1	09/08/2011	Crime	1
ITV News and Weather	ITV1	12/08/2011	Due impartiality/bias	1
Jez Welham	Kiss 100	02/08/2011	Competitions	1
Jimmy Carr Live At The Apollo	Comedy Central	15/08/2011	Religious/Beliefs discrimination/offence	1
JLS feat DEV - 'She Makes Me Wanna'	n/a	24/07/2011	Offensive language	1
Julia Hartley Brewer	LBC 97.3FM	10/08/2011	Generally accepted standards	1
Ken Livingstone / David Mellor	LBC 97.3FM	n/a	Due impartiality/bias	1
Kiss Breakfast	Kiss 100	10/08/2011	Harm	1
Law and Order: UK	ITV1	31/07/2011	Materially misleading	1
Little Box of Horrors	E4	04/08/2011	Offensive language	1
Little Box of Horrors	E4	18/08/2011	Generally accepted standards	1
Live Super League	Sky Sports 1	08/07/2011	Generally accepted standards	1
London Tonight	ITV1	14/07/2011	Fairness & Privacy	1
London Tonight	ITV1	09/08/2011	Crime	1
Lorraine	ITV1	08/08/2011	Due impartiality/bias	1
Luke Nguyen's Vietnam	Good Food	02/08/2011	Animal welfare	1
Man, Woman, Wild	Discovery	02/08/2011	Animal welfare	1
Midsomer Murders	ITV1	07/08/2011	Scheduling	1
Mildred Pierce	Sky Atlantic	23/07/2011	Sexual material	1
Money for Nothing	BBC Radio Wales	07/08/2011	Crime	1
News	Press TV	10/01/2011	Race discrimination/offence	1
News	BBC / ITV / Sky News	08/08/2011	Crime	1

News	BBC / ITV / Sky News	08/08/2011	Crime	1
News	BBC 1 / ITV1 / Channel 4 / Channel 5	09/08/2011	Violence and dangerous behaviour	1
News, Sport, Weather	Sky News	11/08/2011	Due accuracy	1
News, Sport, Weather	Sky News	13/08/2011	Crime	1
Newsbeat	BBC Radio 1	20/04/2011	Sexual material	1
Newsnight	BBC 2	22/06/2011	Flashing images/risk to viewers who have PSE	1
Newsnight	BBC 2	10/08/2011	Race discrimination/offence	2
Nicky Campbell	BBC Radio 5 Live	26/07/2011	Generally accepted standards	1
Nicole Scherzinger 'Right There'	Capital FM	08/06/2011	Sexual material	1
Nicole Scherzinger 'Right There'	Capital FM	28/06/2011	Sexual material	1
Off the Record	Ary News	09/06/2011	Violence and dangerous behaviour	2
Olympics Trailer	BBC 1	16/08/2011	Crime	1
One Tree Hill	E4	06/08/2011	Scheduling	1
Oops TV	Sky3	25/07/2011	Violence and dangerous behaviour	1
Outnumbered	Gold	11/08/2011	Animal welfare	1
Peter Andre: Here 2 Help	ITV2	17/07/2011	Product placement	1
Peter Andre: Here 2 Help	ITV2	18/08/2011	Materially misleading	1
Phineas and Ferb	ITV1	07/08/2011	Nudity	1
Press Preview	Sky News	10/08/2011	Generally accepted standards	1
Press TV	Press TV	n/a	Due impartiality/bias	1
Promotion for Bet365.com	Channel 4	28/07/2011	Advertising/editorial distinction	1
Psychic First	Watchmetv.tv	03/08/2011	Under 18s in programmes	1
QI	Dave	25/07/2011	Sexual material	1
Radio West Fife	Radio West Fife	29/07/2011	Outside of remit / other	1
Red Light Central	Red Light 1	05/08/2011	Participation TV - Offence	1
Richard Bacon	BBC Radio 5 Live	01/08/2011	Exorcism, the occult and the paranormal	1
Riot coverage	BBC / ITV / Sky	n/a	Crime	1
Road Wars	Pick TV	31/07/2011	Nudity	1
Rosemary and Thyme	ITV1	01/08/2011	Offensive language	1
Rosemary and Thyme	ITV1	17/08/2011	Offensive language	1
Russell Howard's Good News	Dave	20/07/2011	Generally accepted standards	1
Sasha Brookes	Capital Birmingham	14/07/2011	Age discrimination/offence	1
Sesame Tree	CBeebies	26/07/2011	HFSS	1
Sex and the City	Comedy Central	01/08/2011	Scheduling	1
Sex and the City	Comedy Central	03/08/2011	Sexual material	1
Sex Night	BBC Radio 1	31/07/2011	Sexual material	1

