

# **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<sup>1</sup>, 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<sup>2</sup>.

The BCAP Code is at: [www.bcap.org.uk/The-Codes/BCAP-Code.aspx](http://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.

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<sup>1</sup> The relevant legislation is set out in detail in Annex 1 of the Code.

<sup>2</sup> 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

## Notice of Sanction

### Press TV Limited

*News item, 1 July 2009*

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#### Introduction

Press TV Limited (“the Licensee”) holds a Television Licensable Content Service (TLCS) licence for the service Press TV. Press TV is an Iranian news channel broadcast on the Sky digital satellite platform.

#### Summary of Decision

On 1 July 2009, Press TV broadcast a news item that reported an attack that had taken place on 15 June 2009 on a Basij<sup>1</sup> base in Tehran by the supporters of the unsuccessful Iranian presidential candidate, Mr Hossein Mousavi, during a post-election demonstration. The item contained images of demonstrators throwing stones and what appeared to be petrol bombs at the buildings. The programme’s presenter commented that the reporting of the demonstration by some TV news channels had been biased by not showing the attacks on the base by the demonstrators. Footage obtained by Press TV of demonstrators attacking the base and footage taken from the *Channel 4 News* report of the security forces shooting at the demonstrators from the roof of the base were shown together by way of comparison. The report then showed interview footage of Mr Maziar Bahari in which he said he had sent a report about the attack against the base to *Channel 4 News* and to *Newsweek* magazine.

In Ofcom’s Finding published in Broadcast Bulletin 182 on 23 May 2011, Ofcom found that the programme had breached Rules 7.1 and 8.1 of the Code:

Rule 7.1: Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes.

Rule 8.1: Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

In summary, Ofcom found that:

- Press TV’s presentation of Mr Bahari in the programme broadcast was unfair in that it omitted material facts and was placed in a context in which inferences adverse to Mr Bahari could be drawn.
- Press TV did not obtain Mr Bahari’s consent to his participation in the programme and this contributed to the overall unfairness to Mr Bahari in the item broadcast.
- Press TV’s filming and broadcast of the interview without Mr Bahari’s consent while he was in a sensitive situation and vulnerable state was an unwarranted infringement of Mr Bahari’s privacy.

Due to the seriousness of the breaches, they were referred to Ofcom’s Broadcasting Sanctions Committee (“the Committee”) for the consideration of statutory sanctions.

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<sup>1</sup> The Basij is an Iranian volunteer militia force.

After considering all the evidence and all the representations made to it by the Licensee, the Committee decided that the Code breaches were so serious that a financial penalty should be imposed in accordance with Ofcom's Procedures for the consideration of statutory sanctions in broadcasting or other licence-related cases<sup>2</sup>. The Committee also considered the level of the financial penalty to be imposed, in accordance with Ofcom's Penalty Guidelines<sup>3</sup>.

Having regard to: the serious nature of the breaches; the Licensee's representations; and Ofcom's Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£100,000** on the Licensee in respect of the Code Breaches (payable to HM Paymaster General).

Ofcom also decided to issue a Direction requiring the Licensee not to repeat the material found in breach on any future occasion and to broadcast a statement of Ofcom's findings, on a date and in a form to be determined by Ofcom.

The full adjudication is available at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/press-tv.pdf>

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<sup>2</sup> This Sanctions Adjudication was made under the Sanctions Procedures which were in force until 31 May 2011. Revised sanctions procedures have been in force since 1 June 2011.

<sup>3</sup> This Sanctions Adjudication was made under the Penalty Guidelines which were in force until 12 June 2011 as they were the basis for the Provisional Decision upon which the Licensee made its representations. Revised Penalty Guidelines have been in force since 13 June 2011.

## Standards cases

### In Breach

#### 50 Super Epic TV Moments

*E! Entertainment, 7 September 2011, 11:00*

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##### Introduction

A complainant alerted Ofcom to the inclusion of sexual material in this programme. The complainant drew attention to a scene in which a 'reality show' participant apparently masturbated using a wine bottle.

E! Entertainment is a cable and satellite television channel. The licence for this channel is held by E Entertainment UK Limited ("E Entertainment" or "the Licensee"). *50 Super Epic TV Moments* was an American compilation show that assembled various sequences – largely from 'reality', chat and award shows – and linked them with brief comments from comedians. Sardonic advice to the people featured in the clips was also offered from time to time by two presenters, NeNe Leakes and Jerry Springer.

The show contained sequences from the 2005 series of *Big Brother* in the UK in which a housemate apparently penetrated herself with the neck of a wine bottle after declaring that she wished to masturbate. The programme labelled this item 'Penis Grigio'. The item was approximately two minutes long.

Other clips used were selected for their bizarre or sensational nature and included items showing:

- an American TV celebrity undergoing a cervical smear test;
- a reality show participant behaving aggressively, removing his penis from his trousers and smashing a bottle on his head;
- a pubic wax carried out by one member of a celebrity family on her sister;
- a woman on an American talent show smashing soft drink cans with her breasts;
- fights between women on various reality shows;
- a woman capable of achieving orgasm only by stimulating herself with the corner of a laundry basket;
- a woman apparently masturbating a man beneath a dinner table;
- the elders of a family in Madagascar eating the foreskin of a circumcised infant;
- a survival expert performing an enema on himself; and
- an Indonesian toddler who smokes 40 cigarettes a day.

None of the sequences was visually explicit: where sexual or other intimate activity was apparently taking place or was being discussed no detail of body parts or penetration was shown. Some of the sequences contained aggression, including physical threats and fighting, and many included 'bleeped' swearing, including obscured sexual swear words. No announcement about the programme's content was made before the start.

Ofcom considered the material raised issues warranting investigation under Rules 1.3, 1.4, and 2.3 of the Code, which state:

- Rule 1.3: "Children must ... be protected by appropriate scheduling from material that is unsuitable for them."
- Rule 1.4: "Television broadcasters must observe the watershed."
- 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, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."

Ofcom therefore sought E Entertainment's comments in respect of these Code rules.

## **Response**

The Licensee acknowledged that "the content in this show was wholly inappropriate for the time it was scheduled and the omission of any warning slates for our viewers only made this worse." It apologised unreservedly to viewers. E Entertainment said that its usual compliance procedures were not followed in this case because of "a period of reorganisation within the wider company and within the compliance department". As a result of this compliance lapse, the Licensee had reviewed its processes and had improved training and retrained staff. In future any content which could raise concerns under the Code "will be subject to viewing by two separate compliance viewers prior to being scheduled".

## **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, two of which are that "persons under the age of eighteen are protected", and that "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".

Rule 1.3 requires that children are protected by appropriate scheduling from material that is unsuitable for them; and 1.4 obliges television broadcasters to observe the watershed. The Code makes clear that as regards the watershed, "Material unsuitable for children should not, in general, be shown before 2100 or after 0530."

### Scene from *Big Brother*

We first considered whether the material was suitable for children. In Ofcom's opinion the *Big Brother* material was clearly unsuitable for children because a *Big Brother* participant was shown behaving in a highly sexual and potentially dangerous way.

Importantly, Ofcom was concerned that when the *Big Brother* material was shown originally in 2005 on Channel 4 Ofcom investigated whether or not its broadcast breached the Code. Ofcom's decision was reported in Broadcast Bulletin 50 in December 2005. The sequences had originally been broadcast at approximately 22:45. In our report of the matter we said:

"In the event, we consider that, on balance, this episode was not in breach of the Code. However, we should stress that we only decided this 'on balance' and that our concerns were serious. This programme, in our view...operated at the limits of acceptability in terms of potential harm and/or offence for a programme of this nature, broadcast on this channel [Channel 4] and at this time [22:45]."<sup>1</sup>

We therefore went on to consider whether it was appropriately scheduled. This content was highly inappropriate for children and likely to cause them upset and a considerable degree of offence to parents. It appeared during daytime at a weekend when it was likely that children – some unaccompanied by an adult – might have been watching. In Ofcom's view, these scenes from *Big Brother* transmitted in these circumstances were clearly not scheduled appropriately. It was therefore a serious breach of Rules 1.3 and 1.4.

We also considered whether the broadcaster applied generally accepted standards. Rule 2.3 requires that potentially offensive material must be justified by context. In our view, this item was of a nature that was potentially offensive to members of the public in general. Ofcom considered whether it was justified by the context and concluded that it clearly was not - principally because of its broadcast in daytime on a general entertainment channel, the absence of any serious purpose and of any warnings to the audience, and because this material was not in keeping with the expectations of the audience. Ofcom therefore considered this item also to be in breach of Rule 2.3.

### Other scenes

Many of the other sequences, including those listed in the Introduction section of this finding, were in Ofcom's view unlikely to be suitable for broadcast at a time when children may be available to view. Further, the cumulative effect of the numerous clips made this programme in general unsuitable for transmission before the watershed in Ofcom's view.

Ofcom acknowledges the Licensee's apologies in this case and its intention to improve its compliance arrangements. Nonetheless, these were clear and serious breaches of the Code and Ofcom does not expect any similar compliance failures by E Entertainment in future.

### **Breaches of Rules 1.3, 1.4, and 2.3**

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<sup>1</sup> Broadcast Bulletin 50, 19 December 2005:  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/pcb45/50.pdf>

## In Breach

### Keeping Up with the Kardashians

*E!*, 24 September 2011, 12:00

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#### Introduction

A complainant alerted Ofcom to several uses of the word “fuck” or a derivative in this programme.

*Keeping Up with the Kardashians* is an American reality television series chronicling the everyday lives of a celebrity family. This episode featured arguments between several members of the family and their partners. Ofcom noted that on six occasions, the word “fuck” or a derivative was broadcast.

E! is owned and operated by E Entertainment UK Ltd (“E Entertainment” or “the Licensee”).

Ofcom considered the material raised issues warranting investigation under Rule 1.14 of the Code, which states:

“The most offensive language must not be broadcast before the watershed (in the case of television) ...”.

We therefore sought comments from E Entertainment under this rule.

#### Response

The Licensee did not respond to Ofcom’s request for comments regarding this material.

#### 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 1.14 states that: “the most offensive language must not be broadcast before the watershed (in the case of television) ...”.

Ofcom research on offensive language<sup>1</sup> clearly notes that the word “fuck” and its derivatives are considered by audiences to be among the most offensive language. This pre-watershed programme featured six instances of the word “fuck” (or a derivative) and was therefore in breach of Rule 1.14 of the Code.

Broadcasters are under a clear duty to ensure that robust procedures are in place to ensure full compliance with the Code. Ofcom noted two past findings relating to the pre-watershed broadcast of the most offensive language on the Licensee’s

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

channels<sup>2</sup>. We also noted the previous finding published in this issue of the Broadcast Bulletin recording breaches of Section One of the Code against the Licensee. In the circumstances, Ofcom is putting E Entertainment on notice that it is particularly concerned about the Licensee's compliance procedures and will proceed to consider further regulatory action should any similar incidents occur.

### **Breach of Rule 1.14**

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<sup>2</sup> Ofcom Broadcast Bulletin 100 (<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb100>)  
Ofcom Broadcast Bulletin 112 (<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb112>)

## In Breach

### Sponsorship of Downton Abbey

ITV1, 18 and 25 September, 2, 9, 16 and 23 October 2011, 21:00

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#### Introduction

*Downton Abbey* was sponsored by Aviva Income Protection. On 18 and 25 September 2011<sup>1</sup>, the sponsorship credits took a narrative 'mini-drama' approach featuring a motorbike accident involving a character called Gary. Each credit throughout the episode reflected a development in the story of Gary's motorbike accident, his recovery, his inability to return to work and his decision to re-train for a new career.

One of the sponsorship credits consisted of the following:

Gary and his wife are sitting on the sofa. Gary is reading a document.

His wife asks: "*What are you doing now?*"

Gary responds: "*It's my insurance policy. I think I'm still covered if I do that course!*"

His wife asks: "*Will you have to wear a uniform?*" and Gary laughs.

The Aviva logo and the text: "*Aviva Income Protection Sponsors Drama Premieres. Reconstruction. Inspired by actual events*" appear on yellow strap across the bottom of the screen.

As the character in the sponsorship credit stated "*It's my insurance policy. I think I'm still covered if I do that course!*" while he was shown holding a document, the credit appeared to refer to a benefit of the sponsor's Income Protection policy. Ofcom therefore considered the material raised issues warranting investigation in relation to 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."

Channel Television ("Channel TV" or "the Licensee") complies this series on behalf of the ITV Network for ITV1. We sought Channel TV's comments in relation to Rule 9.22(a).

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<sup>1</sup> See the 'Response' section for reference to the sponsorship credits broadcast on 2, 9, 16 and 23 October 2011.

## Response

Channel TV submitted that these credits were “in essence, dramatised recreations of events that occurred in lives of Aviva customers. The intention behind this creative approach was to create a strong thematic link to ‘ITV Drama’, and to complement the ITV Drama being broadcast with the Aviva mini-drama being played out in the sponsor credits.”

Channel TV explained that “the sponsorship message is shown as a graphic across the lower third of the screen throughout the credits to make it clear that, despite the mini-drama being acted out, the purpose of these credits is to inform the viewers of the sponsorship arrangement. The sponsorship line changes from credit to credit ... this particular credit employed the sponsorship line ‘Aviva Income Protection sponsors Drama Premieres’”. The Licensee considered that the sponsorship message was the “primary message” of the credit.

The Licensee Channel TV submitted that “it is not possible to tell exactly what Gary is examining. His response when asked is simply ‘It’s my insurance policy’. It is not possible to distinguish any Aviva branding on the documents seen at the bottom of the frame in this credit, nor is any specific information as to the type of policy visible.”

Channel TV stated that “no detailed description of any Aviva product is given in this credit, nor is any specific claim made as to the likely benefits. Gary gives a qualified response (I think I’m still covered) rather than affirming any specific benefit due to him as a result of his policy (I’m still covered). No promotional language is used...” The Licensee added that Gary “gives no firm indication that he is actually covered”. Channel TV considered advertising messages to be “explicit” whereas this reference, in its view, was not, and that the single reference to the insurance policy was appropriately limited and non-promotional for the sponsor.

The Licensee Channel TV went on to explain that “the inclusion of the affectionate, jokey line ‘Will you have to wear a uniform?’, emphasises that the focus of the credit’s creative theme is the warm and supportive relationship between Gary and his wife, further reducing the possibility of this credit being misinterpreted by viewers as an advertising message.”

Channel TV explained that from 2 October 2011 onwards the sponsorship credits were slightly amended and the rotation expanded to include credits from another character, Jane’s story. Channel TV said that although it considered that the credit in question was compliant, it took advantage of this opportunity to re-edit. It amended the sponsorship message to “*Aviva Sponsors Drama Premieres*” and removed the phrase “*It’s my insurance policy*”.

Channel TV stated that “most Income Protection Policies allow those who are in receipt of illness or accident related benefits to undertake training courses without any loss of income” and that this benefit is “in effect universal in Income Protection policies”, not specific to those policies offered by Aviva. Channel TV therefore considered that the reference to the benefit should be deemed to be a brief product description rather than an advertising message about “a distinct benefit of Aviva’s cover.”

## 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.

Ofcom noted Channel TV’s argument that “it is not possible to tell exactly what Gary is examining. His response when asked is simply ‘It’s my insurance policy’. It is not possible to distinguish any Aviva branding on the documents seen at the bottom of the frame in this credit, nor is any specific information as to the type of policy visible.” In Ofcom’s view, it was made clear to the audience in these credits that the sponsor was Aviva Income Protection. The character featured in this credit tells his wife he is looking at his “insurance policy”. Therefore Ofcom considered that the majority of viewers would have assumed that the character was reading his Aviva Income Protection policy, irrespective of the absence of any visible Aviva branding or information on the documents.

Ofcom judged that the line, “*It’s my insurance policy. I think I’m still covered if I do that course!*” promoted a benefit of the sponsor’s Income Protection policy, because it conveyed the message that under an Aviva policy, you can undertake a training course and still receive income protection. Ofcom noted Channel TV’s argument that, because most insurance companies’ income protection policies offer the same benefit, this was a brief description of the sponsor’s product rather than an advertising message. However, Ofcom did not agree. Irrespective of whether the benefit is unique to Aviva’s Income Protection policy or shared with its competitors’ products, the reference to it in this credit nevertheless promoted a specific benefit of the sponsor’s product which, in Ofcom’s view, amounted to an advertising message. Ofcom therefore found the sponsorship credit as broadcast on 18 and 25 September 2011 in breach of Rule 9.22(a).

Ofcom noted that in the amended sponsorship credit broadcast on 2, 9, 16 and 23 October 2011, the phrase “*It’s my insurance policy*” had been removed and the on-screen text had also been amended to read “*Aviva Sponsors Drama Premieres*”. However, Ofcom considered that even without the words “*It’s my insurance policy*” and “*Income Protection*”, it was still clear that the character was referring to an insurance policy that covered him even if he undertook a training course. As detailed above, Ofcom judged that this promoted a benefit of the sponsor’s insurance, i.e. that if you undertake a training course, you can still receive insurance payments under an Aviva policy. As such, Ofcom concluded that the sponsorship credit broadcast on 2, 9, 16 and 23 October 2011 contained an advertising message and therefore were also in breach of Rule 9.22(a).

### **Breaches of Rule 9.22(a)**

## Resolved

### Strike Back: Project Dawn

Sky 1, 21 August 2011, 4 and 11 September 2011, 21:00

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#### Introduction

Sky 1 is a general entertainment channel, the licence for which is held by British Sky Broadcasting Ltd (“Sky” or “the Licensee”).

*Strike Back: Project Dawn* is a drama series focusing on covert army operations concerning anti-terrorist operations around the world.

Three complainants alerted Ofcom to scenes in three separate programmes in this series. Complainants objected to scenes of sexual intercourse being broadcast just after the watershed.

On assessing the three programmes, Ofcom noted the following:

#### 21 August 2011:

At approximately 21:06, there was a scene featuring one of the male lead characters, Damien Scott, who was naked and depicted having sexual intercourse with a naked female character. The scene lasted ten seconds in total and included a full body side shot, lasting four seconds portraying Damien Scott having sex with the female character from behind.

#### 4 September 2011:

At approximately 21:22, there was a scene lasting about 58 seconds featuring a naked couple depicted having sex. The scene started by showing the naked female character on top of the male character in long shot and from behind the female character. The majority of the scene then showed the couple either from the side or from behind the male character, and continued until the couple was portrayed reaching a sexual climax.

#### 11 September 2011:

At approximately 21:09, Damien Scott was depicted partially clothed having sex with a female character, while standing up. The whole scene lasted approximately 30 seconds and cut away to other characters, but included three side shot sequences of the couple: the first two sequences lasted approximately five seconds each and were full body side shots, portraying Damien Scott having sex with the female character whilst her legs were wrapped around his waist; and the third scene lasted approximately two seconds, showing the couple’s heads and shoulders, and ended with the couple portrayed reaching a sexual climax.

Ofcom considered the material raised issues warranting investigation under Rule 1.6 of the Code, which states:

“The transition to more adult material must not be unduly abrupt at the watershed (in the case of television)...For television, the strongest material should appear later in the schedule.”

We therefore sought comments from Sky under this rule.

## Response

Sky said it was sorry that complainants were unhappy with the scenes in question, and stated: "We do not set out to offend any of our viewers and are sorry if this is the case". The Licensee also stated its belief that "these scenes are appropriately identified with warnings from the outset, part of a well-established series, short and editorially justified and suitable for the time slot".

Sky said that *Strike Back: Project Dawn* is a "fast-paced" entertainment drama series, comprising "highly charged" storylines about undercover anti-terrorist operations, including scenes of violence, sex and strong language, presented in the context of a hard hitting, adult drama. In addition, the Licensee said the characters were shown involved in a range of "stylised and hyper-realistic" situations such as "taut kidnap scenarios" and "major shoot outs". As such the series was "clearly stylised and hyper-realistic, rather than attempting to present 'believable' characters or events ... [as part of] an adult orientated drama".

The three programmes in question were part of the second series, and featured a new "gung ho" womanising male lead character, Damien Scott. The Licensee pointed out a number of factors which, in its opinion, justified the scheduling of these programmes at 21:00:

- the audience expectation as to the nature of the content: Sky said that each programme started with "clear and accurate" warnings in recognition that the programmes contained "violent action, strong language and some sexual scenes". In the Licensee's view, "This would leave the viewer in no doubt that this programme is post watershed material". Further, Sky argued that viewers would have made a choice to watch the programme, "informed by the clear continuity messages and the flags of violence, sex and language in the Electronic Programme Guide";
- the nature of the material immediately preceding the scenes of sexual intercourse: Sky said that there were "strong action adventure scenes that preceded the sexual scenes that would make it clear to most viewers that this material is not suitable for children";
- the time that the scenes of sexual intercourse were broadcast: Sky stated that in each case: the scenes were not "abruptly at the start of the programme";
- the editorial context of the sexual scenes: Sky said that they helped to give context and to "further the characterisation in the drama". For example: the Licensee stated that the scene broadcast on 4 September 2011 (at 21:22) contained "... no explicit detail as it again is mostly shot carefully in close up and in silhouette. This scene sets up the relationship between the two ruthless terrorists. The female character is seen to use sex as a way of manipulating men, as she seduces [Damien] Scott, in the next episode";
- the content of the sexual scenes: for example, the Licensee stated that, in the scene broadcast on 21 August 2011 (at 21:06): "the viewer is left no doubt that [the scene] is of a sexual nature but without lingering shots or any explicit detail". In relation to the scene broadcast on 11 September 2011 (at 21:09),

Sky stated that “the scene is not graphic or explicit and both people are clothed”; and

- the low child audience for these programmes, with the percentage of children in the audience for the three programmes in question being 4%.

Sky was therefore of the view that “given the lack of explicit detail and the short nature of the scenes, the material was also judged to be in line with what would be permissible at a BBFC<sup>1</sup> 15 rating and, therefore, not beyond what may be expected at the 21:00 timeslot on Sky1”.

In conclusion, however, the Licensee said that, in light of the concerns raised in relation to the content, Sky would:

- schedule any future repeats of the unedited series of *Strike Back: Project Dawn* (from which the programmes in this case were taken) either “well after the watershed [or] on or after 22:00”;
- in future, avoid “scheduling family-orientated content before strong drama programming”; and
- ensure that the issues raised in this case are taken into consideration during the production development phase of the next series of *Strike Back: Project Dawn*.

## 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 1.6 states: “The transition to more adult material must not be unduly abrupt at the watershed (in the case of television)... For television, the strongest material should appear later in the schedule.”

Ofcom acknowledges the 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.

*Strike Back: Project Dawn* is a hard-hitting drama series that contains content that is likely to attract an adult audience, such as violent and sexual content. The Code does not prohibit such material from being broadcast after the watershed provided it complies with the Code – in particular to comply with Rule 1.6 there should be a smooth transition to more adult content after 21:00, and the strongest material should not commence at or immediately after the watershed.

Each of the programmes in question was preceded by the following pre-broadcast announcement:

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<sup>1</sup> British Board of Film Classification.

*“The following programme contains scenes of strong violence, sex and very strong language from the outset and throughout.”*

We took into account Sky’s view that the scenes were “judged to be in line with what would be permissible at a BBFC 15 rating and, therefore, not beyond what may be expected at the 21:00 timeslot on Sky1”. We acknowledge that BBFC 15-rated films are often broadcast at or soon after 21:00. However, broadcasters must still ensure that the transition to any type of adult material is not unduly abrupt after the watershed.

Sky argued that the child audience for these three programmes was low, with the percentage of children in the audience for the three programmes in question being 4%. However, we took into consideration that: all three programmes were immediately preceded by editions of *The Simpsons*, a programme that would have been likely to attract a family audience, including a large amount of children; and it was likely that children would still have been watching the programme segments in this case given their proximity to the watershed. Audience figures for the age group 4-15 in fact show that: 51,000 children were watching at 21:06 on 21 August 2011; 32,000 children were watching at 21:22 on 4 September 2011; and 43,000 children were watching at 21:09 on 11 September.

We also took into account that these programmes were broadcast on Sky 1, a general entertainment channel and therefore more likely to attract a wider audience than a premium subscription service.

We noted Sky’s arguments that: in the scene broadcast at 21:06 on 21 August 2011, there was no “explicit detail”; and that the scene broadcast at 21:09 on 11 September 2011 was “not graphic or explicit”. Ofcom considered however that these scenes, albeit relatively brief, clearly depicted couples engaging in sexual intercourse. In addition, in the latter scene, the fact that the couple were partially clothed did not dilute the fact that the scene unambiguously depicted sexual intercourse.

Ofcom acknowledges that broadcasters are of course permitted to show sex scenes after the watershed. However, given all the factors above, we considered that the material broadcast on 21 August 2011 and 11 September 2011 was of a sufficiently strong sexual nature and extended that it was clearly unacceptable for broadcast within the first ten minutes following the 21:00 watershed on a general entertainment channel. Therefore, the transition to more adult material was unduly abrupt on these two occasions, and was not compliant with the Code.

We noted Sky’s argument that in the scene broadcast on 4 September 2011 there was no “explicit detail”. The scene consisted however of a relatively prolonged depiction of sexual intercourse, with the majority of the footage showing a topless female character on top of a male character. Although the shot was framed above the characters’ waists, the scene showed clear images of the female character writhing, and both characters reaching a sexual climax. We therefore considered that the scene clearly depicted sexual intercourse over a relatively prolonged period. Given these factors, and the number of children watching as noted above, we considered that the 22 minutes that elapsed after the watershed were not sufficient to justify showing a scene of so strong a sexual nature so soon after 21:00. We therefore considered that the transition to more adult material was unduly abrupt as regards this sexual material broadcast on 4 September 2011, and was not compliant with the Code.