Promotions for Sex Night	BBC Radio 1	25/07/2011	Scheduling	1
Sex: How to Do Everything	5*	06/08/2011	Gender discrimination/offence	1
Sherlock	BBC 1	03/08/2011	Generally accepted standards	1
Shouting in the Dark	Al Jazeera	04/08/2011	Due accuracy	1
Shouting in the Dark	Al Jazeera	04/08/2011	Due accuracy	1
Shouting in the Dark	Al Jazeera	04/08/2011	Materially misleading	1
Show Me the Funny	ITV1	08/08/2011	Race discrimination/offence	1
Show Me the Funny	ITV1	15/08/2011	Violence and dangerous behaviour	1
Sin Cities	Pick TV	13/08/2011	Animal welfare	1
SKY and BBC News	BBC/ SKY	09/08/2011	Crime	1
Sky News	Sky News	04/08/2011	Fairness & Privacy	1
Sky News	Sky News	07/08/2011	Race discrimination/offence	1
Sky News	Sky News	08/08/2011	Due accuracy	1
Sky News	Sky News	08/08/2011	Race discrimination/offence	1
Sky News	Sky News	09/08/2011	Due accuracy	4
Sky News	Sky News	09/08/2011	Religious/Beliefs discrimination/offence	7
Sky News	Sky News	09/08/2011	Generally accepted standards	2
Sky News	Sky News	09/08/2011	Harm	1
Sky News	Sky News	10/08/2011	Crime	1
Sky News	Sky News	12/08/2011	Crime	8
Sky News	Sky News	12/08/2011	Due accuracy	1
Sky News	Sky News	n/a	Due accuracy	1
Sky News	Sky News	n/a	Due impartiality/bias	1
Sky News	Sky News	n/a	Race discrimination/offence	1
Sky News at Nine	Sky News	08/08/2011	Crime	1
Sky News with Kay Burley	Sky News	09/08/2011	Due accuracy	1
Sky News with Kay Burley	Sky News	09/08/2011	Due impartiality/bias	1
Sky News with Kay Burley	Sky News	11/08/2011	Harm	1
Sodastream's sponsorship of Friends	E4	14/08/2011	Sexual material	1
Something for the Weekend	BBC 2	31/07/2011	Animal welfare	2
Station ident	Jack FM (Oxford)	23/07/2011	Disability discrimination/offence	1
Station promotion	Imagine FM	n/a	Materially misleading	1
Street Summer competition	Channel 4	19/07/2011	Competitions	1
Street Summer competition	Channel 4	n/a	Competitions	1
Sunrise	Sky News	02/08/2011	Animal welfare	1
Sunrise	Sky News	12/08/2011	Crime	3
T4 programme link	Channel 4	13/08/2011	Generally accepted standards	1
Terry Pratchett: Choosing	BBC 2	13/06/2011	Generally accepted	12

to Die			standards	
The Andrew Marr Show	BBC 1	31/07/2011	Age discrimination/offence	1
The Celebrity Apprentice USA	BBC 1	09/08/2011	Generally accepted standards	1
The Idiots	Channel 4	14/08/2011	Sexual material	3
The Jeremy Kyle Show	ITV1	05/08/2011	Materially misleading	1
The Jeremy Kyle Show	ITV1	17/08/2011	Generally accepted standards	1
The Open 2011	ESPN HD	14/07/2011	Promotion of products/services	1
The O'Reilly Factor	Fox News	12/08/2011	Due impartiality/bias	1
The Royal	ITV1	31/07/2011	Violence and dangerous behaviour	1
The Secret Life of Buildings	Channel 4	01/08/2011	Materially misleading	1
The Sex Education Show	Channel 4	26/07/2011	Sexual material	1
The Sex Education Show	Channel 4	02/08/2011	Nudity	1
The Sex Education Show	Channel 4	02/08/2011	Sexual material	2
The Sex Education Show	Channel 4	16/08/2011	Sexual material	4
The Today Programme	BBC Radio 4	08/08/2011	Generally accepted standards	1
This Morning	ITV1	01/08/2011	Generally accepted standards	1
This Morning	ITV1	02/08/2011	Due impartiality/bias	1
This Morning	ITV1	08/08/2011	Religious/Beliefs discrimination/offence	1
This Morning	ITV1	08/08/2011	Generally accepted standards	1
This Morning	ITV1	09/08/2011	Generally accepted standards	1
This Morning	ITV1	11/08/2011	Nudity	1
This Morning	ITV1	n/a	Generally accepted standards	1
Tombola.co.uk's sponsorship of Emmerdale	ITV1	n/a	Materially misleading	1
Tonight Special: Taking Back The Streets	ITV1	10/08/2011	Crime	3
Top Gear	BBC 2	31/07/2011	Race discrimination/offence	1
Top Gear	BBC 3	04/08/2011	Generally accepted standards	1
Torchwood: Miracle Day	BBC 1	11/08/2011	Violence and dangerous behaviour	1
Tour De France 2011 Highlights	ITV4	13/07/2011	Promotion of products/services	1
Traffic Cops	BBC 1	11/08/2011	Generally accepted standards	1
Trailer for Dirty, Sexy Things	Channel 4	22/07/2011	Generally accepted standards	1
Trailer for Hollyoaks	Channel 4	31/07/2011	Scheduling	1
Trailer for Hollyoaks	Channel 4	02/08/2011	Scheduling	2
Trailer for Hollyoaks	Channel 4	04/08/2011	Sexual material	1
Trailer for Little Box of Horrors	Channel 4	29/07/2011	Animal welfare	1