Ofcom however took into account the various significant steps that the Licensee said it would be taking in response to the concerns Ofcom raised in relation to the broadcast content in this case. We therefore concluded on balance that this matter should be resolved.

Broadcasters should be aware that Ofcom has recently published Guidance<sup>2</sup> on Rule 1.6 and other issues relating to the watershed.

### **Resolved**

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<sup>2</sup> See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

## Resolved

### Roberto

95.8 Capital FM, 4 October 2011, 11:00

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#### Introduction

95.8 Capital FM Radio (“Capital”) is a commercial music radio service that broadcasts to London and the surrounding area. The licence holder for this service is Global Radio UK Ltd (“Global” or “the Licensee”).

A listener alerted Ofcom to offensive language broadcast on Capital at 11:00 in the track ‘Loca People’ by the Spanish DJ and music producer Sak Noel. On assessing the material Ofcom noted there was a long period of silence before the song began. About 13 seconds of the track was then broadcast which included the words: *“all day, all night, what the fuck”*. The track was immediately stopped after the expletive was heard and approximately 27 seconds of silence followed before normal scheduling resumed.

We noted that approximately 14 minutes after the broadcast of the offensive language, the presenter apologised to listeners.

Ofcom first assessed whether the material raised issues warranting investigation under Rule 1.14, which states:

“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).”

Ofcom noted that this programming was broadcast on a Tuesday at 11:00, during school term time, when historically, few children listen 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.

However, Ofcom did consider 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.”

#### Response

Global explained that its “playout system crashed, which stopped our scheduled music from being broadcast. In this scenario, our presenters are briefed to play an emergency ‘back-up CD’ in lieu of the automated system - we keep an emergency CD in all studio[s] for use in such events”. The Licensee added: “Unfortunately on this occasion, the back-up CD had been replaced with a CD containing an explicit version of the track ‘Loca People’ by Sak Noel. The explicit version of this track is only being broadcast overnight, and it had been provided to the relevant presenter on a CD, rather than scheduled through our playout system, to eradicate any risk of human error in scheduling the explicit track instead of the radio edit”.

Global said that “following the expletive, after only a matter of seconds, the presenter immediately stopped the CD. We switched to another studio, and restarted the playout system. Once we regained control of the radio desk, a sincere apology was broadcast for the mistake and any offence it may have caused”. The Licensee accepted entirely that the track was inappropriate and stated that it had been caused by “a simple technical issue.” It has underlined to staff the importance of its emergency procedure and made it clear that in the event of an emergency, staff “must check what’s in the CD deck before playing it”.

## 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 “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material.

Ofcom 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).

Our research on offensive language<sup>1</sup> indicates that the word “fuck” and its derivatives are examples of the most offensive language. In Ofcom’s view, the broadcast of this language in this programming clearly had the potential to offend.

Ofcom therefore went on to consider whether the potential offence was justified by the context. In particular we took into account the editorial content of the programme and the likely size, composition and expectations of the audience.

Ofcom noted the offensive language occurred during the *Roberto* programming. This broadcast is described on the station website as: “[DJ] Roberto plays the biggest hits and brings you the latest showbiz gossip”.

Although only one instance of the most offensive language 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 midweek, mid-morning programme of this type aimed at a wide audience, on a ‘hits’-based music station such as Capital.

However, Ofcom noted that the track was broadcast as a result of human error, and the presenter immediately stopped it as soon as the expletive was broadcast. We also noted that approximately 14 minutes after the broadcast of the offensive language, the presenter apologised to listeners, stating:

*“I owe you an apology, really sorry if any offence was caused when the wrong version of Sak Noel, Loca People went out, it’s a technical problem...”*

Given the measures taken by the Licensee to prevent further offensive language being broadcast during the live programming, and the steps taken by Global to

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

reduce the risk of a similar mistake occurring again and deal with this matter directly with the complainant concerned, Ofcom considers the matter resolved.

**Resolved**

## Resolved

### News

*Radio Ikhlas, 16 September 2011, 14:20*

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#### Introduction

Radio Ikhlas is a community radio station serving the Asian community in the Normanton area of Derby. The licence for this station is held by Radio Ikhlas (“the Licensee”).

A viewer alerted Ofcom to content broadcast on Radio Ikhlas. While reviewing this content, we noted a news bulletin, which included the following news items:

*“Midwife shortages in England risking lives. Parts of England are facing big midwife shortages putting mothers and babies at risk, midwives have said. The Royal College of Midwives says a 22% rise in births over 20 years has led to shortfalls across England, but some areas are worse than others. It highlights the East Midlands and the East. The RCM wants 4,700 more midwives and says the Prime Minister has backed away from a pledge to raise numbers”.*

*“Israel steals Palestinian WB [West Bank] riches. The Palestinian Authority has charged that the Israeli regime has been stealing Palestinian oil and gas from a field near the West Bank City of Ramallah. ‘Israel has recently started unilateral exploration activities in a gas/ oil field alongside the West Bank borders,’ said Abdullah Abdullah, the PA Deputy Settlement Affairs Minister. He further reiterated that the Tel Aviv regime has already began extracting gas from the field adding that nearly 80% of the field is owned by Palestinians. ‘Israel is intentionally and secretly stealing the Palestinians’ natural resources’, Abdullah pointed out”.*

Ofcom considered the material raised issues warranting investigation under Rule 5.1 of the Code, which states:

*“News, in whatever form, must be reported with due accuracy and presented with due impartiality”.*

We therefore sought Radio Ikhlas’s comments as to how this material complied with the requirement of “due impartiality” set out in this rule.

#### Response

The Licensee said that it had started to produce its own news bulletins during the week in which the programme had been broadcast. In this case, a volunteer had been instructed “to summarise news stories on reputable websites, such as the BBC, Yahoo and This is Derbyshire (local news). Her role was to select 5 stories and to record them for broadcasting”. The news stories in question were then to be checked by the station manager.

However, on the day of this broadcast, the station manager was not available to check the news bulletin, and another employee checked the news bulletin prior to broadcast. According to Radio Ikhlas: “Unfortunately, the employee thought that, summarising news stories by just including the heading and first paragraph was

enough, as it was from a reputable website. The employee did not realise the news stories were not impartial”.

After being contacted by Ofcom, Radio Ikhlas said that “news bulletins were suspended...until full training about impartiality had been given to the volunteer and member of staff. Both have been trained on the subject...and now understand where they went wrong”.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content which it considers are best calculated to secure a number of standards objectives. One of these objectives is that news included in television and radio services is presented with due impartiality.

Rule 5.1 of the Code states that: “News, in whatever form, must be reported with due accuracy and presented with due impartiality”.

When interpreting due impartiality, 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.

However the broadcaster’s right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to preserve “due impartiality” in news programmes in whatever form. Ofcom recognises that this requirement acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to a news item is unduly favoured.

In this case, we noted that during the news bulletin in question, news items were included on the subjects of midwife shortages in England and extraction of oil and gas in the West Bank.

Rule 5.1 applies potentially to any issue covered in a news programme, and not just matters of political or industrial controversy and matters relating to current public policy. Clearly however news items reporting on an alleged shortage of midwives in England at a time of public spending cuts, or the Palestinian Authority accusing the Israeli government of “stealing” Palestinian oil and gas from the West Bank, were controversial issues which when reported in the news needed to be presented with due impartiality.

In judging whether due impartiality has been preserved in any particular case, the Code makes clear that the term “due” means adequate or appropriate to the subject matter. Therefore “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of the argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

In this case, Ofcom noted that the two news items in question only summarised one significant viewpoint in relation to each issue being reported. Firstly, there was a summary of the viewpoint of the Royal College of Midwives only in an item about

alleged midwife shortages in England; and second, there was a summary of the viewpoint of the Palestinian Authority only in an item about the extraction of oil and gas in the West Bank.

Ofcom considered that Ikhlas Radio failed to reflect appropriate alternative viewpoints in these two news items. In the news item about alleged midwife shortages in England, there was no reflection of the viewpoint of for example, the UK Government or the National Health Service. Similarly, in the news item about the extraction of oil and gas in the West Bank, there was no reflection of the viewpoint of, for example, the state of Israel.

We therefore concluded that Radio Ikhlas failed to present the two news items with due impartiality. However, given Radio Ikhlas's good compliance record, the fact that it immediately suspended the production of news bulletins until the relevant members of staff had been appropriately trained, and the steps it had taken to improve compliance in this area, we considered the matter resolved.

**Resolved**

## Broadcast Licensing Cases

### Resolved

#### Breach of Licence Condition

##### *Dunoon Community Radio*

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#### Introduction

Dunoon Community Radio is a community radio station licensed to provide a service for the population of Dunoon in Argyll, Scotland. It has been on air since December 2009 and the output is presented by volunteers. The licence is held by Dunoon Radio Ltd ("the Licensee"). The licence requires that the station broadcasts a service, as well as provide other outputs (such as opportunities for volunteers), throughout the licence period.

The station's licence also includes as an annex a 'key commitments' document, which sets out the nature of the service that the 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.

On 26 October 2011, a listener complained to Ofcom, saying that Dunoon Community Radio had not been broadcasting on its FM frequency for a number of days (although it was still broadcasting on the internet).

We contacted the station, which confirmed that it had been suffering intermittent broadband outages. These had led to the station being off air sporadically due to the link between the transmitter and the studio not functioning.

We therefore wrote to the Licensee on 26 October 2011 to ask how it considered it was complying with the licence conditions which require it to broadcast a service, and require that this service is that which is described in its 'key commitments'. Conditions 2(1) and 2(4), contained in Part 2 of the Schedule to the licence, state that:

2(1) "The Licensee shall provide the Licensed Service specified in the Annex for the licence period."

and:

2(4) "The Licensee shall ensure that the Licensed Service<sup>1</sup> accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period."

#### Response

In an email dated 3 November 2011, the Licensee explained that its broadband provider had confirmed that intermittent problems with broadband provision had been experienced in the Dunoon area during the period 21 to 24 October 2011. The

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<sup>1</sup> The service that the station is licensed to provide, as described in its 'key commitments'.

Licensee said that these problems had affected the station's ability to send broadcast output from its studio to the FM transmitter "for periods during the afternoon and evening of both the 21<sup>st</sup> and 24<sup>th</sup> of October. We do not appear to have been affected on the 22<sup>nd</sup> and 23<sup>rd</sup>". The Licensee went on to explain that it had done everything it could to restore the service on 21 and 24 October, but that the broadband fault meant that it was limited in what it could do until the broadband service had been resumed.

The Licensee apologised for not informing Ofcom that the station was intermittently off air. As a result of the loss of service, the Licensee has now introduced additional procedures, with immediate effect, whereby it will endeavour to advise Ofcom of any future losses of service as soon as they are able to. In addition to this it has also introduced additional monitoring to ensure that any further losses of service are flagged to station representatives at the earliest opportunity.

### **Decision**

Ofcom accepts that Dunoon Community Radio was off air due to an unforeseen problem caused by a third party, which was entirely outside of the licensee's control and that the breaks in transmission lasted for only a short period. We note that the licensee has already introduced additional procedures to ensure that Ofcom is informed promptly of any future losses of service, and that it was the first time that Ofcom has needed to write to the licensee about a possible breach of licence conditions. For these reasons we consider this matter resolved.

### **Resolved**

## Fairness and Privacy Cases

### Not Upheld

#### Complaint by Ms K

*Who Needs Fathers, BBC2, 31 March 2010*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Ms K.

This programme followed two families in which the parents had separated and at the beginning stated that Mr M, Ms K and their four sons were one of the families featured in the programme.

The programme told the story of this family largely from Mr M's perspective and described his efforts to have contact with his sons. It also followed his attempts to take his sons on holiday to France and showed the events over the course of one of his contact weekends.

Ofcom found the following:

- The nature of Ms K's contributions included in the programme accorded with what was represented to her when gaining her consent to contribute to the programme.
- The programme, when taken as a whole, did not present material facts in a way that was unfair to Ms K.
- The programme provided Ms K with an appropriate and timely opportunity to respond to the allegations made about her in the programme.

#### Introduction

On 31 March 2010, BBC2 broadcast the first programme of a three part series, *Who Needs Fathers*, which examined whether the key principle of the Children Act 1989 ("the Children Act") – that the welfare of the child is paramount – was being adhered to in family breakdowns.

This programme, entitled *For the Sake of the Kids*, followed two families in which the parents had separated and at the beginning stated:

*"One in three British children have parents who are separated. All too often children become the weapons in their parents' war. This film explores the impact of separation on children's lives".*

Mr M, Ms K and their four sons were one of the families featured in the programme.

The programme told the story largely from Mr M's perspective and described his efforts to have contact with his sons. It also followed his attempts to take his sons on holiday to France and showed the events over the course of one of his contact weekends.

The programme stated that in the four years since Mr M and Ms K separated there had been various proceedings in the Family Court and at the conclusion of the programme, just before the credits, the following printed statement appeared:

*“It took another 13 months in court, but they now have an agreement. [Mr M] gets more than one third of the year with the children”.*

Ms K also appeared in the programme, but spoke little about the issue of contact with the children.

Ms K complained to Ofcom that she was treated unfairly in the programme as broadcast.

## **The Complaint**

### **Ms K’s case**

In summary, Ms K complained that she was treated unfairly in the programme as broadcast in that:

- a) Ms K had agreed to participate in a programme about whether the Children Act was working. There was no mention in the programme of most of the Children Act applications Mr M had made. The programme concentrated on contact only and labelled her a mother who deprived her children of contact with their father.
- b) Ms K was unfairly portrayed in relation to the issue of:
  - i) Contact with their children. In particular, Ms K complained that the programme suggested that:
    - She was going to do everything possible to prevent Mr M from seeing his children. Ms K said that she had not stopped Mr M seeing their children.
    - After they separated it was six months before Mr M had proper access to their children but that “now” he could see them every other weekend. Ms K said that in the first six months of their separation Mr M had unlimited contact with their children and it was misleading for the programme to suggest that only “now” was he seeing them every other weekend.
    - Mr M had spent tens of thousands of pounds in legal fees to ensure regular contact with his children. Ms K said that, although he had spent thousands of pounds on legal fees, this had not related to contact.
    - In early 2009 when they were in court over money, contact was still being disputed. Ms K said there were no contact issues.
    - After the cameras left and after another 13 months in court, they had an agreement and Mr M had got more than one third of the year with the children. Ms K said that in fact Mr M has contact with the children alternate weekends. The court awarded Mr M half the time with the children that Ms K had given him voluntarily.
  - ii) The children’s holiday. In particular, Ms K complained that the programme suggested that:
    - She was insisting that Mr M could only take the children on holiday for a week rather than nine days, even though the Court Order stated “a week

or thereabouts". Ms K said that she had agreed to a nine day holiday. Mr M wanted 15 days.

- Mr M had all the holiday paperwork and there was nothing to stop the holiday going ahead. Ms K said that she had not received the paperwork confirming the arrangements in accordance with the Court Order and that she had told Mr M that he would only receive the passports when she received that information.
- She had not allowed Mr M to collect the children the day before their holiday and he had to get the police involved. Ms K said that the day before the holiday Mr M did not arrive at her house asking for the children. The footage of him leaving and arriving back with an empty car gave a false impression of the situation.
- She had not allowed Mr M to collect the children on the morning of the holiday and then denied he had gone to the house that morning. Ms K said that the morning when the programme showed Mr M failing to collect the children, she had been at work. She said that her au pair had telephoned her and had said that Mr M was sitting in the car outside. Ms K said that he did not go to the door to ask for the children. Therefore, Ms K's answer when asked the question on camera whether Mr M had been to the house in the morning – "No" – was correct.
- She was blatantly disregarding the significance of a contact order. Ms K said that the Court Order stated that she should be given confirmation of the holiday booking and that the holiday should be a week or thereabouts. Ms K said that she had received the confirmation at midnight the night before the holiday and that Mr M was still insisting on a 15 day holiday.
- Mr M had to make an urgent application for a Court Order making Ms K hand over the children for the holiday. The children were upset by the uncertainty over the holiday. Ms K said that the children had no idea about the issues and so were not upset.
- It was four years since the children had been on holiday with Mr M because Ms K had frustrated other attempts. Ms K said that it was correct that it was four years since the children had been on holiday with their father, but that was only because he refused to take them when she had offered holiday dates.
- She ignored numerous text messages sent by Mr M about the holiday and had blocked his calls and text messages to her phone. Ms K said that was not true. Their usual method of communication was email rather than phone.

By way of background, Ms K said that the programme makers filmed her over the course of two years and spent a great deal of time with her. As a result, they were aware of her side of the story, but had not reflected this in the programme.

- c) Ms K was not given an opportunity to respond to most of the derogatory assertions and allegations about her in the programme and identified at head b) above. As the allegations were not put to Ms K, she did not have an opportunity to make the true position clear.

### **The BBC's case**

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

- a) In respect of the complaint that Ms K had agreed to participate in a programme about whether the Children Act was working, the BBC said that the nature of the

programme, and the others in the series, was explained in a letter to Ms K which preceded any involvement by her in the programme. The BBC said that this letter fully and accurately set out the scope of the series of programmes which were being made and the basis on which Ms K was being invited to participate. The BBC said that it did not believe Ms K was in any way misled as to the nature of the programme.

b) In respect of the complaint that Ms K was unfairly portrayed in relation to the issue of:

i) Contact with the children and in particular the suggestions that:

- Ms K was going to do everything possible to prevent Mr M from seeing his children, the BBC said that the programme did not make such a suggestion.

The BBC said that it was clear from the programme that at this stage in the narrative Mr M had regular contact with the children, especially at weekends, but that there were disputes over the lengths of time which he spent with his children and, in particular, difficulties over the timing and duration of holidays. The BBC said that to portray such difficulties was not, however, to suggest that Ms K was doing everything possible to stop Mr M seeing his children.

- After they separated it was six months before Mr M had proper access to their children but that “now” he could see them every other weekend.

The BBC said that the programme did not claim that Mr M did not have proper access in the first six months following separation. What the programme actually said was:

*“[One of the children, “Boy A”] was born after the split. The courts got involved and he barely saw his children for six months until access was restored. Now he sees them every other weekend”.*

The BBC said that this referred to a six month period, after the separation, but running from October 2005 to March 2006, during which Mr M’s access to his children was very limited. The BBC said it believed that this was beyond dispute. The BBC said that Boy A was born on 16 September 2005 and that Mr M was granted parental responsibility for the children, including Boy A, by a Parental Responsibility Order made by the court on 25 October 2005. However, the BBC said that Mr M’s subsequent access to the children was considerably less than he had expected and on 7 December 2005 he applied for, and was granted, an interim contact order setting out his entitlement to access. The BBC said that Mr M’s access to the children, however, continued to be restricted by Ms K and he later produced, as evidence of his lack of contact with his children, a spreadsheet recording contact time. This showed that he only had contact with the children for six per cent of the time each month, as opposed to the 50 per cent which Ms K claimed he had been getting. The BBC said it believed that it was evident that the issue before the court was a lack of co-operation from Ms K from the clause which the family court judge added to the order at that stage, granting:

“Permission for father to apply without notice to the respondent for a penal notice to be attached to this order”.

The BBC said that it believed that the evidence was clear that for this six month period, shortly but not immediately after the separation, Mr M was not being accorded the access to his children that Ms K claims he was.

- Mr M had spent tens of thousands of pounds in legal fees to ensure regular contact with his children.

The BBC said that Ms K had offered no evidence for her claim to know how much Mr M had spent on legal fees and how those funds had been attributed to dealing with the various issues related to the breakdown of their marriage. The BBC said that the figure used was provided by Mr M and it had no reason to doubt its accuracy. In any event, the BBC said that this was a complaint of inaccuracy which it did not believe raised any issue of unfairness in relation to Ms K.

- In February 2009 when they were in court again, this time over money, contact was still being disputed.

The BBC said that it is not clear whether Ms K’s complaint was that this particular court hearing did not involve contact issues or that there were no outstanding contact issues at the time this hearing took place. The BBC said that it believed that, on either understanding, this was a complaint of (minor) inaccuracy and as such did not raise any issues of unfairness in relation to Ms K. However, the BBC pointed out, if the first was the intended meaning, that the programme did not actually say what Ms K appeared to complain that it said, that is, that contact issues formed part of the court proceedings in February 2009. It said:

*“It’s February and they’re back in court. This time they’re arguing about money. It’s now four years since [Mr M] and [Ms K] separated. Contact is still being disputed and their finances are unresolved”.*

In other words, the BBC said that although contact issues remained unresolved, on this occasion they were in court *“arguing about money”*. If the second meaning was that intended, then the BBC pointed out that it was a matter of fact that, at that time, there were still outstanding issues relating to contact which were not disposed of until March 2010 when a final court order relating to contact was made.

- After the cameras left and after another 13 months in court, they had an agreement and Mr M had got more than one third of the year with the children.

The BBC said that this referred to the Court Order made in March 2010 which finalised contact arrangements with the children and appeared to complain that the programme unfairly suggested that Ms K had to be compelled to allow Mr M improved access to his children. The BBC said that the Court Order determined that all holiday time (13 weeks) should be shared. The BBC said that when it began filming with Mr M he was allowed three weeks and that by the end of the filming this had been increased to four weeks. The final order increased it to six and a half

weeks.

However, the BBC said that the order made other provisions for improving contact between Mr M and the children. It said that more time had to be allocated to other overnight contact apart from holidays, specifically during the week, and phone contact was also to be increased. The BBC said that Mr M was already supposed to have phone contact with the children but was being denied it. The BBC said that it was ordered that telephone contact should be formalised at twice a week and that the eldest child was to have a mobile telephone which Ms K was not to block. The BBC said it believed it was clear from this and the other Court Orders cited above that, regardless of what Ms K claimed she had agreed at the separation, Mr M's access to the children was limited and was being frustrated and that the situation was considerably improved by the orders which he had to apply for and, in particular, by the Court Order granted in March 2010.

ii) The children's holiday and in particular the suggestions that:

- Ms K was insisting Mr M could only take the children on holiday for a week rather than nine days, even though the Court Order stated "*a week or thereabouts*".

The BBC said that although Mr M had originally wanted to take the children away for 15 days, it was clear that by the time events had progressed to the point where the narrative began in the programme he had scaled down this request and was prepared to settle for nine days. The holiday was, in fact, only ever booked for 11 days. The BBC said that Ms K was therefore wrong in claiming that Mr M was insisting on 15 days. The BBC said that the further compromise suggested by Ms L was that he should settle for seven days. The BBC said that, in fact, Ms K only agreed to a nine day holiday in an email sent to Mr M on the morning of 8 August 2008, the day that he was supposed to leave on holiday with the children. The BBC said that the previous night, when the police had called at her house at the request of Mr M and given her the booking details for the holiday, she had rejected his offer of only taking the children for nine days and in her email she made clear that she had been holding out for only a seven day holiday. She said:

*"You need to show me your booking details for the holiday for one week..."*

The BBC said that Ms K then went on to agree nine days, for the first time, but only on the basis that two weekend days were days when Mr M would normally have had the children in any case. The BBC said that the email correspondence showed that even after that, through the morning and early afternoon of 8 August 2008, by which time Mr M had missed the ferry sailing which he had originally booked, Ms K continued to raise difficulties and it was this behaviour which persuaded Mr M to seek a court order. The BBC said that it believed that the state of affairs was accurately reflected in the programme.

- Mr M had all the holiday paperwork and there was nothing to stop the holiday going ahead.

The BBC said that it understood Ms K was suggesting that she was justified in delaying the holiday because Mr M had failed to comply with an order from the court that he should provide her with holiday documentation before taking the children on holiday. The BBC said that this was not the case. The Court Orders which were made prior to the holiday and laid down how long Mr M might take the children on holiday nowhere stipulated that booking details had to be provided as a condition of the holiday taking place. The BBC said that such a stipulation was made in a subsequent court order the following year and applied to both parents, but at the time of the holiday in August 2008 there was no requirement on Mr M to provide such documentation. The BBC said that this was something that Ms K was insisting upon herself and the BBC could only speculate as to her motives in doing so and for claiming that Mr M was in breach of the Court Order. The BBC said that Mr M, as was said in the programme, claimed that the documents had been sent to Ms K by post though she claimed not to have received them. In any event, she was by that time insisting on amended documents before she would part with the children and their passports. The BBC said that it did not believe that any unfairness to Ms K arose from the way that this matter was reported in the programme.

- She had not allowed Mr M to collect the children the day before their holiday and he had to get the police involved.

The BBC said that it did not accept that the film gave a false impression of events the day before Mr M was due to take the children on holiday. The BBC said that Mr M drove to Ms K's house, by arrangement, to collect the children. However, when he got there he saw her father's car was parked across the drive. The BBC said that according to Mr M, there had been a number of aggressive incidents involving Ms K's father and himself, and given that Ms K knew that he planned to collect the children at this time, he perceived her father's presence as deliberately provocative and potentially confrontational and so he was reluctant to approach the door of the house unaccompanied. The BBC said that, for this reason, he called the police to accompany him to the house and prevent any unpleasantness in front of the children. The BBC said the fact that Ms K was being uncooperative at that stage was borne out by the fact, shown in the programme, that at that point she had blocked phone calls from Mr M and did not respond to any text messages. The BBC said that the programme director accompanied Mr M on this occasion and was witness to the fact that calls were being rejected and that there was no response from Ms K to Mr M's text messages. The BBC said that when Mr M tried to email Ms K his email was returned saying "The following recipient could not be reached". The BBC said that this formed part of a pattern of behaviour by Ms K and was evidenced by a series of undelivered emails between 31 July and 5 August 2008 and a February 2007 witness statement from Mr M's solicitor. The BBC said that it did not believe the programme's account of the facts at this point of the programme was either misleading or unfair to Ms K, who was plainly being uncooperative and obstructive throughout the episode and, in the end, had to be compelled by a Court Order to give the children and their passports to Mr M.

- She had not allowed Mr M to collect the children on the morning of the holiday and then denied he had gone to the house that morning.

The BBC said that it did not accept Ms K's version of events. The BBC said, first, that it was clear from the email sent by Ms K to Mr M at 11.20 on the morning of 8 August 2008 that he had been to the house and that she had been at home at the time. The BBC said that Ms K wrongly accused Mr M of shouting abuse at her. Furthermore, the BBC said that, although it would not have been apparent to Ms K, Mr M was accompanied, on this occasion, by Mrs L, a former family court magistrate, who saw Ms K at an upstairs window shouting at Mr M. The BBC said that Mrs L stayed in the car and was not able to hear what was actually said between Ms K and Mr M. However, in an interview later she said that:

*"I went with him and I saw him behave in a very sensible manner and she just called out the window and she wouldn't even entertain it..."*

The BBC said that it believed that the evidence was clear that Mr M did call at Ms K's house that morning, that she was at home and that she refused to allow him to take the children away for their holiday. The BBC said that the answer she gave in the programme was not accurate.

- She was blatantly disregarding the significance of a "contact order".

The BBC said that it believed that it had already dealt with this point: there was no Court Order in place requiring Mr M to provide Ms K with documentary confirmation of holiday and travel arrangements. Mr M was not, at this stage, "insisting" on a 15 day holiday. The BBC said that it was clear from the email sent by Ms K to Mr M on the morning of 8 August 2008 that the proposal taken to her by the police and then being finalised was that the holiday should be nine days.

- Mr M had to make an urgent application for a Court Order making Ms K hand over the children for the holiday.

The BBC said that Ms K's account at this point could not be accurate. First, the BBC said that it was clear from the terms of the Court Order made on 8 August that Mr M did make an emergency application for an order compelling Ms K to hand over the children and that this was the court's first concern. Secondly, the BBC said that it was plain from her email to Mr M on the morning of 8 August 2008 that she well understood that Mr M was only asking for nine days and that she had by then conceded this. The BBC said that the Court Order could not have been based on Ms K's claim that Mr M was not complying with the terms of the Court Order by not providing her with travel and holiday documentation, as the court would have been well aware that there was no such requirement in place.

- The children were upset by the uncertainty over the holiday.

The BBC said that the programme did not say that the children were upset by the uncertainty over the holiday. The only occasion on which the effect of the delay on the children was mentioned was when Mr M said that the children would be wondering what was going on:

*“So I just sat there completely numb, unbelievably upset knowing that the kids were wondering what on earth was happening, where am I going? Really started to think about throwing the towel in because it just seems that everything is against you”.*

The BBC said that it believed that was an unexceptional observation and resulted in no unfairness to Ms K.

- It was four years since the children had been on holiday with Mr M because Ms K had frustrated other attempts.

The BBC said that the view that Ms K had frustrated Mr M's attempts to take the children on holiday was expressed in the programme by Mr M himself but it was not endorsed by the programme and was followed immediately by a summary of Ms K's view as to why the holidays had not happened. The programme said:

Mr M: *“Four years since they've been on holiday with their dad. Four years. But every time it's frustrated by one thing or another.*

*Well, there's two ways that she usually practises. One is not give you the kids. Another is give you the kids but not give you the passports”.*

Commentary: *“says this is because [Mr M] doesn't tell her where he's taking the children”.*

The BBC said that it believed it was reasonable for the programme to set out the fact that Mr M had not taken the children on holiday for four years and then give the rival accounts as to why this was the case. As the programme carried both accounts and did not endorse Mr M's view, the BBC said that no unfairness arose to Ms K from this.

- She ignored numerous text messages sent by Mr M about the holiday and had blocked his calls and text messages to her phone.

The BBC said that it had already disposed of this point above, where it had provided evidence that between 31 July and 8 August 2008, Mr M's phone calls were blocked, text messages not responded to and emails returned as undeliverable.

- c) In respect of the complaint that Ms K was not given an opportunity to respond to most of the derogatory assertions and allegations about her in the programme and identified at head b) above:

The BBC said that most of the points of complaint listed under head b) were, as it had already argued, either based upon the premise that the programme said things which in fact it did not, or were matters of fact or factual accuracy which did not give rise to any issues of fairness in respect of Ms K. In those cases, the BBC said that it did not believe that a right of reply was required because no actual criticisms of Ms K or allegations about her were involved. The BBC said that there were three outstanding issues where it accepted that a right of reply was appropriate: whether Ms K had been responsible for the fact that the children had not been on holiday with their father for four years; whether she was

unreasonably obstructing Mr M's efforts to take the children on holiday prior to 8 August 2008; and whether, even after they had agreed upon nine days and she had been provided with travel documents, she nevertheless still refused him access to the children on the day the holiday was supposed to begin.

The BBC said that the first allegation was dealt with early in the programme and it had shown above, where the substantive point of complaint was dealt with, how Ms K's point of view was incorporated as the two sides of this aspect of the dispute were set out. The BBC said that the other two outstanding allegations were put directly to Ms K in the programme:

Commentary: *"We asked [Ms K], why she hadn't let [Mr M] take the children on holiday a few weeks earlier?"*

Ms K: *He would not give me confirmation of where those children were going. He just wouldn't so I wouldn't release the passports.*

*The police knocked on the door at 12 o'clock midnight, and they had the papers with them so they gave me the papers.*

Interviewer: *But didn't he come back in the morning again and try again once you'd got those documents?*

Ms K: *No, no".*

The BBC said that it believed that the inclusion of those responses in the programme fully met the programme's responsibility to afford a right to reply to Ms K in respect of issues raised under head b) above.

### **Ms K's comments upon the BBC's statement**

In summary, Ms K commented upon the BBC's statement as follows:

- a) In relation to informed consent for her participation in the programme, Ms K said that she and Mr M were never married and the BBC's reference to "her former husband", whilst understandable, was inaccurate.

Ms K said that Mr M had made many applications pursuant to the Children Act that had been rejected by the court. The absence of this information meant that his actions were not set in context.

Ms K said that probably the most important Children Act application for the children (and it is their interests that are "paramount"), was to prevent the sale of the family home, keeping the children in their school and the environment that they were used to. Ms K said that this was especially important to her eldest son who was autistic.

Ms K said that even though the programme makers knew of this, they made no mention of the background and the strain, stress and impact that had been caused to the children. Ms K said that the one-sided approach of the programme makers portrayed Mr M as the "victim". That was not a fair and accurate record of the position. At the very least, such an arbitrary presentation could not be said to be "balanced".

Ms K said that she had been induced to agree to participate in the programme on the basis that it was going to be fair and balanced. What was broadcast was prejudicial to her and, more importantly, to the children. Ms K said that even if (and she says she was not) in the wrong, her exposure to such abuse and ridicule was extremely damaging to the children, and highly irresponsible.

Ms K said that if she had been told that the programme was not going to be balanced she would not have taken part, nor exposed the children to such a dangerous and intrusive programme.

Ms K said that she has difficulties with her former partner who she believes is a fantasist and who successfully creates situations or stories that do not exist. Ms K said that she was not asking Ofcom to judge that issue. Ms K said that it was their respective truthfulness that was at issue in the programme. Ms K said that there was no challenge to Mr M's credibility in the programme. Ms K said that while not wishing to publicise the issue within a programme, she should have been given the opportunity to respond to his attacks on her.

Ms K said that the court had ordered Mr M to pay costs to her. Regrettably, Ms K said that the result of Mr M's refusal to pay led to the incidence of further costs that were paid. Ms K said that, sadly, the expenditure just benefited the legal profession and diverted money away from the children.

Ms K said that she had been forced to make (and was granted) two injunctions to protect herself from Mr M's violent behaviour. She said that the Court Order dated 20 June 2005 had the effect of evicting Mr M from the family home on 27 June 2005 and forbidding him to use or threaten violence, intimidate, harass or pester her. Ms K said that the programme makers allowed Mr M to state in the programme that "he was relieved to leave the relationship" - whereas the truth was that he was evicted forcibly by the courts following an application made by her. Ms K said that the producer was made aware of the circumstances surrounding Mr M's departure from the family home and chose instead to run another false version of events – leaving Ms K's right to reply out.

Ms K said that those actions set in context her reluctance to allow unnecessary contact and that the failure to set out the history when making allegations against her allowed the story to be taken out of context and that the partial presentation was biased.

Ms K said that the bias manifested itself in the horrendous allegations that were made against her.

Ms K said that the response from the BBC on this point was a letter that was sent to her to induce her to agree to take part in the programme. Ms K said that it stated "if you feel this might be an opportunity for you to share how the experience of break up or divorce has affected you as a mother, we would be extremely pleased to hear from you". Ms K said that was extremely misleading, the programme was not about sharing, and she was portrayed as the abuser and Mr M as the victim. Ms K said that her opportunity to share her experience was not given and neither was the impact of the Children Act decisions made by the courts. Ms K said that if this had been the sale of a product, she would have made a complaint to Trading Standards. Ms K said that she was induced to take part in the programme by a false representation.

b) In relation to the complaint that Ms K was unfairly portrayed in relation to the issue of:

i) Contact with the children. In particular:

- In relation to the fact that she was alleged to be doing everything possible to prevent Mr M from seeing his children, Ms K said that selective editing showed a completely different story. Ms K said that there was no response from her, which was not fair and balanced reporting. Ms K said that bias was unacceptable in reporting any matter and that where it involved the sensitive issues of children and family breakdown it was even more essential that a partial view was not presented (one which she said was not just biased but untrue). Ms K said that the many comments from viewers and reviewers confirm what they believed was the truth of the situation.
- In relation to the suggestion that after they separated it was six months before Mr M had proper access to their children, Ms K said that this was a deliberate play on words. Ms K said the truth was that at that time Mr M had unlimited contact with his children for the first six months of their separation. He had the children every weekend whereas she had no time at the weekends with their children. Ms K said that this was done deliberately on her behalf to avoid any court proceedings and in the interests of the children. Ms K said that if she had been asked and balance had been applied, the viewers would have got a completely different view. Ms K said that the producer was also made aware of the fact that Mr M had unlimited access, and that ignoring facts to make TV programmes just served to make matters worse.
- In relation to the suggestion that Mr M had spent tens of thousands of pounds in legal fees to ensure contact with his children, Ms K said that Mr M represented himself in the alleged contact issues over the children. Ms K referred to a Court Order dated 1 December 2006 that referred to “the father (now acting in person)”. Ms K said that he did not incur legal fees, but the allegation that he had spent tens of thousands of pounds just emphasised the false portrayal of her being unreasonable whilst at the same time stressing how devoted he was by spending such large sums.

Ms K said that responsible journalism would have sought documentation to back up such a serious claim. She said that there could be no evidence because there was none. To say the BBC “has no reason to doubt his accuracy” was a fundamental breach of fairness. Ms K said that two parties were in conflict but the BBC had chosen to prefer the evidence of one rather than the other.

- In relation to the suggestion that in early 2009, when they were in court over money, contact was still being disputed, Ms K said that various allegations were made by Mr M, but all were proved to be unfounded. Ms K said that against that background, Mr M was refusing to comply, which was clear from the Court Order. Ms K said that this point was ignored in the programme and it was made to look as if the contact issues were being caused by her when in fact they were caused by Mr M. Ms K said that she was not asking Ofcom to adjudicate that issue, but she wanted

Ofcom to see why she was horrified that there was unfair and unbalanced reporting.

- In relation to the claim that after the cameras left and after another 13 months in court, Ms K produced a copy of the Order and said that it was the final Order in respect of contact.

Ms K said that the programme did not mention any of the arrangements that the Court had left to her to agree with Mr M in connection with contact with the children.

Ms K said that the Court Order dated March 2010 said that more time had to be allocated to other overnight contact apart from holidays, specifically during the week. Ms K said that the Court Order also provided for no contact during the week although, despite the absence of any order allowing it, Ms K said that midweek contact did take place when Mr M asked.

ii) In relation to the children's' holiday. In particular:

- In relation to the suggestion that Ms K was insisting that Mr M could only take the children on holiday for a week rather than nine days, even though the Court Order stated "a week or thereabouts", Ms K said that despite the facts being readily available, the programme makers chose not to allow the facts to ruin the story that they wanted to tell. Ms K said that there was no accurate reflection of the state of affairs and that the programme makers became part of the story. Ms K said that the fact that the police became involved at all followed an off-camera comment to Mr M that he should contact the police. She said that not only was this irresponsible, but it showed that the programme makers created the story that they wanted to tell.

Ms K said that what happened might well not have suited the programme makers but was incontrovertible. She said that the suggestion that to film was a record of events was just wrong. Ms K then referred to various matters which appear to have been the subject of family court proceedings and so cannot be published in this decision because of the confidentiality of such proceedings. In summary, however, she referred to various matters which she said showed that the programme wilfully misrepresented her position as regards allowing Mr M to taking the children on holiday.

Ms K said that the BBC portrayed her as not being in agreement on the holiday dates whereas the reality was that it was Mr M who had threatened not to comply with the Court Order. Ms K said that the Order stated the parties were to be in agreement on the dates, which was clearly not the case.

- In relation to the suggestion that Mr M had all the holiday paperwork and there was nothing to stop the holiday going ahead, Ms K said that the Court Order of 7 December 2006 stated "dates to be agreed between the parties". The dates were not agreed between the parties because Mr M told her that he had booked for 15 days (she had agreed to nine days) and that the Court Order stipulated "a week or thereabouts".

Ms K said that Mr M only agreed to the nine days on the morning of 8 August 2008. Ms K said that the programme was unbalanced because it did not set in context that the start of the “holiday dispute” was Mr M threatening to ignore the Court Order. Ms K said that without that context, the false impression was created and that deliberate falsity undermined the whole programme as being a “Film of Record”.

Ms K said that in addition to Mr M’s deliberate decision to ignore a Court Order (a fact not mentioned in the programme), he held a foreign passport and therefore did not have the same attachment to England as she did, and as a result she had reason to fear that he might not return when (as was the case here) he had ignored Court Order.

Ms K said that the Court Order made on 8 August 2008 gave her the protection and guarantee that their children would be returned by 19 August 2008 at the latest. Ms K said that she was happy with the arrangement that she would get the children back on time (as her holiday with them was then due to commence).

Ms K said that sadly the programme was not a “Film of Record” but a false representation that she had been told off, whereas it was Mr M who was ordered to co-operate by the Court.

Ms K said that she confirmed that she never received any documents by post of Mr M holiday arrangements. She said that Mr M always sent any communication to her by email and that she never received any post from him as he emailed, called or went round. Ms K said that she did not ask Ofcom to adjudicate on this issue and that her point was that there was no balance or fairness. She said that if it had been suggested that Mr M had sent her information by post, she would have disputed that, and sought to corroborate the factual dispute by pointing out that first, she never got any post, secondly, he never posted things to her, and thirdly, that he only calls, visits or emails.

- In relation to the suggestion that Ms K had not allowed Mr M to collect the children the day before their holiday and he had to get the police involved, Ms K said that the narrator said that Mr M had gone to her house to collect the children and was gone for two hours and that the impression created was that Ms K had wasted two hours of Mr M’s time in making a fruitless trip. Ms K said that in fact they lived five minutes apart.

Ms K said that if Mr M had gone to her house then she would have asked him to give her the holiday confirmation which she still had not had sight of. Ms K said that Mr M alleged that he had posted a copy to her and therefore could have (and no doubt would have) said “but I’ve already posted it to you”.

Rather, Ms K said it was noteworthy that Mr M did not state that and that contrary to what was suggested in the programme, the police did not accompany Mr M to her house to collect the children the day before. Ms K said that she found it to be an example of bias that the letter stated that she was unreasonable because she had blocked calls. Ms K said that she dealt with that below, but the accusation that she was being unreasonable was never put to her by the programme makers. Ms K said that if it had been, then she would have explained that she had taken action to avoid

physical and mental abuse. Ms K considered that the BBC reaching the conclusion that it did just illustrated how the programme failed to be fair and balanced.

Ms K said that the Court had made orders to protect her from Mr M's violence. So while it was true that she did block Mr M's phone calls to the house and to her mobile that was because of his abuse of such communication to threaten her with violence. However, Ms K said that no one asked why she had blocked his calls.

Ms K said that it was presented as though she was deliberately being awkward and that is not balance. Ms K said that her side was neither sought nor presented and the consequence of the bias was the venom and hatred shown to her. Effectively the programme was just another addition to the bullying and abuse.

Ms K said that she was still receiving text messages and emails and that if there had been balance, the programme would have stated "says that she does not accept calls because of Mr M's violence, we cannot judge who is in the right". Ms K asked what evidence there was that any text messages were not being received. Ms K asked why Mr M did not try another email address if his first attempt did not work. She suggested that addressing emails to her rather than an open address to her business might have been more appropriate.

Ms K said that she also had a returned undeliverable email from Mr M (sent to his former address) dated 4 August 2008 during this same five day period. Ms K said that the BBC was wrong; there was no pattern of behaviour, and how that statement could be reconciled with balance was beyond her. Ms K said that the BBC could not make judgements about her without allegations being put to her for response.

Ms K said that again she was not allowed a voice or to know anything about the situation being created on the other side. Ms K said that if the programme makers had asked her about the emails and text messages, she would have pointed out that, firstly, text messages would have still got through; secondly, she had no idea there was a problem with Mr M sending her emails for that five day period; thirdly, at or around that time her website was experiencing major problems and if that was the case then emails would have been affected also; and fourthly, Mr M had and could/should have used other email addresses.

Ms K said that even though there was no evidence to prove that she was deliberately avoiding contact, the programme makers chose to take sides without speaking to her. The programme stated "*That this formed part of a pattern of behaviour by Ms K*".

Ms K said that there was no evidential value to the statement provided by the BBC made by a solicitor stating his experience of the poor communication between Mr M and Ms K. Ms K said that if Mr M's solicitor had been made aware of the facts of Mr M's abusive behaviour, the non-molestation order and his arrest, he would have understood why she did not accept calls from Mr M.

- In relation to the suggestion that Ms K had not allowed Mr M to collect the children on the morning of the holiday and then denied he had gone to the house that morning, Ms K said that the email sent to Mr M on 8 August 2008 did not confirm at all that Mr M went to the house on the morning of 8 August 2008 or that she had been at home. Ms K said that she did not know whether the BBC had chosen deliberately to represent the email message inaccurately or had simply misunderstood it. Either way, she said that it showed the lack of balance in their misrepresentation of the situation.

Ms K said that the email said “do not come to the house shouting abuse at me. You just upset everyone” and that the most serious leap of logic was required to turn that into a statement that there had been a visit that morning and that she had been at home.

Ms K said that Mrs L had not spoken to her for over five years, yet stated: *“I would say she’s blatantly disregarding the significance of a contact order”... “If she was taking the children away herself I could understand, but she was not – we would look for in Court what good reason has she not to let him have the children”*. Ms K said that, whether or not Mrs L had the specific authorisation to sit in family matters (and she did not know if she had that certification), she was not able to give a verdict on this case. Rather than disqualifying herself as someone who knew and sided with one of the parties, she chose to express an opinion as a magistrate without accepting the blindingly obvious point that she had only heard one side of the story.

Ms K said that there were significant discrepancies in the story told by Mrs L. Ms K said that while Mrs L had been a magistrate, she did not have formal legal training otherwise she would have known that she could not give evidence based on uncorroborated hearsay.

Ms K said that the programme showed Mrs L waiting at the side of the road when Mr M pulled up and gave the impression that he was distraught. Mrs L then asked Mr M *“what precisely did she say?”* Whereas, in her undated statement Mrs L states *“[Mr M] was polite and asked her (one last time) if he could have the boys because they were anticipating going on holiday. He did this in a courteous manner without raising his voice but she adamantly refused and when questioned why she would not allow them she screamed out of the window”*. Ms K said that it did not take great forensic ability to see that these are diametrically opposed statements.

Ms K said that Mrs L’s statement to camera was likely to be the accurate version of events. Ms K said that the programme makers did not ask her to comment and that if they had done, she would have pointed out that no such thing had happened. She said that it was all made up and did not bear scrutiny.

Ms K said that on camera, Mrs L was seen to ask *“what precisely did she say?”*. In the statement, Mrs L confirmed exactly what she says was told (it wasn’t said at all) without the audience being told that she had previously tried to give evidence against Ms K on oath that was not admissible as she tried to give evidence about something she had not

seen. Ms K said that if ever a pattern of behaviour had developed it was her giving improper evidence.

Ms K said that although the viewers saw Mrs H suggesting to Mr M that he should take the children for a week, he did not reply that she had already agreed to nine days. Ms K said that again the allegations were not put to her and so the viewers saw her as the blameworthy bad parent.

Ms K said that Mr M stated on film *"well the bottom line is that the holiday is for nine days and she's saying no. So I am going to try and get them this morning and I was wondering if you'd come with me"*. Ms K said that she was not given the opportunity to show why that was a lie and that the emails and text messages that she had sent to Mr M showed that she had agreed to nine days. Ms K said that she never had a voice at all so was not able to defend herself or show the real situation. In addition, she said that she was never asked by the producer or told of the ongoing saga being staged and filmed on the other side and that the lack of balance had caused the "most spiteful and vitriolic attacks" on her.

- In relation to the suggestion that she was blatantly disregarding the significance of a contact order, Ms K said that her comments were mainly covered above in respect of this issue. However, she said that no proposal was taken to her by the police. She said that the police arrived at her house and for the first time gave her the holiday details that she had been asking for. Ms K said that the nine day duration had already been agreed. Ms K said that the police told her that they were angry they had been involved in this "set up" and suggested that she should let them know if she needed help. Ms K said that the BBC's response relied upon an untrue finding. Ms K said that while the bias was very distressing to her, it did show that the BBC had chosen to take sides in the dispute and therefore betray any semblance of balance or impartiality.
- In relation to the suggestion that Mr M had to make an urgent application for a Court Order to make Ms K hand over the children for the holiday, Ms K said that it was outrageous to say that she was not "being accurate". Ms K said that it seemed that in order to avoid accusations of bias against it, the BBC had regurgitated what it had been told. Ms K said that there was no order made against her at all.
- In relation to the suggestion that the children were upset by the uncertainty over the holiday, Ms K said that this was an example of bias by the BBC interpreting statements in a way that suited it, but one that did not bear scrutiny. Ms K said that while the BBC might regard it as an "unexceptional observation", that was too simplistic and that the objectionable aspect of the statement was the "knowing that the kids were wondering what was happening". That was simply not true and that it might have been unobjectionable to say that "I am thinking of throwing in the towel", the remainder of the statement was extremely contentious. That said, Ms K said that the BBC thinking that there was nothing to object to, corroborated the fact that it did not ask for her comment. Ms K said that had they realised that there could be exception taken, they might well have asked for it. That decision before hearing the other side amounted to bias.

- In relation to the suggestion that it was four years since the children had been on holiday with Mr M because Ms K had frustrated other attempts, Ms K said that again her voice was not heard. Ms K said that the pluralisation of holidays within the response demonstrated the bias of the BBC. Ms K said that there were not two views, and that it was wrong to suggest that there were “two accounts”.

Ms K said that it was her case that Mr M had refused dates given, or not previously wanted to take the children on holiday on the dates offered to him, and that for years she had asked him to help out in school holidays, especially during the summer holidays. Ms K said that Mr M always refused, explaining to her that he was not her babysitter and that she needed to give him three weeks’ notice. Ms K said that even on a cursory analysis, Mr M did not point to any court order or application to take the children away in those four years and that the reason why he did not refer to such an order was because there was not one.

Ms K said that Mr M only agreed to have the children during the summer holidays from last year for the first time and that was her offering, not him asking. This was very unfairly portrayed.

- In relation to the suggestion that she ignored numerous text messages sent by Mr M about the holiday and had blocked his calls and text messages to her phone, Ms K said that there was no evidence regarding blocked text messages, or as Mr M stated in the programme, returned text messages and that the reason that there was no evidence was because the return of text messages did not happen. Ms K said that the presentation of this supposed fact just caused greater venom and hostility to her as a result of the portrayal of her.
- c) In relation to the suggestion that Ms K was not given an opportunity to respond to most of the derogatory assertions and allegations about her in the programme, Ms K said that she was not given a “right of reply” because she was not told what she was replying to. Now that she had had the opportunity to respond to the allegations against her, she had set out her response in some detail.

### **The BBC’s response to Ms K’s comments**

The BBC said that in the course of Ms K’s response, she frequently referred to matters which formed part of family court proceedings in which she and Mr M had been involved and that many of the claims she made in that context were deeply prejudicial to Mr M but that the BBC was prevented, as Ms K should know, from responding in any way which might refer to those proceedings, as to do so would involve a breach of the confidentiality of those proceedings.

- a) In relation to informed consent for participation in the programme, the BBC said that its reference to Mr M as Ms K’s “former husband” in its statement was an error but that it was not an error which was made in the programme.