Trailer for Street Summer	More4	31/07/2011	Crime	3
Trailer for Street Summer	Channel 4	01/08/2011	Crime	2
Trailer for Street Summer	Channel 4	05/08/2011	Crime	1
Trailer for Street Summer	Channel 4	07/08/2011	Crime	1
Trailer for Street Summer	Channel 4 / E4	n/a	Crime	3
Trailer for The Bachelor	Channel 5	13/08/2011	Harm	4
Trailer for The Killing	Channel 4	03/07/2011	Scheduling	1
Trollied	Sky1	04/08/2011	Disability discrimination/offence	1
True Stories: The Redemption of General Butt Naked	More4	02/08/2011	Generally accepted standards	1
TV Licensing promo	BBC	n/a	Generally accepted standards	1
Undercover Boss	Channel 4	02/08/2011	Materially misleading	1
Undercover Boss	Channel 4	09/08/2011	Generally accepted standards	1
V	TV6	09/03/2011	Advertising minutage	1
Vanessa Feltz	BBC London 94.9	05/08/2011	Generally accepted standards	1
Who Do You Think You Are?	BBC 1	10/08/2011	Drugs, smoking, solvents or alcohol	1
Your Highness	Sky Box Office	13/08/2011	Sexual material	1

Investigations List

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

Here is an alphabetical list of new investigations launched between 18 August and 7 September 2011.

Programme	Broadcaster	Transmission Date
Advertising minutage	Good Food	18 July 2011
Advertising minutage	VH1	17 July 2011
Advertising scheduling	Attheraces	25 July 2011
Advertising scheduling	BET	23 July 2011
Advertising scheduling	Movies4Men	Various
Advertising scheduling	MTV/MTV Hits	Various
Advertising scheduling	S4C	19 July 2011
Advertising scheduling	Sky Atlantic	16 July 2011
Advertising scheduling	Sky Sports 4	24 July 2011
Advertising scheduling	Sunrise TV	16 July 2011
Advertising scheduling	The Africa Channel	27 July 2011
Advertising scheduling	The Box	28 September 2011
Advertising scheduling	VIVA	23 July 2011
Advertising scheduling	WTF	24 July 2011
Advertising scheduling	Zing	Various
Bluebird TV	SportxxxGirls	10 August 2011
Cowboy Builders	Channel 5	14 July 2011
Flavours of India sponsors Hit of the Hour	Buzz Asia	20 August 2011
Maghrib Athaan and Isha Athaan	Islam Channel	22 July 2011 and 23 July 2011
Police Interceptors	Channel 5	18 July 2011
Programmes	Rinse FM Community Radio	09 August 2011
Punjab Radio	Punjab Radio	18 July 2011
Sky Anytime+ promo	Sky Movies Comedy	06 August 2011
Soapbox with Chris Hossacks	Phoenix FM (Brentwood)	01 July 2011

Straight Talk	Voice of Africa Radio	21 August 2011
The Jeremy Kyle Show	ITV1 London	07 September 2011
Torchwood: Miracle Day	BBC 1	25 August 2011

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

For more information about how Ofcom assesses complaints and conducts investigations go to:
http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/.
For fairness and privacy complaints go to:
http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/.