The BBC said that it believed that it was made clear to Ms K at the outset that the programme was an observational documentary. The BBC said that the programme focused on two incidents that occurred within the filming period, which it believed were representative of the impact of the Children Act on the family. The BBC said that it did not agree that Mr M was presented as the victim

in both incidents and believed that the programme makers dealt with Ms K in a fair and balanced way throughout.

The BBC said that while it accepted that an order was made removing Mr M from the family home, it considered that it was prevented from referring to the proceedings which led to the order being granted and, in particular, to submissions which were made in the course of those proceedings. The BBC said that issues between Mr M and Ms K which led to the breakdown of their relationship were outside of the scope of the programme, which was concerned with the operation of the Children Act in resolving issues arising after such a breakdown. The BBC said that the scope of the programme was set out very clearly to Ms K in the letter to her from the programme makers. The BBC also said that if the courts viewed Mr M's behaviour as a continuing physical threat to either Ms K or the children, it was highly unlikely that his contact with his children would have been consistently increased.

The BBC said that the programme was not concerned with Ms K's reluctance to allow "unnecessary" contact but with her reluctance to allow contact which had been ordered by the court.

b) In relation to the suggestion that Ms K was unfairly portrayed in relation to the issue of:

i) Contact with the children and in particular the suggestion that:

- She was going to do everything possible to prevent Mr M from seeing his children, the BBC said that it could only reiterate that the programme did not say what Ms K claimed it said in this respect and that what was said did not reflect adversely upon her. The BBC said that there was, therefore, no requirement to extend a right of reply to her. However, the issue of contact was covered in interview with Ms K and her answer reflected in the commentary.
- In respect of the six months before Mr M had proper access, the BBC said that it had nothing to add to its first statement in this regard, other than to point out that the series of orders issued by the court was evidence that contact arrangements were not working and there was a consequent need to return to court on several occasions.
- In relation to them being back in court in early 2009, the BBC said that it could not respond to a number of points without breaching the confidentiality of the family proceedings, although it was satisfied that the court hearing in February 2009 was primarily a hearing about finances.

The BBC said that it is not the case that the programme ignored the fact that the order made by the court instructed Mr M to hand over travel dates and accommodation bookings to Ms K. In fact, the BBC said that, as it pointed out in its first statement, there was no such requirement in any order made by the court prior to the holiday.

The BBC said that this was the first time that a claim about abusive phone calls had been made in the course of the complaint. However, when the programme-makers asked Ms K in interview about blocking Mr M' telephone calls she specifically denied having blocked calls from his

mobile phone. The BBC said that Ms K now admitted doing so and that given the evidence available to the programme makers (blocked calls were witnessed by the director) in support of the assertion made in the programme that calls from Mr M' mobile phone were being blocked, the inclusion of her response in interview would not have served to provide Ms K's explanation but to demonstrate that she was not telling the truth in interview. The BBC said that its omission, therefore, was not to Ms K's disadvantage but to her advantage.

- In relation to the agreement reached after the cameras had left, the BBC said that it could not respond to a number of points due to the confidentiality of family proceedings, but that the order provided by Ms K showed that holiday time with the children was to be shared equally between the parents as stated in its first statement. The BBC said that issues she raised relating to Christmas holidays concerned specific discussions at the family court which it could not respond to without breaching the confidentiality of those proceedings.

The BBC said that it accepted that there was a minor inaccuracy in the note made of the contents of the order granted in March 2010. However, the general point held, that the order improved access for Mr M and, in any case, none of it was at issue in the programme complained of.

ii) In relation to the children's holiday and in particular:

- In relation to the suggestion that she was insisting Mr M could only take the children on holiday for a week rather than nine days, the BBC said that the programme makers did not suggest to Mr M that he should contact the police. The BBC said that on the occasion of his failed visit to Ms K's home on the afternoon of 7 August 2008, he was not accompanied by any member of the programme team and that when that visit failed, Mr M contacted the police before returning to his home where the director met him. He then informed the director of the course of action he had already embarked upon.

The BBC said that again, Ms K claimed that she was entitled, under the terms of a court order, to be provided with written details of travel and accommodation before she allowed Mr M to have the children and their passports. It said that this was simply not the case.

The BBC said that it was not the case that Mr M was accompanied to court by a cameraman and that the exterior shots of the court which appeared in the programme were filmed on another occasion. Mr M did not appear in the shots used. The BBC said that it could not respond to other matters raised without breaching the confidentiality of the family court proceedings although it was clear from the order that this was not a "wasted application" to court because the court ordered Ms K to release the children and their passports to Mr M.

The BBC said that Mr M was shown in the programme gathering up all of the documentation relating to the holiday to take to Ms K's house when he visited it on 7 August 2008. Because of the situation which Mr M believed had been contrived at the house by Ms K, he said he was unable to give them to her. However, the BBC said that the documentation was given to her by the police, at Mr M's request, later that evening. The BBC said that

Mr M's account was that he was attempting to deliver the documentation by hand because Ms K had denied receiving the same documentation when, according to Mr M, it had been posted to her.

The BBC said that it is not the case that a "voice off camera" suggested to Mr M that he calls the police. The only reference to calling the police in the programme was a line of commentary which said:

*"Unless [Mr M] leaves by ten o'clock tomorrow morning, they'll miss the ferry. The only way he can force [Ms K] to hand over the kids is to get the police involved".*

The BBC said that the decision to involve the police was taken by Mr M alone and he took steps to contact the police before he returned to his house after visiting Ms K's house on the morning of 7 August 2008. The BBC said that this explained the two hour delay in his returning to his own house where the director was waiting and that at that point Mr M informed the director that he had called the police.

The BBC said that while Mr M did provide the court with undertakings about the return of the children, it was nevertheless clear, from the terms of the order, that it was Ms K who was the subject of the order and that she was being instructed to make the children available to Mr M.

- In relation to the suggestion that Mr M had all the holiday paperwork and there was nothing to stop the holiday going ahead, the BBC said that again, Ms K's assertion that previous court orders entitled her to be given written confirmation of travel and holiday arrangements was simply not true.

The BBC said that Mr M's passport was an issue that was never a concern of the court as reflected in any of the court orders available to the programme makers and that Ms K had produced no evidence that it was.

- In relation to the suggestion that Mr M had to get the police involved, the BBC said that it was clear from the sequence of events shown in the programme that Mr M intended to hand over the documentation on his first attempt to collect the boys and that he was seen collecting up the documents, describing each one as he did so, and leaving the house with them. The BBC said that, had the circumstances of that visit not deterred Mr M from approaching the house, he would have given Ms K the documents and would not have had to involve the police to deliver them to her.

The BBC said that there was no suggestion in the programme that the police accompanied Mr M to Ms K's house.

The BBC noted Ms K's admission that she was blocking Mr M's phone calls both to her home phone and to her mobile phone, even though she denied in interview blocking calls. Furthermore, the BBC said it believed the reason she gave did not bear scrutiny. The BBC said that there was no reason for her to take measures to avoid violent phone calls when, as she explained herself, there was a specific legal injunction against Mr M which would have meant that such phone calls would lead to his arrest.

The BBC said that the programme did not claim that text messages were not being received. On the contrary, it said they were being received. The commentary said:

*“She’s barred his calls...and texting hasn’t worked either”.*

Mr M then said:

*“One, two, three, four, five, six, seven, eight. Eight text messages all delivered [BBC’s emphasis], not one answer”.*

The BBC said that it might be that addressing emails to Ms K’s personal email address would have been more appropriate but Mr M’s access to that address had been blocked only a few days earlier. The BBC said that Mr M was, not unreasonably, trying different email addresses to gain a response.

The BBC said that one returned email from Mr M’s address could have any number of innocent explanations, and certainly did not reflect a pattern of behaviour such as that displayed by Ms K.

The BBC said that the statement that this was a “pattern of behaviour” referred to the pattern, which emerged from study of the emails between them over many months, of Ms K consistently obstructing holiday plans.

- In relation to the suggestion that she had not allowed Mr M to collect the children on the morning of the holiday and then denied he had been there, the BBC said that it believed that the email clearly confirmed that Mr M went to the house, and, in any case, this was corroborated by Mrs L. In addition, the BBC said that the director witnessed Mr M’s car turning into Ms K’s close.

The BBC said that Ms K seemed to be suggesting that Mrs L never went to the house, and was waiting for Mr M’s return on the pavement. This was not the case; Mrs L’s own account described going to the house and the director witnessed the fact that she accompanied Mr M there. The BBC said that when they returned to Mrs L’s house she got out of the car and went round to the driver’s window where they were filmed discussing what had happened.

The BBC said that the account given by Ms L was not inconsistent with the fact that she asked Mr M what Ms K had said to him. She simply asked Mr M to recount for the benefit of the camera what had actually been said, even though she had witnessed it herself.

- In relation to the suggestion that Ms K was blatantly disregarding the significance of a contact order, the BBC said that from the email traffic between Mr M and Ms K it was clear that the first record that Ms K had accepted nine days was in the text and email exchanges between them on the morning of 8 August 2008, subsequent to Mr M’s further attempt to pick up the children and the involvement of the police and that Ms K had presented no evidence to the contrary.

- In relation to the suggestion that Mr M had to make an urgent application to court, the BBC said that the order referred to was specifically directed at Ms K and instructed her to hand over the children and the passports to Mr M.
- In relation to the suggestion that the children were upset, the BBC said that it did not agree that the observation by Mr M about “*knowing that the kids were wondering what was happening*” was untrue and objectionable. Mr M had told the children that they were going on holiday that weekend. They had even packed their own bags. However, on the weekend that they were supposed to be travelling he had not collected them from their mother. The BBC said that it believed that it was perfectly reasonable to observe that the children would have been wondering what was going on and that the programme did not say, as Ms K claimed, that the children were upset.
- In relation to the suggestion that Ms K ignored numerous text messages, the BBC said that the programme did not claim that texts were being blocked or that they were returned. The programme said that texts were being delivered but not responded to which was accurate.

### **Ms K’s contact diary**

Ms K submitted a contact diary she had kept on her computer.

### **The BBC’s response to Ms K’s contact diary**

The BBC said that, as it had already pointed out, the programme did not refer to the six-month period immediately after the separation, but to an overlapping six-month period preceding a court application which took place in March 2006. The programme said:

*“[Boy A] was born after the split. The courts were involved and it was six months before [Mr M] got proper access to his children again. Now he sees them every other weekend”.*

The BBC said that in writing that part of the commentary, it was guided by the outcome of court proceedings in which orders were issued concerning Mr M’s access to the children. The BBC said that the nature of those orders made clear that access was being obstructed. Between the hearings of December 2005 and March 2006, the BBC said that Mr M produced, as evidence of his lack of contact with his children, a spreadsheet recording contact time which showed that he only had contact with the children for six per cent of the time each month, as opposed to the 50 per cent which Ms K claimed he had been getting. The BBC said that Mr M’s claims that access was being thwarted by Ms K were supported by Mrs L.

The BBC said that it considered that there were grounds for doubting that the contact diary provided by Ms K was entirely contemporaneous and that, even if it were accepted as contemporaneous, there was no sound basis for preferring its contents to Mr M’s account of events.

As to the contemporaneousness of the document, the BBC said that the document’s properties showed that it was actually created (with the document name “Dina”) on 8 July 2005, yet it contained a number of entries (going back to 10 June 2005) which

predated that. The BBC said that the unexplained anomaly seemed inconsistent with the statement in Ms K's email to Ofcom: *"I remember putting the information in on my computer each and every time Mr M had contact with the children"*. The BBC also said that a comment at *"20/21 August"*, that *"There have been no problems with contact up until this point"* (in bold type, and underlined) provided further grounds for believing that there has been more retrospective change than Ms K acknowledged. The BBC said that it considered it was a curious observation to make at any stage in the absence of problems (or even grounds for anticipating them), and an oddly prescient one to have made immediately before – according to the document – relations began to deteriorate and problems with contact began to occur. The BBC said that such a comment might normally be expected to come after any deterioration and be retrospective: *"There had been no problems with contact before that point"*.

The BBC said that the document's entries covered the period 5 June 2005 to 15 August 2006 and that various court proceedings took place during this period, in the course of which Mr M argued that Ms K was denying him agreed contact with his children. These resulted, on 26 March 2006, in a court order which, in addition to setting out the access which he should enjoy, allowed Mr M, without notice to Ms K, to apply for a penal notice to be attached to the order.

The BBC said that there was no reason to believe that Ms K at any stage submitted to the court what she now presented as her own contemporaneous record of events and that for the six weeks immediately prior to the application – when, according to Mr M, his access to the children was at its worst - her diary was actually silent. In the event that she did present or refer to the contact diary in the course of the court proceedings, the BBC considered that it was evident from the outcome that the court did not give it credence. The BBC said that the clear inference from the order granted on 26 March 2006 was that the court agreed that Ms K had been persistently and repeatedly denying Mr M agreed contact with his children, and that it preferred his account to hers. The BBC said that there are no grounds on which Ofcom could regard the contact diary as a basis for arriving at a view of events which differed from the view taken by the court, which was in turn the view reflected in the programme.

## **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment 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 both parties' written submissions and supporting documentation.

Ofcom noted that Ms K's submissions contained references to material that had been referred to during the Family Court proceedings to which both she and Mr M had been party. Ofcom considered that reference to such material could contravene the rules that prohibit the information relating to proceedings held in private and relating

to the Children Act. Therefore, Ofcom has made no reference to this material in this Provisional Decision.

- a) Ofcom first considered the complaint that Ms K was treated unfairly in the programme because she had agreed to participate in a programme about whether the Children Act was working. There was no mention in the programme of most of the Children Act applications Mr M had made. The programme concentrated on contact only and presented her as a mother who deprived her children to some extent of contact with their father.

In relation to the whole complaint, Ofcom noted that Rule 7.1 of Ofcom's Broadcasting Code ("the Code") provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. In the context of this head of complaint, Ofcom noted that a lack of informed consent may lead to a finding of unfair treatment in the programme as broadcast and a breach of Rule 7.1. Ofcom considered the complaint made by Ms K in the context of that Rule and also the Practices to be followed set out at paragraphs 7.2 and 7.3 of the Code which state that where a person is invited to make a contribution to a programme, they should normally, at an appropriate stage:

- be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first broadcast;
- be informed about the areas of questioning and, wherever possible, the nature of other likely contributions; and
- be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness.

Ofcom noted that the initial letter from the programme makers to Ms K included the following:

*"...making a three-part documentary on BBC2 about family law and its impact on family relationships after divorce and separation. The series will mark the twentieth anniversary of the Children Act next year. [...] We can only make our films by approaching families who are living with the reality and working out practical solutions, and we therefore hope you will understand our reason for contacting you. Our series is not concerned with how or why relationships break down; it is a serious examination for BBC2 of the impact of the Children Act on decisions made in the family courts. We want to explore the way in which agreements made in court work themselves out in practice, and in so doing to help other families and inform the general public of the impact of these agreements on people's lives. [...] If you feel this might be an opportunity for you to share how the experience of breakup or divorce has affected you as a mother, we would be extremely pleased to hear from you".*

And:

*"If you felt this might be an opportunity for you to share how the experience of break-up or divorce has affected you as a mother [...]"*

Ofcom considered that the letter made clear to Ms K that the programme was intended to examine the legal circumstances following from the breakdown of her relationship with Mr M. It further noted that it was clear that access to the

children had been a significant issue. Ofcom therefore took the view that in such circumstances it would have been within the reasonable contemplation of either party that this issue of contact would have been discussed, if not concentrated on, as well as a more general discussion about the practicalities of separation.

Ofcom also noted that Ms K's first contribution included in the programme as broadcast was:

*"I would say, having gone through the system, and having had that experience that when you're about, when you're going to split up, you need to get into your own mind that you need to agree to disagree. You know, you're not going to make a go of the relationship any more. You're seeing different points of view and accept that. Don't try and change each other. Be reasonable. And I truly believe that the only reason you end up in court in the first place is because either one of you, or both of you, is being unreasonable. So stay reasonable and you shouldn't really even need to go there. Now unfortunately, I wasn't in that situation to have that".*

Ofcom noted that this excerpt was about separation in general and what mind sets are needed in order to avoid the courts. Ofcom took the view that this was in keeping with the undated letter sent to Ms K. Ofcom noted that the programme then included contributions from Ms K that related to the differences Ms K and Mr M had regarding access to the children.

Ofcom therefore took the view that the nature of Ms K's contribution included in the programme accorded with what was represented to her when gaining her consent to contribute to the programme.

As a result, Ofcom has not upheld the complaint in this respect.

b) and c)

Ofcom then considered the complaint that Ms K was unfairly portrayed in relation to the issues of contact with the children and the holiday. At the same time it also considered Ms K's complaint that she was not given an opportunity to respond to most of the derogatory assertions about her in the programme.

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

i) Ofcom first considered Ms K's portrayal in connection with contact with the children and the various suggestions she said arose from the programme:

- That Ms K was going to do everything possible to prevent Mr M from seeing his children.

In considering this element to the complaint, Ofcom first examined whether such an assertion was made in the programme as broadcast.

In doing so, Ofcom noted the following excerpts in particular:

- Presenter: *“All too often children become the weapons in their parents’ war”.*
- Ms K: *“I don’t respect his wishes as a father I respect my children’s wishes, it’s what they want that counts in my book”....*
- Presenter: *“This film explores the impact of separation on children’s lives”....*
- Mr M: *“One day I’m going to look up to my kids and say do you know what kids, I tried my best but the mountain in front was just too big for one person to climb and God knows I tried”.*
- Presenter: *“[Boy A] was born after the split. The courts were involved and it was six months before [Mr M] got proper access to his children again. Now he sees them every other weekend”.*

After the presenter said that by June 2005 Mr M’s and Ms K’s relationship had broken down, the following statements were made:

- Mr M: *“There was a sense of relief that it was all over, that I no longer need to be with her. And then suddenly after a short period of time it suddenly strikes you, yes, but she’s now going to do everything possible to stop you from seeing your children”.*
- Presenter: *“Since then, [Mr M] has spent over £60,000 in legal fees to ensure he sees his children regularly”.*

Ofcom took the view that the excerpt from Mr M carried the allegation that Ms K was doing, or at least would intend to do, *“everything possible”* to prevent him from seeing his children. Ofcom took the view that such an allegation should be considered as significant, and if taken in isolation, had the potential to be unfair.

Ofcom therefore examined whether the programme represented Ms K’s position on this assertion – which Ofcom considered central to the programme. Ofcom noted that Ms K, when speaking in general terms about dealing with separation, said:

*“And I truly believe that the only reason you end up in court in the first place is because either one of you, or both of you, is being unreasonable. So stay reasonable and you shouldn’t really even need to go there. Now unfortunately, I wasn’t in that situation to have that.”*

Ofcom noted, as it did under head a), that this was the first contribution from Ms K that was included in the programme. It took the view that this showed viewers that Ms K was determined to approach the difficult issue surrounding separation reasonably and in a manner which would not involve going to court.

Given that Ms K's view was included in the programme, Ofcom considered that the programme did not portray Ms K unfairly as someone who would do everything possible to prevent Mr M seeing his children.

- After they separated it was six months before Mr M had proper access to their children but that "now" he could see them every other weekend. Ms K said that in the first six months of their separation Mr M had unlimited contact with their children and it was misleading for the programme to suggest that only "now" was he seeing them every other weekend.

Ofcom first noted the relevant excerpt of the programme:

*"[Boy A] was born after the split. The courts were involved and it was six months before [Mr M] got proper access to his children again. Now he sees them every other weekend".*

Ofcom noted that the parties disagreed about precisely which six month period this referred to. Ms K considered it referred to the six months immediately after the split, i.e. June 2005 to December 2005. The BBC said it referred to the six months after Boy A was born i.e. from 16 September 2005 onwards.

Ofcom considered that as the excerpt began by explicitly referring to the birth of Boy A and then subsequently described a period of six months, that viewers would have understood the programme to have been referring to the six month period subsequent to Boy A's birth. Ofcom considered that the remainder of the excerpt asserted that following on from the six month period, Mr M had regular access to the children in that he saw them "every other weekend".

Ofcom therefore considered whether the BBC had taken reasonable steps before making the assertion that the access Mr M had to his children during this six month period was irregular in comparison to seeing them "every other weekend," as the programme asserted he had thereafter.

In doing so, Ofcom examined Mr M record of access with his children relating to the relevant period. It recorded whether the contact consent order ordered by the court on 7 December 2005 was or was not fulfilled regarding each child up to 22 March 2006.

Ofcom noted that on the face of the figures recorded by Mr M that the access he had to his children was indeed irregular. For example, Ofcom noted that Mr M recorded that on 9 December 2005, he had access to all but one of the children. On 6 January 2006, he did not have access to any of the children. On the weekend of 3 February 2006, Mr M had access to all the children except Boy A. From 16 February 2006 through to 22 March 2006, no access was recorded at all.

Ofcom also noted that Ms K submitted a computer file to Ofcom in support of her complaint, which contained a contact diary recording her observations about contact between Mr M and the children between the dates 10 June 2005 and 15 August 2006.

In reaching this decision, Ofcom did not treat either record of contact as being definitive for the purposes of reaching its decision, except where

they appeared to be in accord. Ofcom noted, for example, that both Mr M's and Ms K's entries for February and March 2006 accorded as neither recorded any contact between Mr M and the children.

In the circumstances, Ofcom considered that the evidence submitted by the BBC supported the assertions that Ofcom found the programme made, namely, that from October 2005 to March 2006 Mr M's access to his children was irregular.

- Mr M had spent tens of thousands of pounds in legal fees to ensure regular contact with his children. Ms K said that, although he had spent thousands of pounds on legal fees, this had not related to contact.

Ofcom noted that in the complaint, Ms K's said that Mr M had represented himself almost all of the time in the access hearings at court and would therefore have incurred few legal costs over access. She indicated that he had spent tens of thousands of pounds in legal fees in unsuccessful attempts to sell the family home, obtain his equity in the family home and have Ms K committed to prison.

Ofcom noted that the BBC said that the figure used in the programme was provided by Mr M and it had no reason to doubt its accuracy. Ofcom noted the BBC's submission that Ms K had not provided supporting evidence for her submissions.

Ofcom is unable to decide on how much Mr M had spent on legal fees to ensure he saw his children as opposed to on other matters. It could not do so based on the submissions from either party. Instead, it was for Ofcom to decide whether the programme makers took reasonable steps in presenting this material fact.

The complaint suggests it may have been unfair to Ms K for the programme to include material saying that Mr M had spent a lot of money on legal fees to ensure he saw his children as opposed to on other matters. Ms K however does not explain in her complaint why if Mr M had spent a lot of money on legal fees to ensure he saw his children rather than on other matters this might be unfair to her. It was reasonable and appropriate in Ofcom's view for the programme to present a factual account of the amount of Mr M's legal fees. In this context, reasonable care had been taken by the broadcaster to satisfy itself that material facts were not presented unfairly.

- In early 2009 when they were in court again, this time over money, contact was still being disputed. Ms K said there were no contact issues.

Ofcom noted that contact order was made in on 2 February 2009, but that another contact order was made by consent on 2 March 2010.

Ofcom also noted that Ms K said that the only contact issues were with Mr M refusing to give dates, times and confirmation of bookings for a holiday with the children.

In Ofcom's view contact was clearly an issue in February 2009 and was not resolved until March 2010. In the circumstances, Ofcom did not

consider that it was unfair to Ms K for the programme to have stated that contact was still being disputed in February 2009.

- After the cameras left and after another 13 months in court, they had an agreement and Mr M had got more than one third of the year with the children.

Ofcom noted that the assertion that Mr M and Ms K had another 13 months in court was not in dispute between the parties. It therefore considered that the only potential issue of unfairness was in connection with Ms K's claim that she had been prepared to agree to give Mr M more time with the children than he eventually achieved through the courts. Ofcom is unable to decide on whether Ms K's contention is true. It can only decide on whether the BBC had reasonable grounds on which to make the statements it did.

Ofcom therefore examined relevant statements made in the programme:

Mr M: *"There's two more binders to go to that and do you know what? My position today, after all that, is no different.*

Ms K: *They should have a court order which says you must get on with your life and you must get on with your life, and you move forward and just get on with your life. That would be wonderful.*

Presenter: *It's February [2009] and they're back in court, this time they're arguing about money. It's now four years since [Mr M] and [Ms K] separated. Contact is still being disputed and their finances are unresolved. There's no end in sight.*

On-screen  
Statement: *It took another 13 months in court, but they now have an agreement. [Mr M] gets more than one third of the year with the children".*

Ofcom noted that the statements above did not state whether either party was the sole reason for the litigation. Instead, the statements merely asserted that the parties were in continuing legal dispute. Ofcom noted that this fact was not in dispute between the parties.

Ofcom took the view that none of the assertions contained in the excerpt above were actually in dispute and therefore did not find unfairness in this regard.

- ii) Ofcom then considered whether Ms K was portrayed unfairly in relation to the children's holiday:

On the issues complained of in this section of Ms K's complaint, as summarised below, it is important to note that Ofcom's remit is to consider and adjudicate on complaints on unfair treatment and unwarranted infringement of privacy and as such it is not required to resolve conflicts of

evidence as to the nature or accuracy of particular accounts of events. Ofcom has not therefore reached a view on whether:

- Ms K had agreed to a seven day or a nine day holiday and/or that Mr M wanted 15 days.
- Ms K had not received the paperwork confirming the arrangements in accordance with the Court Order and had told Mr M that he would only receive the passports when she received that information.
- Mr M did not actually arrive at her house asking for the children the day before the holiday.
- Ms K was at work the morning the programme showed Mr M failing to collect the children.
- Ms K had received the confirmation at midnight the night before the holiday and that Mr M was still insisting on a 15 day holiday.
- The background to the negotiation about the passports and the number of days Mr M could take the children away on holiday and that she had only received the holiday confirmation documents from the police at midnight the night before.
- The children were upset by the uncertainty over the holiday.
- It was four years since the children had been on holiday with their father, but that was only because he refused to take them when she had offered holiday dates.
- Ms K ignored numerous text messages sent by Mr M about the holiday and had blocked his calls and text messages to her phone and whether their usual method of communication was email rather than phone.

Ofcom has examined the entire section of the programme that discussed Mr M's attempts to take his children on holiday as a whole, and assessed whether it was unfair to Ms K, i.e. whether Ms K was portrayed unfairly in relation to the children's holiday.

Ofcom first examined how the programme introduced this issue. The commentary stated: *"When we started filming, he was about to take the boys camping for 9 days in France"*. Ofcom then noted the following statement from Mr M:

*"Four years since they've been on holiday with their Dad. Four years. But every time it's frustrated by one thing or another. Well there's two ways that she usually practises. One is not give you the kids. Another one is give you the kids but not give you the passports."*

Ofcom considered that the statement made by Mr M here, which accused Ms K of obstructing Mr M from going on holiday with his children for four years, was a significant allegation about Ms K.

Ofcom took into account Mr M's right to freedom of expression and to impart his views and opinions. However, as Ofcom regarded this statement as a significant allegation it also had regard to Practice 7.11 of the Code which states that if a programme alleges wrongdoing or incompetence or makes any other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom therefore considered the programme's commentary which came directly after Mr M's assertion:

*“says this is because [Mr M] doesn’t tell her where he’s taking the children. This time she’s insisting he can only have the boys for a week....the court order states “a week or thereabouts.””*

Ofcom considered that this excerpt fairly reflected Ms K’s position on this issue.

As regards the specific holiday documented in the programme, Ofcom noted the assertion that Ms K was insisting that Mr M could only see the boys for a week. Ofcom noted that Ms K complained that this was untrue. Ofcom therefore considered whether the BBC had reasonable grounds on which to make this assertion. It noted that Ms K had written an email sent the night before the holiday was due to begin which said: *“You need to show me your booking details for the holiday for one week...”*

Ofcom took the view that the programme makers had reasonable grounds on which to make the assertion that Ms K was insisting on one week’s holiday, given that it had sight of this email she had written which contained this stipulation.

Ofcom then turned to the next statement made by Mr M:

*“We’ve now got all the details for the mother. The ticket, holiday camp reservation, the dates of departure, dates of arrival. There we are – it’s all there. The holiday is happening. It is booked and we’re going. End of story. There’s nothing that says I can’t and there’s everything that says I can”.*

The programme’s commentary then said:

*“[Mr M] has told [Ms K] he’ll pick up the boys on Thursday so they can leave for France the next morning”.*

And:

*“But he knows he’s pushing his luck because [Ms K] still hasn’t agreed to the full nine days. Two hours later [Mr M] returns from [Ms K]’s alone”.*

Once he had returned home, Mr M said that he wished *“a judge could just come out of his courtroom and really see what is going on for himself”*. The commentary then said, *“Unless [Mr M] leaves by ten o’clock tomorrow morning, they’ll miss the ferry. The only way he can force [Ms K] to hand over the kids is to get the police involved”*.

Ofcom noted that this section carried with it the implication that Ms K was obstructing Mr M from going on holiday with his children. Ofcom noted that Ms K’s position was not included in the programme at this stage.

The next section of the programme began with the following commentary:

*“has been trying to contact his ex-partner, to ask why she won’t let him have the children to go on holiday. She’s barred his calls...and texting hasn’t worked either”.*

Ofcom noted that Mr M then said that he had sent eight text messages to Ms K and that she had not replied to one of them. Ofcom noted that Ms K did not dispute this, but that she had said that their usual form of communication was email. In such circumstances, Ofcom saw no issue of unfairness in this regard.

The programme then showed Mr M seeking support from a family friend, Ms H, a retired magistrate in the Family Proceedings Court. Mr M wanted her to accompany him as he tried to collect the children on the morning he was to go on holiday with them. Mr M repeated the assertion that Ms K was insisting on the holiday only being one week. Ofcom has already dealt with the disputed issue of the length of the holiday above.

Ofcom then noted that Mr M read a text message out loud that had been sent by Ms K, but that this has not been complained about.

The commentary then stated that Ms K lived “200 yards down the road” and subsequently showed Mr M seemingly driving back from Ms K’s house, without the children and clearly upset. Ms H said that Mr M should think about “*this court order business*” and asked him what Ms K had said. Mr M replied:

*“She just she couldn’t care less. Just there being cocky and clever. And the boys out the back.”*

And when asked if he had asked to see the boys:

*“I called out ‘boys’ and she shut the window”.*

Ms H then said to camera:

*“I would say she’s blatantly disregarding the significance of a contact order”.*

Ofcom noted that Ms K denies that Mr M approached the house at all (instead, he parked outside) and that she was not present at this point, but at her office. Ofcom noted again that these are disputes of fact that it cannot adjudicate on. As regards the issue of whether Mr M had arrived at the house, Ofcom noted that the programme asked her about this point. The interviewer asked:

*“But didn’t he come back in the morning again and try again once you’d got those documents?”*

To which Ms K replied:

*“No, No”.*

Ofcom therefore noted that Ms K’s response to Mr M account of events was reflected in the programme. It therefore noted that, by doing so, the programme achieved fairness.

When considering Ms H’s comments about Ms K disregarding the significance of the court order, Ofcom took into account her right to express her opinions on the situation and the audience’s right to receive it. Ofcom noted that Ms H was present that day, had seen what had happened, and had worked as a magistrate in the family court. For these reasons, Ofcom considered that it was reasonable for the programme makers to ask Ms H what her view of the situation was and to include it in the programme.

Ofcom then noted that the programme asked Ms K why she had not let Mr M take the children on holiday, she said:

*“He would not give me confirmation of where those children were so going. He just wouldn’t so I wouldn’t release the passports. The police knocked on the door at 12 o’clock midnight, and they had the papers with them, so they gave me the papers.”*

Ofcom again noted that Ms K’s views were fairly reflected in the programme.

Ofcom noted that the next section of the programme asked Mr M what eventually happened. Mr M said that he decided to pursue court action. The programme’s commentary then said:

*“[Mr M] made an urgent application to the court and was told a judge would see him immediately.”*

Mr M said:

*“And I came out with this! An order telling her to let me go on holiday with my kids! Got this, went to the mother, gave her this, picked the kids up and went on holiday. It worked. Finally it worked. So, to the relevant judge, thank you”.*

Ofcom noted that Ms K complained that the programme unfairly presented that Mr M had made an urgent application to the court which made Ms K hand over the children for the holiday. Ofcom considered that the programme did indeed present such a situation. Ofcom then examined what steps the programme makers had taken in presenting this material fact. It noted that they had sight of the Court Order itself, dated 8 August 2008. Ofcom noted that the Court Order read as follows:

*“The Court Orders [...] Mother, [Ms K] shall by 6.00pm on 8 August 2008 (or as soon thereafter as a copy of their [sic] order is given to her) make available to and deliver the children as named above and their respective passports to the Father [Mr M], for the purpose of him taking them forthwith on holiday to France and returning them to Mother...”.*

Ofcom considered that it was reasonable for the programme makers to rely on this evidence when presenting the situation and that therefore, there was no unfairness to Ms K in this regard.

As noted above, Ofcom could not examine the issue regarding whether the children were upset, save for noting that the programme did not make such an assertion. It noted that Mr M did say that the children wondered where or when they were going on holiday. Ofcom considered that it was clear from the programme that this was a concern of Mr M, and that the programme makers were entitled to include it in the programme in the context of what was being shown. This was not unfair to Ms K.

As regards Ms K ignoring numerous text messages sent by Mr M and blocking his calls, Ofcom noted that the programme’s director accompanied Mr M and was witness to his calls being blocked and that there was no response from Ms K to Mr M’s text messages. Ofcom took the view that as the programme makers were witness to the events which formed the basis of this statement, the programme makers had reasonable grounds on which to base it. Ofcom also noted that Ms K in her second statement accepted that she had blocked Mr M’ phone calls to the house and to her mobile. Ofcom therefore took the view that these events should be considered fact, and could not constitute an ‘allegation’ within the meaning of

Practice 7.11 of the Code. Ofcom considered that it was therefore not incumbent on the programme makers to offer Ms K an opportunity to respond to this point.

In conclusion therefore, Ofcom found no unfairness to Ms K on any of the grounds complained of.

**Accordingly, Ofcom has not upheld Ms K's complaint of unfair treatment in the programme as broadcast.**

## Not Upheld

### **Complaint by Mr Darren Bradley made on his own behalf and on behalf of Bradley and Bradley Limited**

*Cowboy Trap, BBC1, 8 November 2010*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Mr Darren Bradley.

BBC1 broadcast an edition of the programme *Cowboy Trap* which looks at building projects that have gone wrong. This edition featured a conversion project carried out by Mr Bradley's building company ("Bradley and Bradley Limited") for John and Georgina Henty.

Mr Bradley complained that he and his company were treated unfairly in the programme as broadcast.

In summary, Ofcom found that:

- Neither Mr Bradley nor his company were treated unfairly in the programme as broadcast in that the programme makers took reasonable care to satisfy themselves that material facts in relation to the allegations made about the work carried out by Bradley and Bradley Limited in the programme were not presented, disregarded or omitted in a way that is unfair to Mr Bradley or his company; and
- The programme makers gave Mr Bradley an appropriate and timely opportunity to respond to these allegations.

#### **Introduction**

On 8 November 2010, BBC1 broadcast an edition of the series *Cowboy Trap*. The series looks at building projects that have gone wrong, assesses the key problems with the work undertaken and organises for the most immediately necessary remedial work to be carried out. This edition of the programme looked at the extension of a two-bedroom bungalow in West Sussex owned by a married couple, John and Georgina Henty.

The programme said that Mr and Mrs Henty had paid their builder £75,000, but that they had been left with an empty shell rather than a house with a completed extension. It also reported that a local building inspector had told the owners that the roof needed re-doing and that a structural engineer had found 31 faults, including several which had left the house in a dangerous condition. The programme also indicated that the builder had returned to the property and taken materials for which Mr and Mrs Henty had already paid and that when Mr and Mrs Henty called the police, the builder told them he was taking the materials because Mr and Mrs Henty had not paid him. The presenter informed viewers that, because Mr and Mrs Henty were dealing with their "*bad builder*" through solicitors, the programme had been asked not to telephone him.

Following the broadcast of the programme, Mr Darren Bradley, the builder referred to but not named in the programme, complained to Ofcom that he and his company, Bradley and Bradley Limited ("Bradley and Bradley"), were treated unjustly or unfairly in the programme as broadcast.

## The Complaint

### Mr Bradley's case

In summary, Mr Bradley complained that he and his company were treated unjustly or unfairly in the programme as broadcast in that:

- a) The work carried out by his company was unfairly portrayed in the programme. In particular, Mr Bradley complained that:
  - i) The project was to convert the property from a two-bedroom bungalow to a three-bedroom bungalow, not a four-bedroom house as stated in the programme.
  - ii) It was unfair to say that work slowed after Mr and Mrs Henty moved out of the property without explaining that this was because it became clear they did not have appropriate planning permission for the new roof.
  - iii) It was unfair to say that "the roof was not in accordance with the plans" as it was being constructed in accordance with the second set of plans drawn up after it became clear that did not have planning permission for their first plan. Mr Bradley said that there was an email from the Building Inspector confirming this was the case when he made a site visit. Mr Bradley added that this site visit took place on the day before his building team left the site.
  - iv) It was unfair to say that that Mr and Mrs Henty were left without a roof, floors, electrics, plumbing, kitchen or windows given that: at the time the building team was asked to leave the site they were working on the roof; the floors were to be laid after the building was water-tight; and, the plumbing, heating, kitchen and windows were all being supplied by other independent contractors.
  - v) It was unfair to say that the roof had to be stripped back and replaced given that when his team left the site the roof was being constructed in accordance with the second set of plans and was left covered and in a safe condition.
  - vi) It was unfair to criticise the company for being unable to start work straight away given that were told that another project on which the company was working nearby was nearing completion and that therefore a small team of builders working on different trades to that on the nearby property could start in a few weeks.
  - vii) It was unfair to say that Mr Bradley's company removed materials for which Mr and Mrs Henty had paid, including items from the roof, given that he had arranged for suppliers who had not been paid to remove their materials and the only thing removed from the roof was scaffolding which had been hired to Mr Bradley's company.
  - viii) It was unfair to say that a structural engineer found 31 faults with the property, including with the rafters, the chimney, the roof and the cavities, given that the photos and footage shown were not of work carried out by his company.
  - ix) It was unfair to say that a quotation was a fixed price regardless of whether more work was required because if a job changed substantially after work started a quotation could be revised and a customer must agree to it before works were completed.
  - x) It was unfair to say that that the "cowboy builders" left Mr and Mrs Henty with a chimney that was not tied in, a roof that had to be redone, unsafe walls, floors and ceilings, no bathroom, no kitchen and the stairs fitted incorrectly and left open because the chimney and roof were safe when his team left the site, and other aspects of the build were being sourced from different contractors. Mr Bradley added that the stairs were fitted by the builder whom

the programme subsequently used to make them safe and referred to as the “the good guy”.

- b) The programme omitted material facts in that it failed to contact the local building inspector to verify the allegations included in the programme. Mr Bradley indicated that the building inspector was preparing a report which would support his position, notably with regard to his claim that much of the work shown in the programme was not carried out by his company and that the reason for the change in the roof structure was Mr and Mrs Henty’s changes to the design of the roof at a late stage.
- c) He and his company were not given an appropriate opportunity to respond to the claims made about the work carried out by the company in the programme in that the research team made no attempt to contact him.

By way of background, Mr Bradley said that having found out that the BBC was making this programme he had contacted it prior to the broadcast.

### **The BBC’s case**

Prior to responding to the individual heads of complaint, the BBC said that *Cowboy Trap* alerted viewers to the pitfalls of dealing with cowboy builders - which it defined as those who were not competent to perform the work they undertook or who set out to defraud - and the steps which could be taken to avoid them. The BBC said that the series featured only projects where intervention by the programme’s “good guys” could make a material difference within the time and resources available and that the Henty’s house was at the very limit of what the series could undertake. The BBC said that, whatever the details of the case, the broad picture was clear: between receipt of the initial quotation in September 2009 and Bradley and Bradley leaving the site in March 2010, Mr and Mrs Henty paid the company a total of £72,500 (slightly in excess of the total cost of the project as originally quoted) and received in return a house which was uninhabitable, with uncompleted, faultily completed and, in some instances, dangerous work, which cost them at least as much again to remedy.

In summary, the BBC responded to the complaints that Mr Bradley and his company were treated unfairly in the programme as broadcast as follows:

- a) The broadcaster first responded to Mr Bradley’s complaint that the work carried out by his company was unfairly portrayed.
- i) The project was to convert the property from a two-bedroom bungalow to a three bedroom bungalow, not a four-bedroom house as stated in the programme.

The BBC said that Mr and Mrs Henty always intended to make their roof space usable and this was the purpose of the first phase of loft works for which Bradley and Bradley quoted. It also said that, because of problems with the original design of the loft, the Building Control authorities suggested that the loft space be divided into two so as to provide additional support to the roof and that Mr Bradley was aware of this and provided Mr and Mrs Henty with amended quotations<sup>1</sup>, accordingly. The BBC argued that in light of these factors the

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<sup>1</sup> Mr Bradley submitted two revised quotations dated 8 December 2009 – one for £79,579.79 and the other for £87,709.79, differing mainly in whether or not they included electrical, plumbing and heating works for the first floor (copies of which were provided to Ofcom).

reference to converting the property to a four rather than a three-bedroom house was no of great significance in terms of the scope of the project.

- ii) It was unfair to say that work slowed after Mr and Mrs Henty moved out of the property without explaining that this was because it became clear they did not have appropriate planning permission.
- iii) It was unfair to say that “the roof was not in accordance with the plans” as it was being constructed in accordance with the second set of plans drawn up after it became clear that Mr and Mrs Henty did not have planning permission for their first plan.

The BBC said that these two points of complaint were at the heart of Mr Bradley’s claim that Mr and Mrs Henty (rather than Bradley and Bradley) were responsible for the problems with the project but argued that this was not the case.

The BBC acknowledged that the original plans failed to get Building Regulations approval on 8 October 2009 and that therefore a new set of plans was drawn up. However, it also said that the builders did not start work on the roof until after the revised set of plans received conditional approval (on 21 December 2009). The broadcaster said that despite this Bradley and Bradley’s work was in accordance with neither the original nor the revised set of plans and in particular did not include rafters spanning from the walls to the roof ridge (which were specified in both sets of plans)

In support of its argument the BBC provided a copy of a letter (dated 6 December 2010) from the building control officer who dealt with the case. The broadcaster said that Mr Bradley was mistaken in his belief that this letter supported his position and quoted the following paragraph from the letter to illustrate:

“When the site was inspected on 25.01.2010 the roof structure was in progress, many of the rafters were in place spanning between the external wall and the internal timber stud wall, but the rafters were not long enough to span to the ridge. The reason given why the rafters did not reach the ridge is that Bradley & Bradley could not obtain rafters of the required length. A high level ring beam was in the process of being constructed. I advised Bradley & Bradley to contact Tim Murray as this arrangement would not work. I confirmed that the rafters were designed to be constructed in a continuous span”.

The broadcaster said that in light of this it was entirely fair for the programme to give the impression that Bradley and Bradley’s work on the roof was not in accordance with the plans and said that, in the circumstances, it was unsurprising that the work slowed down after Mr and Mrs Henty moved out of the house. The BBC said that, immediately after Mr and Mrs Henty moved into rented accommodation, the building team ripped out the plumbing, kitchen and electrics in the course of a day and then did no more work for eight days. Neighbours had observed that the team was often not on site or began work late and finished early.

- iv) It was unfair to say that Mr and Mrs Henty were left without a roof, floors, electrics, plumbing, kitchen or windows given that at the time the building team was asked to leave the site it was working on the roof; the floors were to be laid after the building was water-tight; and the plumbing, heating, kitchen and windows were all being supplied by other independent contractors.

The BBC said that Mr and Mrs Henty did not ask the building team to “*leave the site*”. In March 2010 Mr Bradley had demanded a further payment to continue work. By this time, Mr and Mrs Henty had already paid £72,500, some of it in response to previous threats by Mr Bradley to discontinue work. Mr and Mrs Henty declined to make another additional payment, and Mr Bradley withdrew his team. At that point less than a third of the work contracted for had been completed. The broadcaster said that Bradley and Bradley had been contracted to supply a complete finish, which included plumbing, heating, kitchen and windows. It also said that shortly before plumbing work was due to commence, Bradley and Bradley informed Mr and Mrs Henty that they no longer wished to install the plumbing and heating and that they should seek an alternative supplier. However, Mr Bradley did not remove those items from the quotation, but assured Mr and Mrs Henty that he would sort it out at the end. The supply and fitting of double-glazed windows ceased to be part of the project after Bradley and Bradley substantially increased the agreed cost and refused to replace some existing windows as set out in the quotation. The BBC said that none of the items of work mentioned in this point of the complaint had been done when Bradley and Bradley left the site, and that it was solely because the company had resiled from its agreed quotation that Mr and Mrs Henty had been obliged to contemplate the use of other contractors.

- v) It was unfair to say that the roof had to be stripped back and replaced given that when his team left the site the roof was being constructed in accordance with the second set of plans and was left covered and in a safe condition.

The BBC referred to its responses to the complaints at heads a) ii) and iii), indicating that the roof was not being constructed in accordance with either the original or the revised set of plans. The BBC also said that a survey carried out by a structural engineer commissioned by Mr and Mrs Henty after Bradley and Bradley had left the site, described a roof which, rather than being left “in a safe condition”, needed to be stripped back and replaced.

- vi) It was unfair to criticise the company for being unable to start work straight away given that Mr and Mrs Henty were told that another project on which the company was working nearby was nearing completion and that therefore a small team of builders working on different trades to that on the nearby property could start in a few weeks.

The BBC said that rather than criticising the company for “being unable to start straight away” the programme made it clear that one of the reasons Mr and Mrs Henty selected the company was that it was able to start “*pretty much straight away*”.

- vii) It was unfair to say that Mr Bradley’s company removed materials for which Mr and Mrs Henty had paid, including items from the roof, given that he had arranged for suppliers who had not been paid to remove their materials and the only thing removed from the roof was scaffolding which had been hired to Mr Bradley’s company.

The broadcaster said that Mr and Mrs Henty’s solicitor had advised them that the materials in question were theirs, by virtue of the payments already made and the programme represented this as their view. It added that Mr and Mrs Henty had no financial dealings with suppliers but made payments only to Bradley and Bradley, on the basis that the company would source the relevant materials, so that any

non-payment of suppliers would have been an issue for Bradley and Bradley, not Mr and Mrs Henty. The BBC also said that Mrs Henty said in the programme:

*“We phoned the police, the police turned up – he convinced the policewoman that we hadn’t paid him, and they were his materials, and that he was taking back what was his”.*

The BBC argued that the programme therefore made it clear that Mr Bradley claimed ownership of the materials and was able to convince a police officer that he was entitled to remove them.

- viii) It was unfair to say that a structural engineer found 31 faults with the property, including with the rafters, the chimney, the roof and the cavities, given that the photos and footage shown were not of work carried out by his company.

In response to this complaint, the BBC suggested that Mr Bradley might have confused the chartered surveyor commissioned by and featured in the programme with the structural engineer commissioned by Mr and Mrs Henty. The broadcaster provided Ofcom with a copy of the defect schedule from the structural engineer’s report, which it said was based on an inspection on 16 March 2010 shortly after Mr Bradley’s team had left the site and before the intervention of any other builder, and indicated that it enumerated 31 faults. The BBC acknowledged that as other builders had been at work on the house by the time of filming it was inevitable that work other than Bradley and Bradley’s appeared in shot, but said that the programme makers and their chartered surveyor had the structural engineer’s report and its accompanying photographs to guide them in attributing particular faults to the work carried out by the company.

- ix) It was unfair to say that a quotation was a fixed price regardless of whether more work was required because if a job changed substantially after work started a quotation could be revised and a customer must agree to it before works were completed.

The BBC said that it was true that the specifications for the job changed and that the programme “telescoped” this aspect of a somewhat complex narrative. However, it also said that the change was accommodated in two alternative quotations of 14 December 2009 and that the quotation accepted at that point by Mr and Mrs Henty was for a fixed price. Despite the fact that there were no further changes to the plan, Mr and Mrs Henty were subjected to substantial further charges, as well as unilateral reductions in the scope of the project by Bradley and Bradley.

- x) It was unfair to say that the “cowboy builders” left Mr and Mrs Henty with a chimney that was not tied in, a roof that had to be redone, unsafe walls, floors and ceilings, no bathroom no kitchen and the stairs fitted incorrectly and left open because the chimney and roof were safe when his team left the site, and other aspects of the build were being sourced from different contractors. Mr Bradley added that the stairs were fitted by the builder whom the programme subsequently used to make them safe and referred to as the “good guy”.

With regard to the role of other contractors and the state of the roof, the BBC referred to its responses to heads a) iv) and a) v) respectively.

With regard to the other aspects of the work, the BBC said that the structural engineer's report identified faults in ceiling joists, floor joists and the chimney and argued that an impression of the seriousness of the faults could be formed from the structural engineer's defect schedule. It acknowledged that that the stairs were installed by the builder who was seen in the programme completing them and repeated that *Cowboy Trap* featured only projects where intervention by the programme's "good guys" could make a material difference within the time and resources available. In the case of Mr and Mrs Henty's house, the need for further work was so comprehensive that the choice of feasible tasks was reduced to the installation of the kitchen and the completion of the stairs. The BBC acknowledged that this may have led viewers to assume that the incomplete stairs shown in the programme had been installed by Bradley and Bradley, but argued that this would not have created a more adverse impression of the company and its work than would have been created if the programme had made clear that the company had abandoned the project without installing any stairs at all.

- b) In response to Mr Bradley's complaint that the programme omitted material facts in that it failed to contact the local building inspector to verify the allegations included in the programme, the BBC said the issue was whether or not the programme included unjustified allegations rather than whether or not the programme makers contacted the relevant building control official. It added that the allegations in the programme were substantiated by both the structural engineer's report commissioned by Mr and Mrs Henty and the chartered surveyor commissioned by the programme. The BBC also argued that an email dated 6 April 2010 from the building control officer to Mr Bradley confirmed several of the claims made in the programme regarding the quality of the work carried out by Bradley and Bradley, as did a letter dated 6 December 2010 from the officer to Mr Bradley.
- c) In response to the complaint that Mr Bradley and his company were not given an appropriate opportunity to respond to the claims made about the work carried out by the company, the BBC said that the producer tried to contact Mr Bradley by phone, on the two numbers given in his most recent correspondence with Mr and Mrs Henty, but found that neither was in use.

The BBC said that there was some confusion as a result of Mr Bradley (who it appears found out about the planned programme by other means) contacting a different producer who had worked on the first series of *Cowboy Trap* but had no subsequent connection with it. However, as a result of contacting BBC Audience Services, Mr Bradley was put directly in touch with the current producer of *Cowboy Trap*, who emailed him on 4 October 2010. The producer reviewed the points Mr Bradley had made in his contact with the former producer of the programme and emailed him again on 5 October 2010 with a substantive reply and some questions of his own. Mr Bradley did not reply to this email. The BBC said that the producer bore Mr Bradley's points in mind while finalising the script, although he was unable to reflect those which were unsupported, or contradicted, by the evidence.

## 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 as well as both parties' written submissions (including documentation relating to the work carried out by Bradley and Bradley and correspondence).

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 Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its decisions on the individual heads of complaint detailed below.

- a) Ofcom's first considered the complaint that Mr Bradley and his company were treated unjustly or unfairly in the programme as broadcast in that the work carried out by his company was unfairly portrayed in the programme.

In considering this part of the complaint, Ofcom had 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 observed that the programme was introduced with the following commentary:

*"Today we're travelling from West Sussex to Somerset. We're meeting two families whose builders took their money, wrecked their homes and left them having to pay all over again. The Hentys wanted to turn their two bed bungalow into a four bed family home. But all they've ended up with is financial disaster".*

Viewers were also informed that once Mr and Mrs Henty, who lived "near Worthing", had got planning permission to convert their property, they found a local builder who said:

*"...he could transform their home from a two bed bungalow to a four bedroom house, in twenty weeks. His £72,300 quote was reasonable and to begin with, the work seemed fine".*

The programme then went on to examine the deterioration of Mr and Mrs Henty's relationship with their builder and the ways in which the work carried out on their property fell short of their expectations and/or did not meet relevant regulatory requirements.

Ofcom looked at each of the points which Mr Bradley complained had resulted in unfairness in the programme as broadcast to him and his company in turn. Ofcom noted that in considering these elements of the complaint its role was not to establish conclusively from the broadcast programme or the submissions and supporting material, whether these points were false allegations but rather to

address itself to the issue of whether the programme makers took reasonable care in relation to material facts.

- i) The project was to convert the property from a two-bedroom bungalow to a three bedroom bungalow, not a four-bedroom house as stated in the programme.

In Ofcom's view the introduction to the programme clearly indicated that the project on Mr and Mrs Henty's house was to convert a two-bedroom bungalow into a four bedroom house, rather than a three-bedroom bungalow.

Ofcom observed that documentation provided by Mr Bradley in support of his complaint indicated that the initial quotation for the job included "a boarded out loft space [albeit] without stairs".

On the basis of the information available it appeared to Ofcom that the original quotation from Bradley and Bradley was to convert Mr and Mrs Henty's house from a two-bedroom to a three-bedroom property. However, Ofcom also considered that the programme makers gathered credible evidence (notably the original and revised quotations) indicating that Mr Bradley had recognised from the outset that the project included an extension into the loft and that from some time before 8 December 2009, the date of the revised quotations, he was aware that project included the sub-division of the loft into two rooms thereby extending the original two-bedroom single storey house into a four-bedroom two storey house. In addition, Ofcom considered that the dates of the quotations indicated that Bradley and Bradley worked on Mr and Mrs Henty's house on the basis of converting it from a two-bedroom to a four-bedroom property between the point when Mr and Mrs Henty accepted one of these quotations (presumably in December 2009) and early March 2010 when the builders left the site.

Taking these factors into account, Ofcom considered that the programme's statement that Mr Bradley was working on a conversion from a two-bedroom to a four-bedroom property was unlikely to have materially affected viewers' understanding of Mr Bradley or his company in a way that was unfair. Ofcom also considered that the programme makers took reasonable care to satisfy themselves that the programme did not present, disregard or omit material facts, with regard to the precise extent of the conversion in a way that resulted in unfairness to Mr Bradley or his company.

- ii) It was unfair to say that work slowed after Mr and Mrs Henty moved out of the property without explaining that this was because it became clear they did not have appropriate planning permission.
- iii) It was unfair to say that "the roof was not in accordance with the plans" as it was being constructed in accordance with the second set of plans drawn up after it became clear that Mr and Mrs Henty did not have planning permission for their first plan.

Ofcom observed that the presenter said:

*"But when the Hentys moved out to let the work continue inside – everything slowed down. And when they complained to their builder about the slow progress – he threatened to walk off the job."*

The presenter also said:

*“When the building inspector looked round, he had a nasty surprise - the roof was all wrong and would have to be done again”.*

The programme then showed Mrs Henty saying:

*“The building inspector said that he had asked him to build the roof differently because he hadn’t built it in accordance with the structural engineers’ plans”.*

Ofcom also observed that the programme said that:

*“The builder blamed the Hentys for the roof blunder – because they had changed the plans. And then he demanded more money to rebuild it. When they refused he left the job”.*

In Ofcom’s view this section of the programme clearly indicated that work slowed after Mr and Mrs Henty moved out of the property and that the roof had not been constructed in accordance with the plans. The programme also indicated that the builder was responsible for both of these problems, but that the builder did not agree with this and considered that the problems were due to Mr and Mrs Henty having changed the plans for the roof.

In considering whether it was unfair for the programme to make these claims Ofcom looked at the source of this information. Ofcom observed that the programme based the claims that the work had slowed down after Mr and Mrs Henty moved out and the roof was not constructed in accordance with the plans on: information supplied by Mr and Mrs Henty (including a survey conducted by a structural engineer whom they commissioned); the testimony of Mr and Mrs Henty’s neighbours; the opinion of a local building control officer; and, the findings an independent surveyor who assessed the property on behalf of the programme after Bradley and Bradley had left the site.

In Ofcom’s view the elements of the evidence gathered by the programme makers were each credible on an individual basis, and together amounted to a reasonable foundation for the claims included in the programme.

It also considered that, given that viewers were made aware that the builder considered that the problems with the roof were due to Mr and Mrs Henty having changed their plans, they would have been able to draw their own conclusions on this matter.

Taking these factors into account, Ofcom considered that the programme makers took reasonable care to satisfy themselves that the programme did not present, disregard or omit material facts, with regard to the pace of the work after Mr and Mrs Henty moved out or the construction of the roof in a way that resulted in unfairness to Mr Bradley or his company.

- iv) It was unfair to say that Mr and Mrs Henty were left without a roof, floors, electrics, plumbing, kitchen or windows given that at the time the building team was asked to leave the site: it was working on the roof; the floors were to be laid after the building was water-tight; and, the plumbing, heating, kitchen and windows were all being supplied by other independent contractors.

Ofcom observed that the presenter said:

*“The Hentys paid out £72,500 and were left with no roof, no floors, no plumbing, no electricity, no kitchen, no bathrooms, no windows – basically they had no home. Their dream house was now a shell that they couldn’t safely walk into – never mind live in”.*

In Ofcom’s view this section of the programme clearly indicated that Mr and Mrs Henty were left without a roof, floors, electrics, plumbing, kitchen or windows and that the builder was responsible for these problems.

In considering whether it was unfair for the programme to make these claims Ofcom looked at the source of this information. Ofcom observed that the programme based the claim that Mr and Mrs Henty were left without a roof, floors, electrics, plumbing, kitchen or windows and that the builder was responsible for these problems on a wide range of evidence: notably information supplied to it by Mr and Mrs Henty (including a survey conducted by a structural engineer whom they commissioned); the opinion of a local building control officer; and, the findings an independent surveyor who assessed the property on behalf of the programme after Bradley and Bradley had left the site.

In Ofcom’s view the elements of the evidence gathered by the programme makers were each credible on an individual basis and together amounted to a reasonable foundation for the claims included in the programme. In particular, Ofcom observed that the original quotation from Mr Bradley indicated that the existing structure was to be gutted and rebuilt according to the new layout. The quotation included plumbing, electrical works, all sanitary wares (excluding a specific type of shower and WC in the family bathroom, which was to be costed separately) and a new kitchen. In addition, as noted in the decision at head a) i) above, this quotation included references to the loft/roof works. It was apparent from the footage of Mr and Mrs Henty’s house, as shown in the programme, that the property had been left in an uninhabitable condition with bare breeze block walls; old plumbing fixtures; no electrics; incomplete/non-existent roof, ceilings and floor; no windows; no bathroom fittings (other than an unfitted toilet) and no kitchen.

Taking these all of these factors into account, Ofcom considered that the programme makers took reasonable care to satisfy themselves that the programme did not present, disregard or omit material facts, with regard to the condition of Mr and Mrs Henty property after the building team had left the site in a way that resulted in unfairness to Mr Bradley or his company.

- v) It was unfair to say that the roof had to be stripped back and replaced given that when his team left the site the roof was being constructed in accordance with the second set of plans and was left covered and in a safe condition.

Ofcom observed that programme included the following exchange between the presenter and Mrs Henty regarding the roof:

Mrs Henty: *“Well a lot of the roof that the builders had done has had to be replaced”.*

Presenter: *“So has it all had to be stripped back?”*

Mrs Henty: *“It all had to be stripped back. Yes”.*

Mrs Henty and the presenter then discussed how much money Mr and Mrs Henty had spent on the work carried out by the original builders and the subsequent remedial work.

In Ofcom's view this section of the programme clearly indicated that the roof constructed by the original builders had had to be replaced because the work was substandard.

In considering whether it was unfair for the programme to make this claim Ofcom looked at the source of this information.

Ofcom noted that, as set out in the decision at heads) a) ii) and iii) above, the programme based its claims about the original work carried out on Mr and Mrs Henty's property on a wide range of credible evidence. This included information supplied by Mr and Mrs Henty, including the survey by their structural engineer; the opinion of a local building control officer; and the findings an independent surveyor who assessed the property on behalf of the programme after Bradley and Bradley had left the site. In particular, Ofcom noted that the structural engineer's report indicated six specific elements of the roof construction which were faulty or inappropriate (including the rafters, the tile battens and the valley beam). It also listed serious potential consequences from these faulty elements (for example: no resistance to rotation; the deflection of the roof; the cracking of ceilings and walls, water ingress and the potential for parts of the roof structure to fail) and indicated that each of these elements needed to be removed and replaced with an appropriate alternative.

Taking these factors into account, Ofcom considered that the programme makers took reasonable care to satisfy themselves that the programme did not present, disregard or omit material facts, with regard to the quality of the work carried out on the roof by Bradley and Bradley in a way that resulted in unfairness to Mr Bradley or his company.

- vi) It was unfair to criticise the company for being unable to start work straight away given that Mr and Mrs Henty were told that another project on which the company was working nearby was nearing completion and that therefore a small team of builders working on different trades to that on the nearby property could start in a few weeks.

Ofcom observed that Mr Henty said in the programme:

*"We wanted the builder to start as soon as possible, so we thought right, we'll go with this builder because he can start pretty much straight away".*

The presenter then said:

*"The Hentys' mistake was choosing a builder who could start straightaway, over the winter, and they also paid him a lot of money up front. Take a tip from me – Be cautious of builders who are available immediately – most good builders will be booked up months in advance".*

Ofcom considered that viewers would have understood from this section of the programme that Mr and Mrs Henty were pleased that the builder could start straight away and had selected him on this basis. It was also clear that the presenter did not think it was not a good idea to employ a builder who could start straight away, because most good builders would have business booked in for

some months ahead. Ofcom considered that, while the presenter's comment indicated that Mr and Mrs Henty had made a mistake in selecting their builder on this basis, he did not specifically criticise Mr Bradley's company but was advising viewers that in general it was likely that good builders would be in demand and unavailable to start work immediately.

Given that the programme did not criticise Mr Bradley's company for not being able to start work straightaway but rather made it clear that he had been selected because he could start almost immediately, Ofcom considered the neither Mr Bradley nor his company were unfairly portrayed in this respect.

- vii) It was unfair to say that Mr Bradley's company removed materials for which Mr and Mrs Henty had paid, including items from the roof, given that he had arranged for suppliers who had not been paid to remove their materials and the only thing removed from the roof was scaffolding which had been hired to Mr Bradley's company.

Ofcom observed that the presenter and Mr and Mrs Henty had the following exchange regarding this matter:

Presenter: *"When was the last time you ever saw the builder? Did he come back to site at all?"*

Mrs Henty: *"The last day we saw him personally, he turned up at our house and he started taking all the materials from the site".*

Presenter: *"What? Materials you'd paid for?"*

Mrs Henty: *"Yep. Materials we'd paid for. Thousands and thousands of pounds of roof – the wood".*

Presenter: *"Dismantling the chimney, wasn't he?"*

Mrs Henty: *"Yeah, actually dismantled some bits from the chimney".*

Presenter: *"While he's on your property without permission? How could he do that?"*

Mr Henty: *"Cos I told him not to go on our property, so he went into the neighbours' property, who were on holiday at the time, and started going over the wall taking bits off of the chimney".*

Mrs Henty: *"We phoned the police, the police turned up – he convinced the policewoman that we hadn't paid him, and they were his materials, and that he was taking back what was his".*

After this conversation the presenter said:

*"The Hentys' builder has been in touch with us. He's adamant he's no cowboy. But the Hentys' dream has ended in disaster".*

In Ofcom's view this section of the programme clearly indicated that the builder had removed materials for which Mr and Mrs Henty had paid, including items from the roof, from the site. Ofcom also considered that viewers would have

understood that the builder disputed this and considered that his company had a right to take back these materials.

Ofcom considered that the programme indicated that it was someone from Mr Bradley's company who had removed these materials, rather than someone from the original suppliers. However, given that Mr Bradley acknowledged that he had arranged for the suppliers to remove the materials from the site, Ofcom did not consider that this discrepancy would have had a material effect on viewers' perception of Mr Bradley or his company.

Ofcom then went on to consider the source of the claim that the builder had removed materials for which Mr and Mrs Henty had paid. It noted that Mr and Mrs Henty had informed the programme makers that their solicitor had advised them that the materials in question were theirs, by virtue of the payments that they had already made to Bradley and Bradley, and that Mr and Mrs Henty had no financial dealings with suppliers but made payments only to Bradley and Bradley, on the basis that the company would source the relevant materials.

Ofcom considered that Mr and Mrs Henty were credible witnesses with regard to: the contract they made with Bradley and Bradley; the work carried out and actions taken by the company; and the advice which they received from professionals.

In addition, given that the programme made clear that the builder disputed Mr and Mrs Henty's position regarding the ownership of the roofing materials at the point his team of workmen left the site, Ofcom considered that viewers would have been able to draw their conclusions in relation to this matter.

Taking these factors into account, Ofcom considered that the programme makers took reasonable care to satisfy themselves that the programme did not present, disregard or omit material facts, with regard to the removal of materials from the site when the builders left in a way that resulted in unfairness to Mr Bradley or his company.

- viii) It was unfair to say that a structural engineer found 31 faults with the property, including with the rafters, the chimney, the roof and the cavities, given that the photos and footage shown were not of work carried out by his company.

Ofcom considered that the following exchange in the programme clearly indicated that a structural engineer found 31 faults after the builders had left and that the property was in a dangerous state:

Presenter: *"Recently you've had a structural engineer's report haven't you?"*

Mrs Henty: *"Yes".*

Presenter: *"How many faults did he find?"*

Mrs Henty: *"Thirty-one".*

Presenter: *"Thirty one faults, and they range from?"*

Mrs Henty: *"Walls not being tied in properly, cavities being breached, wrong sized rafters used in the roof. None of the floor joists were supported properly so the floors upstairs and downstairs may have*

*collapsed. Another dangerous thing was the chimney wasn't tied in at all, so if there had been a strong wind it could have blown down on us and crushed us".*

Presenter: *"These are major problems. These people, definitely in this property, left you in danger and it is an absolute disgrace..."*

Ofcom observed that the BBC submitted a copy of a defect schedule supplied to Mr and Mrs Henty by their structural engineer after the builder left. This schedule listed 30 defects, including problems with: the joists; the beams, the cavities; the brickwork; the chimney (which it indicated needed to be taken down and replaced); and the roof.

Ofcom acknowledged that there was a discrepancy between the precise number of faults listed in this defect schedule and those indicated in the programme (30 rather than 31). However, given that this discrepancy was very small and given that, in its view, the defects listed were accurately reflected in the programme, it did not consider that this discrepancy would have had a material effect on viewers' perceptions of Mr Bradley and his company.

In addition, Ofcom considered that Mr and Mrs Henty were credible witnesses with regard to the work carried on their property by Bradley and Bradley and that their testimony was corroborated by the findings of an independent structural engineer.

Ofcom considered that the inclusion of footage of remedial work carried out by a different builder after Bradley and Bradley had left the site would not have adversely affected viewers' perception of Mr Bradley or his company. Ofcom noted that the footage of Mr and Mrs Henty's property included in this section of the programme, when the faults found by the structural engineer were discussed, was clearly presented as the second stage of a "before and after" process, in which the programme showed the property both before and after a builder the programme makers it had employed had undertaken remedial work.

Ofcom observed that footage of Mr and Mrs Henty's property taken before the programme's builder had come in also included some remedial work, specifically new roof timbers. This was because, as noted above (see the Decision at head a) v)), after Bradley and Bradley left the site Mr and Mrs Henty had been advised that they must arrange for these timbers to be stripped out and replaced and they had done so prior to *Cowboy Traps'* intervention. As with the later footage, Ofcom considered that it was made clear in the programme that this work had been carried out by a different builder and Ofcom did not consider that the inclusion of footage of some of the remedial work carried out by a different builder would have adversely affected viewers' perceptions of Mr Bradley or his company.

Taking these factors into account, Ofcom considered that the programme makers took reasonable care to satisfy themselves that the programme did not present, disregard or omit material facts, with regard to the state of the property at the point when Mr Bradley's team of workmen left the site in a way that resulted in unfairness to Mr Bradley or his company.

- ix) It was unfair to say that a quotation was a fixed price regardless of whether more work was required because if a job changed substantially after work started a quotation could be revised and a customer must agree to it before works were completed.

Ofcom looked at the relevant sections of the programme and observed that the presenter said:

*“The builder blamed the Hentys for the roof blunder – because they had changed the plans. And then he demanded more money to rebuild it. When they refused he left the job”.*

Mrs Henty then said:

*“We sought some legal advice and it was at this time that we found out that a quote is legally binding and they can’t ask you for more money to do the same thing even if they have to do more work than they expected”.*

Later the presenter said:

*“We’re back in West Sussex now. Where Georgina and John Henty wanted to convert a two bed bungalow into a four bedroom home. It all started well but after shelling out more than £70,000, work slowed up, they were asked to pay thirty grand more than the original quote and it turned out their builder hadn’t been following the plans. Disaster.”*

Ofcom did not consider that the programme indicated that a quotation amounted to a fixed price regardless of whether more work was required, but took the view that, taken together with other sections of the programme, notably those in which the specific amounts of money asked for and paid by Mr and Mrs Henty were set out, it suggested that:

- Mr and Mrs Henty were quoted, and accepted, a price of £72,300 for the project;
- Mr and Mrs Henty were advised that if one agreed to a quotation for a specific task that agreement was binding and the price charged for the task should not be increased;
- Mr and Mrs Henty paid their builder £72,500, which was just over the full amount of the initial quotation, but that at the point the building team left the site less than a third of the job was complete and much of that which had been completed did not meet the minimum required standard; and
- Despite this, the builder had asked for £30,000 more, which Mr and Mrs Henty had refused to pay, and the builder had then left the job.

Ofcom went on to consider whether these claims resulted in unfairness to Mr Bradley and his company.

As noted above, Ofcom considered that Mr and Mrs Henty were credible witnesses with regard to their contractual relationship with Mr Bradley’s company and that their testimony was corroborated by further evidence.

Ofcom observed that it had not been informed which of the two alternative quotations provided by Mr Bradley in December 2009 Mr and Mrs Henty had accepted. However, it also observed that the more expensive of the two was for £87,709.79, which indicated that when the builder left the site, because Mr and Mrs Henty refused to pay a further £30,000, (i.e. when less than a third of the project was complete) they could have owed the builder no more than a maximum of £15,210 for the finished project.

Taking these factors into account, Ofcom considered that the programme makers took reasonable care to satisfy themselves that the programme did not present, disregard or omit material facts, with regard to the quotations (notwithstanding that it did not explain that a change in the specifications for the loft space had resulted in an increase to the initially agreed quotation) and the sums requested from and paid by Mr and Mrs Henty in a way that resulted in unfairness to Mr Bradley or his company.

- x) It was unfair to say that the “cowboy builders” left Mr and Mrs Henty with a chimney that was not tied in, a roof that had to be redone, unsafe walls, floors and ceilings, no bathroom no kitchen and the stairs fitted incorrectly and left open because the chimney and roof were safe when his team left the site, and other aspects of the build were being sourced from different contractors. Mr Bradley added that the stairs were fitted by the builder whom the programme subsequently used to make them safe and referred to as the “good guy”.

As set out at decision heads a) ii) to viii) above, Ofcom took the view that the claims in the programme about the quality of the work undertaken by Mr Bradley’s company were based on credible evidence. In addition, as set out at decision head a) viii), Ofcom did not consider that the inclusion of footage of some remedial work carried out by a different builder would have adversely affected viewers’ perceptions of Mr Bradley or his company.

As regards the stairs, Ofcom considered that, as the BBC acknowledged, viewers may have wrongly assumed that Bradley and Bradley had installed the incomplete stairs shown in the programme. However, Ofcom noted that in fact Bradley and Bradley had not installed any stairs at all and took into account its decision, as set out above, that the claims in the programme were based on credible evidence. In these circumstances, Ofcom took the view that the programme’s reference to the stairs would not have materially affected viewers’ perceptions of Bradley and Bradley.

In light of the observations and conclusions above and in particular its view that the programme’s claims about Mr and Mrs Henty’s builders were based on credible evidence, Ofcom found that neither the way in which work carried out by Mr Bradley’s company was portrayed nor the way in which the programme makers dealt with material facts resulted in the unfair treatment of Mr Bradley or his company in the programme as broadcast.

Ofcom therefore found no unfairness to Mr Bradley or his company in this respect.

- b) Ofcom then considered the complaint that that the programme omitted material facts in that it failed to contact the local building inspector to verify the allegations included in the programme.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 of the Code, as set out above.

Ofcom recognised that it is not its role to stipulate specifically who programme makers should have included within a programme, but rather to assess whether any omission has resulted in unfairness. Ofcom’s finding set out in decision head a) above that the programme makers took reasonable care to satisfy themselves that the programme did not present, disregard or omit material facts, with regard

to any of the various claims or specific sections of footage about which Mr Bradley had complained, in a way that resulted in unfairness to Mr Bradley or his company. Ofcom therefore considered that omission of input from the local building inspector from the programme had not resulted in any unfairness to the complainant or his company.

Ofcom therefore found no unfairness to Mr Bradley or his company in this respect.

- c) Ofcom then turned to Mr Bradley's complaint that he and his company were not given an appropriate opportunity to respond to the claims made about the work carried out by the company in the programme in that the research team made no attempt to contact him.

In considering this head of Mr Bradley's complaint Ofcom had regard to Practice 7.11 of the Code, which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

In light of its findings at decision heads a) and b) above, Ofcom considers that the programme included a number of negative claims about the work carried out by Mr Bradley's company, which amounted to allegations of wrongdoing or incompetence notably that: Mr and Mrs Henty had paid their builder £72,500, which was just over the full quotation they were originally given, but had been left without a roof, floors, electrics, plumbing, kitchen or windows; the roof had not been built in accordance with the plans; the chimney, ceilings and walls were left in a dangerous condition; and, the stairs had been left without a balustrade and safety rail.

Ofcom observed that neither Mr Bradley nor his company were named in the broadcast and therefore that it was likely that he and his company would have been identifiable to only a very small number of people to whom both he and his company were already well known. Nonetheless, given the possibility that he and his company could be identified and the nature and extent of the allegations, Ofcom concluded that it was incumbent upon the programme makers to offer Mr Bradley an appropriate and timely opportunity to respond to the significant allegations which would be made about him in the programme.

In this context, Ofcom noted that the presenter indicated that because Mr and Mrs Henty were only communicating with *"their bad builder"* through solicitors *"the programme had been asked not to phone him up while the case is on-going"*. However, Ofcom also noted that the producer of the programme had telephoned Mr Bradley to advise him of the claims to be made about him and to seek his response. The producer used the two numbers given in Mr Bradley's most recent correspondence with Mr and Mrs Henty but found that neither number was in use.

Ofcom noted that, having found out by other means that the programme was being made, Mr Bradley contacted a producer who had worked on the original series of *Cowboy Trap* but was no longer involved with programme and was subsequently put in contact with the current producer. Ofcom also noted that on 4 October 2010 the producer emailed Mr Bradley to explain that: his original letter appeared to have been misdirected; his chase-up letter had been forwarded to the programme; the programme had tried and failed to contact him on the numbers listed in his correspondence with Mr and Mrs Henty; and to ask him for

a current telephone number to discuss the points in Mr Bradley's letter to the programme. Mr Bradley had acknowledged this email on 5 October 2010 and indicated that he would be "happy to clarify to you any points you have regarding my letter if you send them by email". The producer sent a further email to Mr Bradley later the same day in which he asked for a response to "the material points" to be made in the programme, namely: the dispute between the parties regarding the plans and the reason the roof failed to pass the building control inspection; the programme's understanding that the building control officer was unable to sign off the key stages of the build; the findings of chartered professionals who had listed significant faults with the works. He also sent an invitation to comment on Mr and Mrs Henty's position that the relationship with their builder broke down when the cost of the build escalated and the works failed inspection. Mr Bradley did not respond to this email during the month which elapsed before the programme was broadcast.

In light of the observations noted above Ofcom considered that the broadcaster took reasonable steps to offer Mr Bradley an appropriate and timely opportunity to respond to the claims made about him in the programme. In addition, it observed that, although the programme did not receive a substantive response from Mr Bradley to the claims which he understood were going to be made about work carried out by his company, it did make clear to viewers that he disputed Mr and Mrs Henty's position regarding why their roof failed inspection and the removal of materials from the site after the builders had stopped work.

Therefore, Ofcom found that neither Mr Bradley nor his company was treated unfairly in this respect.

**Accordingly, Ofcom has not upheld Mr Bradley's complaint of unfair treatment on behalf of himself and his company in the broadcast of the programme.**

## Not Upheld

### Complaint by Mr Robert Knight

*The Hotel Inspector, Channel 5, 23 May 2011*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Mr Robert Knight.

In this edition of *The Hotel Inspector*, the presenter was helping Mrs Barbara Lewthwaite, the owner of the Hollybush Inn in Hay-on-Wye, to resolve problems with her business. They visited a local market to invite people to a special event and the programme included brief footage of an interview with Mr Knight, who was reluctant to attend the event.

In summary, Ofcom found the following:

- Mr Knight gave implied consent for the filming and his explicit consent for the broadcast of the footage was not required, given his willing engagement with the programme makers.
- Mr Knight's contribution was not unfairly edited.
- Given the location of the filming and the fact that Mr Knight engaged willingly in conversation with Mrs Lewthwaite, Mr Knight had no legitimate expectation of privacy in relation to the filming.
- Given the location of the filming, the absence of any private or sensitive material and the "vox pop" nature of Mr Knight's contribution, he did not have a legitimate expectation of privacy in relation to the broadcast of the footage.

#### Introduction

On 23 May 2011, Channel 5 broadcast an edition of *The Hotel Inspector*, a series in which hotelier Ms Alex Polizzi set out on a "crusade to transform Britain's most desperate hotels and bed and breakfasts". In this edition, Ms Polizzi visited the Hollybush Inn in Hay-on-Wye, of which the narrator said:

*"This week: the hippy dream becomes a nightmare for the hotel inspector...57 year old Barbara Lewthwaite moved here seven years ago. The self-proclaimed healer dreamed of creating a laid back, ethical, nature friendly holiday retreat, with tipis, a camping and caravan site, five bedroomed bed and breakfast, plus bar and restaurant".*

Guests had complained about both Ms Lewthwaite and the facilities she provided at the Hollybush Inn and she had called in Ms Polizzi to help her resolve the problems. In an attempt to improve winter business, Ms Polizzi suggested "a music and dinner evening" at the Hollybush Inn. Ms Lewthwaite went to the local market to sell tickets for the event and one of the people she approached was Mr Robert Knight. She asked if he would like to come and see what she was doing at the Hollybush Inn, to which he replied: "Um, not really no". Ms Lewthwaite was later shown asking Mr Knight if there was a reason why he would not like to come, to which he replied:

*"Bit of bad press, I think, is the reason for it".*

The footage of Mr Knight responding “*Um, not really no*” to Mrs Lewthwaite’s invitation was then repeated.

Mr Knight, who was not named in the programme, complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast and that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast.

## **The Complaint and Channel 5’s response**

### Unjust or unfair treatment

- a) In summary, Mr Knight complained that that he was treated unjustly and unfairly in the programme as broadcast in that footage of him was included in the programme without his knowledge or consent. The programme makers did not have any verbal or written consent to any digital imagery or sound captured and did not contact him prior to broadcast.

In summary and in response to Mr Knight’s complaint, Channel 5 said that Mr Knight was informed about the nature and purpose of the filming, agreed to talk to the programme makers and indicated his consent tacitly by speaking to Ms Lewthwaite on camera and continuing to respond to her questions.

Channel 5 said that members of the crew filming with Ms Lewthwaite in the market were approaching people asking if they would mind talking about the Hollybush Inn on camera. If they were happy to do so, the programme makers filmed quick interviews with them and Ms Lewthwaite. The programme makers explained to everyone that they were filming for *The Hotel Inspector* on Channel 5. By the time the programme makers approached Mr Knight they had been in the small market for approximately two hours and were a highly visible presence. There were two cameramen, both with sound-records carrying boom-poles, the presenter, Ms Lewthwaite and a band. Mr Knight had also been in the market for some time and could not have failed to have noticed the presence of the programme makers. Furthermore, Channel 5 noted that, in his complaint, Mr Knight indicated that it was “local knowledge that *The Hotel Inspector* was being filmed in the locality”.

Channel 5 said that the programme makers explained to Mr Knight why they were filming. Mr Knight indicated he was prepared to speak to the programme makers and Ms Lewthwaite was then filmed speaking to him. It was clear from the unedited footage of the exchange between Mr Knight and Ms Lewthwaite that Mr Knight was aware of the camera, that Ms Lewthwaite gave him a further brief explanation of what was going on, which he appeared to understand, and that he gave no indication that he did not wish to participate.

Channel 5 said that, after filming, the programme makers had asked Mr Knight to sign a contributor release form. He said that he would think about it and get back to them and then left the market. Mr Knight did not get back to the programme makers and did not return the completed contributor release form.

Channel 5 said that the programme makers did not have full contact details for Mr Knight, but made extensive searches with a view to contacting him prior to broadcast. Channel 5 said that they had searched online and on social media websites, checked the telephone directory, checked photographs from an archive search of Hay-on-Wye events and tried to follow up through local sources.

Channel 5 said that the programme makers endeavoured to obtain contributor release forms from as many individuals filmed during the making of a programme as possible, first as evidence of consent, and also to ensure that the extended rights set out in the form were secured. Channel 5 also said that, generally, where a contribution to a programme was significant, the programme makers would seek to ensure that written consent had been obtained. However, as in this case, where people took part in a “vox pop”, where people were interviewed at short notice or where the matter discussed was trivial, Channel 5 considered that by taking part in the filming and continuing to participate, the person had given their tacit consent.

Channel 5 said that Mr Knight had not indicated during or after filming that he did not want his contribution to be used nor did he contact the programme makers prior to broadcast to inform them of his particular circumstances as set out in his complaint form.

- b) In summary, Mr Knight complained that that he was treated unjustly and unfairly in the programme as broadcast in that an interview of him was unfairly edited, so that a negative slant was put on what he said and some of his positive, salient points were not included. By way of background, Mr Knight said that the programme looked at a highly emotive subject in a small rural community.

In summary and in response to Mr Knight's complaint, Channel 5 said that Mrs Lewthwaite was in the market to try and sell tickets to the event she was planning and the key question that she put to Mr Knight was whether he would be interested in attending the event to take a look at what she was doing at the Hollybush Inn. Channel 5 said that there was no additional detail or explanation from Mr Knight that it was unfair to him not to include in the programme.

#### Unwarranted infringement of privacy

- c) In summary, Mr Knight complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that although the footage was filmed in a public place, the programme makers did not have any pre- or post-filming consent from him to film him.

In summary and response to Mr Knight's complaint, Channel 5 said that the circumstances of the filming were as set out in response to the complaint at head a) above and that Mr Knight was filmed with his consent and openly in a public market in broad daylight, where his actions and words were clearly visible and audible to those around.

- d) In summary, Mr Knight also complained that his privacy was unwarrantably infringed in the programme as broadcast in that the programme makers did not have any pre- or post-filming consent from him to use the footage in the programme. By way of background, Mr Knight said that he had relocated to the area due to his personal circumstances and in order to make a fresh start. This had been undermined by the broadcast of the footage without his consent.

In summary and in response to Mr Knight's complaint, Channel 5 said that the circumstances of filming and broadcast of the footage of Mr Knight were as set out in response to the complaint at head a) above and that Mr Knight had provided informed consent to being filmed for *The Hotel Inspector* and to the

broadcast of his contribution as part of that programme and that he had not withdrawn his consent.

Channel 5 said that, in any event, Mr Knight was filmed openly and in a public place and the content of his exchange with Mrs Lewthwaite was not of a particularly personal or sensitive nature.

Notwithstanding its response above, Channel 5 said that on receipt of Mr Knight's letter of complaint, immediate steps had been taken to edit the programme to remove his interview and that the interview would not be included in repeats of the programme.

## **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment 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 a recording and transcript of the unedited footage.

### Unjust or unfair treatment

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 Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its decision on the individual heads of complaint detailed below.

- a) Ofcom first considered the complaint that footage of Mr Knight was included in the programme without his knowledge or consent and that the programme makers did not have any verbal or written consent to any digital imagery or sound captured and did not contact him prior to broadcast.

In considering this part of the complaint Ofcom took account of Practice 7.3 of the Code. Practice 7.3 states that where a person is invited to make a contribution to a programme (except where the subject matter is trivial or their participation minor), they should, amongst other matters, normally be told about the nature and purpose of the programme and what kind of contribution they are expected to make. Taking the steps set out in this Practice is likely to result in any consent given being "informed consent".

As noted above, a person who is invited to contribute to a programme should be given sufficient information about the programme's nature and purpose to enable them to make an informed decision about whether or not to take part. In assessing whether a contributor has given informed consent, Ofcom will look at

information that was provided to the contributor prior to the recording of the contribution, untransmitted footage and the programme itself.

Ofcom noted that the programme makers explained to Mr Knight why they were in the market and that Mrs Lewthwaite again explained why she was talking to him as he was being filmed. Having viewed the untransmitted footage, Ofcom took the view that Mr Knight engaged willingly in conversation with Mrs Lewthwaite, fully aware that he was being filmed. In Ofcom's view therefore, Mr Knight gave implied consent to the filming.

In any event, Ofcom took the view that Mr Knight's participation in the programme as broadcast was minor, that it was in the form of a "vox pop" comment and that Mr Knight was not shown engaged in any private or sensitive activity. Given these circumstances, Ofcom considered that it was not necessary for the programme makers to obtain Mr Knight's consent.

Taking into account the information set out above, Ofcom considered that, although extensive efforts were made to secure Mr Knight's written consent to the use of the footage, Mr Knight did consent to the filming, albeit impliedly, and that it was not incumbent on the programme makers to obtain his explicit consent for the broadcast of the footage.

Ofcom therefore found no unfairness to Mr Knight in this respect.

- b) Ofcom then considered the complaint that Mr Knight's interview was unfairly edited, so that a negative slant was put on what he said and some of his positive, salient points were not included.

In considering this part of the complaint, Ofcom had regard to Practice 7.6 of the Code, which states that when a programme is edited, contributions should be represented fairly.

Ofcom noted that at the end of part two of the programme, footage was shown of Mrs Lewthwaite talking to Mr Knight in the market and saying:

*"Do you think you would like to come and have a look, see what I'm doing?"*

Mr Knight was shown saying: *"Not really, no"*.

In part three, a slightly longer extract from the conversation was included, with Mrs Lewthwaite asking Mr Knight:

*"Is there a reason why you wouldn't like to come?"*

Mr Knight replied: *"You've had a bit of bad press I think"*. The earlier extract was then repeated.

Ofcom also considered the untransmitted footage of the conversation and noted that Mrs Lewthwaite approached Mr Knight as he was looking at some socks in the market. She said she was going to explain what she was doing in the market and Mr Knight commented: "Point a camera in my face, it's pretty obvious". Mrs Lewthwaite then explained her plans for the music evening. Mr Knight said that the Hollybush Inn was in a "nice location" but said that he had not been in there as he frequented other places. Mrs Lewthwaite asked if he would like to come and see what she was doing at the Hollybush Inn, to which Mr Knight responded

“Not really, no”. He said that it was not his scene and that it had had a bit of a bad press. Mrs Lewthwaite said that it would be a good opportunity for Mr Knight to see for himself what she was doing. The conversation finished with Mr Knight saying he might pull in next time he was visiting.

Having considered both the unedited footage and the programme as broadcast, Ofcom took the view that, during the course of a good natured conversation, Mr Knight explained briefly why he did not wish to attend the music evening and said he might visit the Hollybush Inn at some point. In Ofcom’s view the essence of his conversation with Mrs Lewthwaite was included in the programme. Ofcom did not consider that his contribution was unfairly edited.

Ofcom therefore found no unfairness to Mr Knight in this respect.

### Unwarranted infringement of privacy

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 intensely 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 Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

- c) Ofcom considered the complaint that Mr Knight’s privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that, although the footage was filmed in a public place, the programme makers did not have any pre- or post-filming consent from him for the filming.

In considering this part of the complaint, Ofcom 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.

In order to establish whether or not Mr Knight’s privacy was unwarrantably infringed in connection with obtaining material included in the programme, Ofcom first assessed the extent to which he had a legitimate expectation of privacy in respect of the recording of the vox pop interview with him.

As set out at decision head a) above, Ofcom noted that the filming was conducted in a public place, namely the market, and considered that it was clear from the conversation with Mrs Lewthwaite that Mr Knight was aware that filming was taking place and the reason why. It appeared to Ofcom from the unedited footage that Mr Knight engaged willingly in a conversation with Mrs Lewthwaite and was aware that the conversation was being filmed. In these circumstances, and notwithstanding the fact that, after the interview, he did not sign the contributor release form but said he would think about it, Ofcom considered that it was reasonable for the programme makers to take the view that Mr Knight had consented to the filming and that he did not have a legitimate expectation of privacy in relation to the filming.

Taking into account the factors above, in particular the location of the filming and the fact that Mr Knight engaged willingly in a conversation with Mrs Lewthwaite,

Ofcom did not consider that Mr Knight 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 Knight's privacy was warranted.

Ofcom therefore found no unwarranted infringement of Mr Knight's privacy in connection with the obtaining of material included in the programme.

- d) Ofcom considered the complaint that Mr Knight's privacy was unwarrantably infringed in the programme as broadcast in that the programme makers did not have any pre- or post-filming consent from him for the use of the footage in the programme.

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.

Ofcom noted Mr Knight's point that he had moved to the area for a fresh start and that, once he had raised his concerns with Channel 5, the programme was edited so as to remove his interview from future broadcasts of the programme.

In considering whether Mr Knight'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 would not be broadcast, and whether his consent was required.

As set out under decision heads a) and c) above, Ofcom took the view that it was reasonable for the programme makers to take the view that Mr Knight had consented to the filming of the interview. As regards the broadcast of the footage, Ofcom again noted that the filming was conducted in a public place, that Mr Knight was aware that filming was taking place and why and that he engaged willingly in a conversation with Mrs Lewthwaite. In these circumstances, Ofcom considered that Mr Knight was likely to have been aware that the footage might be included in a subsequent broadcast, particularly given that Mrs Lewthwaite said at one point in the untransmitted footage: "...this is *The Hotel Inspector* crew". Ofcom noted that, while Mr Knight did not sign the consent form, the programme makers made efforts to locate him in order to secure his written consent for use of the footage but were unsuccessful. Ofcom considered that it would have been preferable if the programme makers had obtained Mr Knight's written consent. However, taking into account the circumstances of the filming, the fact that the footage was used as a "vox pop" in the programme and that Mr Knight was not shown engaged in any private or sensitive activity, Ofcom took the view that it was not necessary for the programme makers to obtain his consent.

Taking into account the factors above, in particular the location of the filming, the absence of private or sensitive material and the "vox pop" nature of Mr Knight's contribution in the programme, Ofcom did not consider that Mr Knight had a legitimate expectation of privacy in the circumstances in which the footage was broadcast. Given this conclusion it was not necessary for Ofcom to consider whether any intrusion into Mr Knight's privacy was warranted.

Ofcom therefore found no unwarranted infringement of Mr Knight's privacy in the programme as broadcast.

**Accordingly, Ofcom has not upheld Mr Knight's complaint of unfair treatment and unwarranted infringement of privacy either in connection with the obtaining of material included in the programme or in the programme as broadcast.**

## Not Upheld

### Complaint by Mrs Glynis Braithwaite

*The Secret Millionaire, Channel 4, 26 April, 2011*

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**Summary:** Ofcom has not upheld this complaint of unwarranted infringement of privacy made by Mrs Glynis Braithwaite.

In this edition of *The Secret Millionaire*, Mrs Braithwaite was filmed and appeared very briefly in the programme, sweeping the pavement in front of her home which was a few doors away from the house where the secret millionaire who was featured in the programme (the “Millionaire”) was staying.

In summary, Ofcom found the following:

- Mrs Braithwaite did not have a legitimate expectation of privacy in relation to the filming that took place, as Mrs Braithwaite was participating in an activity in a public place that could not be regarded as private or sensitive in nature and she was aware that filming was taking place.
- Mrs Braithwaite did not have a legitimate expectation of privacy in relation to the broadcast of the footage, as the footage shown was of Mrs Braithwaite participating in an activity in a public place that could not be regarded as private or sensitive in nature the footage was very brief and it did not identify Mrs Braithwaite.

#### Introduction

On 26 April 2011, Channel 4 broadcast an edition of *The Secret Millionaire*, a series of programmes in which a millionaire goes undercover to research charity projects with the intention of ultimately giving them financial aid.

This edition was filmed in Middlesbrough. The programme said that the Millionaire would be living in the “*heart of Middlesbrough, blighted by drugs and crime.*” It then showed him asking for directions to Craven Street.

In the opening pictures of part three of the programme, a woman was shown in her dressing gown sweeping the pavement outside a house on the same street in which the Millionaire was living. The footage of her was very brief and her face was not shown.

Following the broadcast of the programme, Mrs Glynis Braithwaite, the woman sweeping the pavement, complained to Ofcom that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the broadcast of the programme.

#### Summary of the Complaint and Channel 4’s response

- a) Mrs Braithwaite complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that she was filmed sweeping the pavement in her dressing gown outside her home without her knowledge or consent.

By way of background, Mrs Braithwaite said that when she was sweeping the pavement in front of her house a film crew on the opposite side of the road was “setting up and getting ready to film”. She said that she did not know that she was being filmed at this stage. Afterwards, she went back into her house and she got dressed to get ready to clean her windows. Mrs Braithwaite said that she was asked by the film crew if she could be filmed cleaning her windows, and that she said yes.

In response, Channel 4 said that on the morning that the filming took place, the film crew were openly filming in the street in which the Millionaire was staying. Channel 4 stated that filming took place from a public street and included wide shots of the Millionaire’s house as well as general shots of the street. Mrs Braithwaite’s house was clearly visible from the street and the film crew were openly positioned on the opposite side of the street to the Millionaire’s house and were clearly visible from Mrs Braithwaite’s house. The film crew had been present setting up and filming for approximately 40 minutes. Channel 4 said that the untransmitted footage showed that when Mrs Braithwaite exited her house onto the public street in her dressing gown, she and the film crew immediately acknowledged one another and exchanged greetings. Channel 4 stated that Mrs Braithwaite did not appear to be unhappy with the presence of the camera and proceeded to sweep the pavement outside her house in full view of the camera and being fully aware that the camera was being used. In light of Mrs Braithwaite’s acknowledgement of the film crew, the cameraman took the opportunity to film her house on a wide shot which included Mrs Braithwaite sweeping the pavement in her dressing gown.

Channel 4 stated that Mrs Braithwaite had gone inside her house briefly and returned after a few minutes in different clothes to continue cleaning. At this point, a member of the film crew approached Mrs Braithwaite to explain that they were making a documentary for Channel 4 and were filming the person who was living next door to her and asked if she was happy for them to film her. Mrs Braithwaite raised no objections at all and did not ask the programme makers not to use any shot of her in her dressing gown. The programme makers therefore considered that they had Mrs Braithwaite’s informed consent. Channel 4 added that Mrs Braithwaite had numerous opportunities throughout the morning to raise any objections or concerns to her being filmed.

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

- b) She was shown in her dressing gown outside of her home without her consent.

By way of background, Mrs Braithwaite said that when she watched the programme she was not on film cleaning her windows but instead had been filmed sweeping the pavement in front of her house.

In reply, Channel 4 stated that Mrs Braithwaite had consented to the programme makers filming her cleaning her windows but, for editorial reasons, these shots were not used and instead the wide shot of Mrs Braithwaite sweeping the pavement was used. Channel 4 said that although the film crew reasonably believed they had Mrs Braithwaite’s consent, such consent to film and use the footage was not strictly required as the filming was conducted in an open and public street. Channel 4 stated that the programme as broadcast did not in any event, reveal Mrs Braithwaite’s identity because the shot was brief, fleeting and purely incidental to the wide shot of the contributor’s house.

## 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.

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 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 considered the complaint that Mrs Braithwaite's privacy was unwarrantably infringed in connection with obtaining material included in the programme, by filming her sweeping the pavement in her dressing gown without her knowledge or consent.

In considering this part of the complaint, Ofcom 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 and/or organisation's consent or be otherwise warranted.

Ofcom first considered the extent to which Mrs Braithwaite had a legitimate expectation of privacy, in the circumstances, that she would not be filmed.

The Code states that legitimate expectations of privacy will vary according to the place and nature of the information or activity in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. It also acknowledges that there may be circumstances where people can reasonably expect privacy even in a public place. Some activities and conditions may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy.

Ofcom noted from the untransmitted footage that the film crew was not hidden from view, having set themselves up across a public street and opposite Mrs Braithwaite's house. Ofcom also noted that when Mrs Braithwaite emerged from her house, a member of the crew was heard shouting "morning" and Mrs Braithwaite appeared to acknowledge this. She then began to sweep the pavement in front of her house. At one point, Ofcom noticed that Mrs Braithwaite also appeared to look straight into the camera. A few minutes later, the footage

showed Mrs Braithwaite returning into her house. When Mrs Braithwaite returned outside she had changed from the dressing gown that she was wearing into different clothes and she continued to sweep the pavement.

Having examined the un-transmitted footage, it was clear to Ofcom that the programme makers had filmed openly in a public place and therefore, in Ofcom's view, Mrs Braithwaite was clearly aware that filming was taking place. Ofcom also noted that when Mrs Braithwaite was filmed sweeping the pavement, she was on a public street and was not participating in any activity which could be regarded as private or sensitive in nature. Further, although Ofcom acknowledged that Mrs Braithwaite gave her consent to be filmed cleaning her windows, there did not appear to be any indication that Mrs Braithwaite had specifically asked to not be filmed while sweeping the pavement outside her home.

Taking all the factors above into account, Ofcom did not consider that Mrs Braithwaite had a legitimate expectation of privacy in relation to filming her outside her house in her dressing gown. It was also satisfied that the circumstances in which Mrs Braithwaite was filmed were such that her consent to be filmed was not required. Given this conclusion, it was not necessary for Ofcom to consider whether any intrusion into Mrs Braithwaite's privacy was warranted.

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

- b) Ofcom considered Mrs Braithwaite's complaint that footage of her outside her home in her dressing gown was broadcast without her consent.

In considering this aspect of the complaint, Ofcom took into account 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.

Ofcom first considered the extent to which Mrs Braithwaite had a legitimate expectation that footage of her sweeping the pavement in her dressing gown would not be broadcast.

Ofcom acknowledged that, whilst Mrs Braithwaite had given consent to be filmed cleaning her windows, the programme makers had not sought her consent for any footage of her to be broadcast. Further, Ofcom noted that as Mrs Braithwaite had been asked if she could be filmed cleaning her windows, she may not have expected to see footage of her sweeping the pavement in her dressing gown.

However, importantly, Ofcom also noted that Mrs Braithwaite was not engaging in any activity which could be regarded as private or sensitive in nature - this activity being sweeping the pavement in daylight on a public street.

Having taken account of these factors, Ofcom considered that Mrs Braithwaite did not have a legitimate expectation of privacy in the broadcast of this footage, and that therefore Mrs Braithwaite's prior consent was not required.

**Accordingly, Ofcom has not upheld Mrs Braithwaite's complaint of unwarranted infringement of privacy in either the making or broadcast of the programme.**

## Other Programmes Not in Breach

Up to 14 November 2011

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
Charity appeals	Prime TV	22/08/2011	Charity appeals
Ken Livingstone and David Mellor	LBC 97.3	18/06/2011	Due impartiality/bias
Tennents' sponsorship of Batman	ITV4	17/10/2011	Sponsorship credits
The Big Appeal Live	ARY QTV	17/08/2011	Charity appeals
The Secret Millionaire	Channel 4	16/10/2011	Offensive language

## Complaints Assessed, not Investigated

### Between 1 and 14 November 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
11th Hour	ARY News	25/10/2011	Generally accepted standards	1
4oD smartphones promo	More4	04/11/2011	Materially misleading	1
4oD smartphones promo	E4+1/Channel 4	n/a	Materially misleading	1
5 Live Breakfast	BBC Radio 5 Live	02/11/2011	Generally accepted standards	1
8 Out of 10 Cats	Channel 4	28/10/2011	Sexual orientation discrimination/offence	1
A League of Their Own	Sky1	21/10/2011	Crime	1
Advertisements	Channel 5	05/11/2011	Outside of remit / other	1
Advertisements	ARY News	n/a	Outside of remit / Advertisement content	1
An Idiot Abroad 2	Sky 2	23/10/2011	Generally accepted standards	1
Anglia Tonight	ITV1 Anglia	07/11/2011	Harm	1
Ann Summers advertisement	Various	n/a	Out of remit / Advertising content	1
Appeals for funds	Noor TV	06/08/2011	Religious programmes	1
Babestation Blue	Get Lucky TV	04/09/2011	Participation TV - Offence	1
Babestation Extra	Lucky Star	14/09/2011	Participation TV - Offence	1
BBC News	BBC News 24	20/10/2011	Scheduling	1
BBC News	BBC 1	20/10/2011	Scheduling / Generally accepted standards	25
BBC News	BBC News 24	10/11/2011	Gender discrimination/offence	1
BBC News	BBC	n/a	Generally accepted standards	1
BBC News 24	BBC News 24	08/11/2011	Outside of remit / other	1
BBC News at Six	BBC 1	21/10/2011	Scheduling	2
BBC News at Ten	BBC 1	11/10/2011	Under 18s in programmes	1
BBC News at Ten	BBC 1	26/10/2011	Outside of remit / other	1
BBC News at Ten	BBC 1	01/11/2011	Outside of remit / other	1
BBC News Channel	BBC News Channel	20/10/2011	Scheduling	5
BBC News Channel	BBC News Channel	21/10/2011	Scheduling	1
BBC News Special	BBC 2	20/10/2011	Scheduling	1
Bean	ITV1	29/10/2011	Advertising content	1
Beeny's Restoration	Channel 4	10/11/2011	Offensive language	2

Nightmare				
Big Brother	Channel 5	28/10/2011	Materially misleading	1
Big Brother	Channel 5	03/11/2011	Outside of remit / other	1
Big Brother	Channel 5	04/11/2011	Voting	1
Big Brother	Channel 5	06/11/2011	Outside of remit / other	1
Big Brother	Channel 5	07/11/2011	Outside of remit / other	1
Big Brother	Channel 5	07/11/2011	Violence and dangerous behaviour	3
Big Brother	Channel 5	08/11/2011	Generally accepted standards	1
Big Brother	Channel 5	08/11/2011	Outside of remit / other	1
Big Brother	Channel 5	08/11/2011	Violence and dangerous behaviour	10
Big Brother	Channel 5	09/11/2011	Offensive language	1
Big Brother's Bit on the Side	Channel 5	20/10/2011	Outside of remit / other	1
Big Brother's Bit on the Side	Channel 5	03/11/2011	Generally accepted standards	16
Big Brother's Bit on the Side	Channel 5	03/11/2011	Offensive language	1
Bluebird TV	Watchme.TV	31/10/2011	Outside of remit / other	1
Boulton and Co	Sky News	25/10/2011	Due impartiality/bias	7
Breakfast	BBC 1	21/10/2011	Scheduling	1
Breakfast	BBC 1	21/10/2011	Violence and dangerous behaviour	1
Breakfast	BBC 1	07/11/2011	Scheduling	1
Bubble Guppies	Nick Jr	05/11/2011	Advertising minutage	1
Burnistoun	BBC 2 Northern Ireland	27/10/2011	Generally accepted standards	1
Cadbury Fabulous Fingers advertisement	Challenge TV	04/11/2011	Out of remit / Advertising content	1
Celebrity Juice	ITV2	10/11/2011	Disability discrimination/offence	1
Celebrity Who Wants to be a Millionaire?	ITV1	09/11/2011	Competitions	1
Channel 4 News	Channel 4	18/10/2011	Due impartiality/bias	1
Channel 4 News	Channel 4	20/10/2011	Scheduling	2
Channel 4 News	Channel 4	21/10/2011	Scheduling	3
Channel 4 News	Channel 4	25/10/2011	Violence and dangerous behaviour	1
Channel 4 News	Channel 4	01/11/2011	Due impartiality/bias	1
Channel 4 News	Channel 4	07/11/2011	Due impartiality/bias	1
Channel 5 News	Channel 5	21/10/2011	Generally accepted standards	2
Child Sex Tourist	Current TV	08/11/2011	Outside of remit / other	1
Chris Moyles' Hollywood Stars Quiz Night	Channel 4	23/10/2011	Generally accepted standards	1
Chris Moyles' Hollywood Stars Quiz Night	Channel 4	28/10/2011	Generally accepted standards	2

Come Dine with Me	Channel 4	07/11/2011	Race discrimination/offence	3
Continuity announcements	Various	n/a	Outside of remit / other	1
Continuity announcement	Channel 4	04/11/2011	Gender discrimination/offence	1
Coronation Street	ITV1	21/09/2011	Scheduling	1
Coronation Street	ITV1	22/09/2011	Scheduling	1
Coronation Street	ITV1	26/09/2011	Scheduling	1
Coronation Street	ITV1	05/11/2011	Outside of remit / other	1
Coronation Street	ITV1	07/11/2011	Gender discrimination/offence	1
Coronation Street	ITV1	n/a	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV1	n/a	Scheduling	1
Country House Rescue	Channel 4	03/11/2011	Offensive language	1
CSI	Sky Living	21/09/2011	Scheduling	1
CSI: Crime Scene Investigation	5 USA	09/11/2011	Offensive language	1
CSI: Crime Scene Investigation	5 USA	09/11/2011	Offensive language	1
Daybreak	ITV1	21/10/2011	Scheduling	2
Daybreak	ITV1	01/11/2011	Drugs, smoking, solvents or alcohol	1
Daybreak	ITV1	02/11/2011	Scheduling	1
Death Note (trailer)	Film4	17/10/2011	Generally accepted standards	1
Derek Marks	The Bay Radio - Lancaster	15/10/2011	Commercial communications on radio	1
Derren Brown	Channel 4	28/10/2011	Crime	1
Derren Brown	Channel 4	28/10/2011	Generally accepted standards	2
Derren Brown	Channel 4	31/10/2011	Generally accepted standards	1
Derren Brown	Channel 4	04/11/2011	Generally accepted standards	7
Derren Brown	Channel 4	08/11/2011	Generally accepted standards	1
Dickenson's Real Deal	ITV1	02/11/2011	Competitions	1
Dickinson's Real Deal	ITV1	03/11/2011	Competitions	1
DM Drama	DM Digital	13/11/2011	Outside of remit / other	1
Don't Tell the Bride	BBC 3	01/11/2011	Offensive language	4
Don't Tell the Bride	BBC 3	03/11/2011	Offensive language	1
Downton Abbey	ITV1	23/10/2011	Advertising minutage	1
Downton Abbey	ITV1	06/11/2011	Advertising minutage	1
Dynamo: Magician Impossible	Watch	25/10/2011	Violence and dangerous behaviour	1
EastEnders	BBC 1	28/10/2011	Religious/Beliefs discrimination/offence	1
EastEnders	BBC 1	03/11/2011	Generally accepted standards	1

EastEnders	BBC 1	04/11/2011	Generally accepted standards	1
EastEnders	BBC 1	04/11/2011	Materially misleading	1
EastEnders	BBC 1	07/11/2011	Sexual material	1
EastEnders	BBC 1	08/11/2011	Sexual orientation discrimination/offence	2
Eminem and Dr Dre "Guilty Conscience"	BBC Radio 1	28/10/2011	Scheduling	1
Emmerdale	UTV	25/10/2011	Sexual material	1
Emmerdale	ITV1	01/11/2011	Generally accepted standards	1
Emmerdale	ITV1	02/11/2011	Generally accepted standards	1
Emmerdale	ITV1	09/11/2011	Generally accepted standards	1
Emmerdale	ITV1	10/11/2011	Generally accepted standards	1
Emmerdale	ITV1	n/a	Drugs, smoking, solvents or alcohol	1
Exposure	ITV1	31/10/2011	Materially misleading	1
Fat Families	Sky Living	29/10/2011	Generally accepted standards	1
Fish Town	Sky Atlantic	16/10/2011	Offensive language	1
Friends	E4	n/a	Religious/Beliefs discrimination/offence	1
Fry's Planet Word	BBC 2	09/10/2011	Offensive language	1
Gastronuts	CBBC	04/11/2011	Offensive language	1
Geoff Lloyd's Hometown Show	Absolute Radio	11/11/2011	Generally accepted standards	1
Gillette Soccer Saturday	Sky Sports News	29/10/2011	Race discrimination/offence	1
Glee	Sky1	03/11/2011	Race discrimination/offence	1
Go Greek for a Week	Channel 4	07/11/2011	Outside of remit / other	1
Go Greek for a Week (trailer)	Channel 4	06/11/2011	Race discrimination/offence	1
Gravity FM	Gravity FM	22/10/2011	Commercial communications on radio	1
Harry Hill's Shark Infested Custard	Cartoon Network	28/10/2011	Sexual orientation discrimination/offence	1
Harry Hill's TV Burp	ITV1	29/10/2011	Sexual material	1
Harry Hill's TV Burp	ITV1	05/11/2011	Disability discrimination/offence	1
Harry Hill's TV Burp	ITV1	12/11/2011	Race discrimination/offence	3
Harry Hill's TV Burp	ITV1	13/11/2011	Race discrimination/offence	1
Harveys' sponsorship of Coronation Street	ITV1	04/11/2011	Gender discrimination/offence	1
Harveys' sponsorship of Coronation Street	ITV2	06/11/2011	Violence and dangerous behaviour	1
Heart Breakfast with Bush, Troy and Paulina	Heart (West Country)	08/11/2011	Commercial communications on radio	1

Hippo: Nature's Wild Feast (trailer)	More4	06/11/2011	Generally accepted standards	1
Hippo: Nature's Wild Feast (trailer)	Channel 4	07/11/2011	Generally accepted standards	1
Holby City	BBC 1	08/11/2011	Generally accepted standards	1
Hollyoaks	Channel 4	26/10/2011	Scheduling	1
Hollyoaks	E4	28/10/2011	Scheduling	1
Hollyoaks	Channel 4	31/10/2011	Scheduling	3
Hollyoaks	Channel 4	01/11/2011	Scheduling	1
Hollyoaks	Channel 4	01/11/2011	Violence and dangerous behaviour	1
Hollyoaks	E4	02/11/2011	Scheduling	1
Hollyoaks	Channel 4	n/a	Generally accepted standards	1
Ike: Countdown to D-Day	5 USA	24/10/2011	Materially misleading	1
Inside Out	BBC 1	07/11/2011	Violence and dangerous behaviour	1
It's All About Amy (trailer)	Channel 5	12/11/2011	Scheduling	1
ITV Bingo.com's sponsorship credits	ITV1	14/10/2011	Violence and dangerous behaviour	1
ITV Bingo.com's sponsorship credits	ITV1	n/a	Sponsorship	1
ITV Bingo.com's sponsorship credits	ITV1	n/a	Violence and dangerous behaviour	1
ITV News	ITV1	20/10/2011	Scheduling / Generally accepted standards	3
ITV News	ITV1	21/10/2011	Scheduling / Generally accepted standards	20
ITV News	ITV1	23/10/2011	Scheduling	3
ITV News	ITV1	11/11/2011	Generally accepted standards	1
ITV News at Ten	ITV1	20/10/2011	Generally accepted standards	2
ITV News at Ten and Weather	ITV1	20/10/2011	Generally accepted standards	1
ITV News at Ten and Weather	ITV1	07/11/2011	Due impartiality/bias	1
James Max	LBC 97.3FM	29/10/2011	Race discrimination/offence	2
James O'Brien	LBC	18/10/2011	Due impartiality/bias	1
James O'Brien	LBC	21/10/2011	Generally accepted standards	1
Jamie's Great Britain	Channel 4	01/11/2011	Race discrimination/offence	1
Jamie's Great Britain	Channel 4	05/11/2011	Sexual material	1
Jonathan Creek	Watch+1	13/11/2011	Offensive language	1
Ken Livingstone and David Mellor	LBC 97.3 FM	22/10/2011	Generally accepted standards	1
King Solomon's Mines	Channel 4	02/11/2011	Animal welfare	2
Kundli Aur Kismat/Future & Fortune	Sunrise TV	03/11/2011	Exorcism, the occult and the paranormal	1
Life in a Day	BBC 2	03/11/2011	Animal welfare	2
Listen Against	BBC Radio 4	10/11/2011	Generally accepted standards	1

Littlewoods advertisement	Heart Radio Station / Channel 4	28/10/2011	Outside of remit / Advertising content	1
Littlewoods advertisement	ITV1	13/11/2011	Outside of remit / Advertising content	1
Littlewoods advertisement	STV	13/11/2011	Outside of remit / Advertising content	1
London Tonight	ITV1	10/11/2011	Outside of remit / other	1
Lorraine	ITV1	07/11/2011	Competitions	1
Lynx advertisement	Comedy Central	11/11/2011	Out of remit / Advertising content	1
Masterchef Australia	Watch	07/11/2011	Offensive language	2
Masterchef Australia	Watch	08/11/2011	Offensive language	1
Masterchef Australia	Watch	13/11/2011	Offensive language	1
Match of the Day	BBC 1	30/10/2011	Offensive language	1
Matt Forde	Talksport	05/11/2011	Crime	1
Mayday Mayday	ITV1	01/11/2011	Materially misleading	1
Midsomer Murders	ITV1	26/10/2011	Advertising minutage	1
Misfits	E4	30/10/2011	Generally accepted standards	1
Mixed Tape - Pitbull "Hotel Room Service"	Flava	03/11/2011	Gender discrimination/offence	1
Models, Misfits and Mayhem	ITV2	08/11/2011	Harm	1
Mongrels	BBC 3	14/11/2011	Violence and dangerous behaviour	1
Motorway Cops	BBC 1	10/11/2011	Generally accepted standards	1
MTV Official Top 20 UK	MTV	02/11/2011	Drugs, smoking, solvents or alcohol	1
My Transsexual Summer (trailer)	Channel 4	29/10/2011	Scheduling	1
My Transsexual Summer (trailer)	Channel 4	30/10/2011	Scheduling	1
My Transsexual Summer (trailer)	Channel 4	01/11/2011	Scheduling	1
My Transsexual Summer (trailer)	Channel 4	03/11/2011	Scheduling	1
My Transsexual Summer (trailer)	Channel 4	07/11/2011	Generally accepted standards	1
My Transsexual Summer (trailer)	Channel 4	08/11/2011	Scheduling	1
New You've Been Framed!	ITV1	05/11/2011	Materially misleading	1
New You've Been Framed!	ITV1	09/11/2011	Generally accepted standards	1
Newshour	Al Jazeera	20/10/2011	Scheduling	1
News	BBC, Sky News	20/10/2011	Generally accepted standards	1
News	LBC 97.3 FM	03/11/2011	Due accuracy	1
News	BBC 1 / Channel 4	04/11/2011	Generally accepted standards	1
News	Various	n/a	Generally accepted standards	1

News on the Hour	Sky News	21/10/2011	Generally accepted standards	2
News update	Channel 5	11/11/2011	Generally accepted standards	1
News, Sport, Weather	Sky News	20/10/2011	Scheduling	6
Newsnight	BBC 2	01/11/2011	Race discrimination/offence	2
Nick Ferrari	LBC 97.3FM	08/03/2011	Religious/Beliefs discrimination/offence	1
Northern Birds	Northern Birds	14/10/2011	Generally accepted standards	1
Panorama	BBC 1	31/10/2011	Outside of remit / other	2
Panorama - Britain on the Fiddle	BBC 1	03/11/2011	Outside of remit / other	3
Passover: A Covenant Renewed	God Channel	07/11/2011	Outside of remit / other	1
Perry and Louise at Breakfast	Signal1	21/10/2011	Scheduling	1
Phones 4 U's sponsorship of Harry Hill's TV Burp	ITV1	08/10/2011	Scheduling	2
Phones 4 U's sponsorship of Harry Hill's TV Burp	ITV1	30/10/2011	Scheduling	1
Phones 4U advertisement	Sky Living	28/10/2011	Out of remit / Advertising content	1
Premier League Live	Talksport	22/10/2011	Commercial communications on radio	1
Programming	Q Radio	n/a	Advertising minutage/Local Content	1
QI XL	BBC 2	22/10/2011	Religious/Beliefs discrimination/offence	1
Rangers - The Inside Story	BBC 1 Scotland	20/10/2011	Generally accepted standards	1
Rangers - The Inside Story	BBC 1 Scotland	20/10/2011	Outside of remit / other	2
Red Light Central	Red Light Central	25/10/2011	Sexual material	1
Secret Pakistan	BBC 2	26/10/2011	Outside of remit / other	1
Secret Pakistan	BBC 2	02/11/2011	Outside of remit / other	2
Shameless	Channel 4	26/10/2011	Animal welfare	1
Sitcom Does.... (trailer)	Eden+1	02/11/2011	Offensive language	1
Sky News	Sky News	20/10/2011	Scheduling	14
Sky News	Sky News	21/10/2011	Generally accepted standards	24
Sky News	Sky News	31/10/2011	Due accuracy	1
Sky News at 11 with Anna Botting	Sky News	04/11/2011	Generally accepted standards	4
Snapshot - Deaf Sisterhood	Community Channel	10/10/2011	Materially misleading	1
Soaps	Various	n/a	Generally accepted standards	4
Soaps	Various	n/a	Scheduling	1
Steve Berry	Talksport	07/11/2011	Generally accepted standards	1

Steve Wright in the Afternoon	BBC Radio 2	10/11/2011	Materially misleading	1
Strictly Come Dancing	BBC 1	29/10/2011	Generally accepted standards	19
Strictly Come Dancing	BBC 1	05/11/2011	Sexual material	1
Strictly Come Dancing	BBC 1	06/11/2011	Scheduling	1
Strictly Come Dancing: It Takes Two	BBC 2	03/11/2011	Generally accepted standards	1
Strike Back Project Dawn	Sky1	23/10/2011	Generally accepted standards	1
Sunday Exclusive	Talksport	23/10/2011	Commercial communications on radio	1
Sunday Morning Live	BBC 1	16/10/2011	Outside of remit / other	1
Sunrise	Sky News	21/10/2011	Scheduling	12
Taxidermia	Film4	06/11/2011	Generally accepted standards	1
Teleshopping	Ideal World	n/a	Out of remit / Advertising content	1
That Sunday Night Show	ITV1	16/10/2011	Violence and dangerous behaviour	1
The Chris Moyles Show	BBC Radio 1	03/11/2011	Harm	1
The End of God?: A Horizon Guide to Science and Religion	BBC 4	10/11/2011	Outside of remit / other	1
The Food Hospital	Channel 4	01/11/2011	Sexual material	1
The Food Hospital	Channel 4	08/11/2011	Outside of remit / other	1
The Food Hospital (trailer)	Channel 4	01/01/2011	Sponsorship	1
The Hotel Inspector	Channel 5	03/10/2011	Sexual orientation discrimination/offence	1
The Hotel Inspector	Channel 5	31/10/2011	Offensive language	1
The Hotel Inspector	Channel 5	13/11/2011	Offensive language	1
The Jeremy Kyle Show	ITV1	14/11/2011	Offensive language	1
The Renovation Game	Channel 4	09/11/2011	Harm	1
The Rory Bremner Show	BBC Radio 4	30/10/2011	Generally accepted standards	1
The Sex Education Show	Channel 4	23/08/2011	Sexual material	1
The Simpsons	Sky1	07/11/2011	Offensive language	1
The Simpsons	Sky1	10/11/2011	Offensive language	1
The Vicar of Dibley	Gold	30/10/2011	Scheduling	1
The Witch Doctor Will See You Now (Trailer)	National Geographic Channel	28/10/2011	Generally accepted standards	1
The Witch Doctor Will See You Now (Trailer)	National Geographic Channel	30/10/2011	Generally accepted standards	1
The Wright Stuff	Channel 5	02/11/2011	Religious/Beliefs discrimination/offence	1
The Wright Stuff	Channel 5	04/11/2011	Due impartiality/bias	1
The Wright Stuff	Channel 5	04/11/2011	Sexual orientation discrimination/offence	1
The Wright Stuff	Channel 5	08/11/2011	Generally accepted	1

			standards	
The X Factor	ITV1	08/10/2011	Sexual material	4
The X Factor	ITV1	15/10/2011	Product placement (tv)	1
The X Factor	ITV1	22/10/2011	Gender discrimination/offence	1
The X Factor	ITV1	22/10/2011	Voting	1
The X Factor	ITV1	23/10/2011	Outside of remit / other	1
The X Factor	ITV1	29/10/2011	Advertising minutage	3
The X Factor	ITV1	29/10/2011	Disability discrimination/offence	3
The X Factor	ITV1	29/10/2011	Generally accepted standards	10
The X Factor	ITV1	29/10/2011	Materially misleading	1
The X Factor	ITV1	29/10/2011	Sexual material	1
The X Factor	ITV1	05/11/2011	Drugs, smoking, solvents or alcohol	9
The X Factor	ITV1	05/11/2011	Generally accepted standards	12
The X Factor	ITV1	05/11/2011	Materially misleading	1
The X Factor	ITV1	05/11/2011	Nudity	1
The X Factor	ITV1	05/11/2011	Outside of remit / other	4
The X Factor	ITV1	05/11/2011	Scheduling	1
The X Factor	ITV1	05/11/2011	Violence and dangerous behaviour	1
The X Factor	ITV1	05/11/2011	Voting	8
The X Factor	ITV1	05/11/2011	Voting	1
The X Factor	ITV1	12/11/2011	Advertising scheduling	3
The X Factor	ITV1	12/11/2011	Drugs, smoking, solvents or alcohol	1
The X Factor	ITV1	12/11/2011	Gender discrimination/offence	21
The X Factor	ITV1	12/11/2011	Outside of remit / other	1
The X Factor	ITV1	12/11/2011	Race discrimination/offence	1
The X Factor	ITV1	12/11/2011	Sexual orientation discrimination/offence	1
The X Factor	ITV1	12/11/2011	Voting	3
The X Factor	ITV1	n/a	Voting	1
The X Factor	ITV1	n/a	Voting	1
The X Factor	ITV1	n/a	Voting	1
The X Factor Results Show	ITV1	09/10/2011	Generally accepted standards	7
The X Factor Results Show	ITV1	30/10/2011	Advertising/editorial distinction	2
The X Factor Results Show	ITV1	30/10/2011	Generally accepted standards	1
The X Factor Results Show	ITV1	30/10/2011	Generally accepted standards	2
The X Factor Results Show	ITV1	06/11/2011	Competitions	1

The X Factor Results Show	ITV1	06/11/2011	Drugs, smoking, solvents or alcohol	1
The X Factor Results Show	ITV1	06/11/2011	Gender discrimination/offence	15
The X Factor Results Show	ITV1	06/11/2011	Nudity	1
The X Factor Results Show	ITV1	06/11/2011	Race discrimination/offence	2
The X Factor Results Show	ITV1	06/11/2011	Violence and dangerous behaviour	1
The X Factor Results Show	ITV1	06/11/2011	Voting	40
The Xtra Factor	ITV2	29/10/2011	Sexual material	13
The Xtra Factor	ITV2	30/10/2011	Generally accepted standards	1
The Xtra Factor	ITV2	05/11/2011	Generally accepted standards	3
This Morning	ITV1	17/10/2011	Generally accepted standards	5
This Morning	ITV1	25/10/2011	Due accuracy	1
This Morning	ITV1	25/10/2011	Generally accepted standards	1
This Morning	ITV1	01/11/2011	Scheduling	2
This Week	BBC 1	20/10/2011	Generally accepted standards	1
Today	BBC Radio 4	n/a	Outside of remit / other	1
Tool Academy	E4	08/11/2011	Generally accepted standards	1
Top Boy	Channel 4	31/10/2011	Crime	1
Top Boy	Channel 4	31/10/2011	Disability discrimination/offence	1
Top Boy	Channel 4	02/11/2011	Animal welfare	6
Top Boy	Channel 4	02/11/2011	Violence and dangerous behaviour	2
Top Boy	Channel 4	03/11/2011	Race discrimination/offence	2
Top Gear	BBC 2	13/11/2011	Generally accepted standards	1
Top Gear	Dave	13/11/2011	Violence and dangerous behaviour	1
Tower Breakfast	Tower FM 107.4	01/11/2011	Transgender discrimination/offence	1
Trailer for Michael Jackson trial coverage	Sky News	n/a	Due impartiality/bias	1
Trailers for on Demand Programmes	Virgin Media On Demand	01/10/2011	Scheduling	1
Tue Stories: The Flaw	More4	08/11/2011	Advertising minutage	1
TV Licensing Advert	BBC News Channel	27/10/2011	Harm	1
Two and a Half Men	Comedy Central	01/11/2011	Scheduling	1
Various	UKTV	n/a	Advertising scheduling	1
Various	Various	n/a	Generally accepted standards	1
Various	Various	n/a	Generally accepted standards	1

Various	BBC	n/a	Outside of remit / product placement	1
Various	Various	n/a	Violence and dangerous behaviour/Sexual	1
Viewer competition	True Entertainment	n/a	Competitions	1
Women's Hour	BBC Radio 4	10/11/2011	Generally accepted standards	1
Wonga.com's sponsorship of Channel 5 drama	Channel 5	01/01/2011	Generally accepted standards	3
Wonga.com's sponsorship of Channel 5 drama	Channel 5	n/a	Age discrimination/offence	1
Young Apprentice	BBC 1	31/10/2011	Race discrimination/offence	2

## 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 17 and 30 November 2011

Programme	Broadcaster	Transmission Date
Advertisement	REN TV Baltic/Mir Baltic	16 November 2011
Advertising minutage	ARY Qtv	09 October 2011
Advertising minutage	Liverpool FC TV	05 October 2011 and 08 October 2011
Advertising minutage	Sun Music	06 September 2011
Advertising minutage	Zing	16 October 2011
Arab Dreams (The Tunisian Debates)	Al Mustakillah Television	09 October 2011 and 25 October 2011
Big Brother: Live Final	Channel 5	11 November 2011
Birthday Celebration	Channel I	30 September 2011
Bricking It	Community Channel	17 November 2011
ChatGirl TV	Adult Channel	04 November 2011
Him and Her	BBC 3	29 November 2011
Nicky Horne	Planet Rock	23 November 2011
PS3's sponsorship of Five Movies	Channel 5	16 October 2011
Talk Living	Body in Balance	07 October 2011 and 10 October 2011
The X Factor	ITV1	26 November 2011
The Xtra Factor	ITV2	20 November 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/>.