Ofcom Broadcast Bulletin

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Contents

Introduction

Under the Communications Act 2003 ("the Act"), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives[1]. Ofcom must include these standards in a code or codes. These are listed below. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services ("ODPS") complies with certain standards requirements as set out in the Act[2].

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes below, as well as licence conditions with which broadcasters regulated by Ofcom are required to comply. We also report on the outcome of ODPS sanctions referrals made by ATVOD and the ASA on the basis of their rules and guidance for ODPS. These Codes, rules and guidance documents include:

a) Ofcom's Broadcasting Code ("the 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.

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[3].

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 can be found on Ofcom's website for television and radio licences.

e) rules and guidance for both editorial content and advertising content on ODPS. Ofcom considers sanctions in relation to ODPS on referral by the Authority for Television On-Demand ("ATVOD") or the Advertising Standards Authority ("ASA"), co-regulators of ODPS for editorial content and advertising respectively, or may do so as a concurrent regulator.

Other codes and requirements may also apply to broadcasters and ODPS, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant

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

[2] The relevant legislation can be found at Part 4A of the Act.

[3] 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.

licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

It is Ofcom's policy to describe fully the content in television, radio and on demand content. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.

Standards cases

In Breach

Dog and Beth: On the Hunt

CBS Reality, 14 November 2013, 11:00 and 16:00

Introduction

Dog and Beth: On the Hunt is a documentary style reality television series following two well known bounty hunters Duane 'Dog' Chapman and Beth Chapman around the United States as they assist in tracking down and arresting criminals. The series is broadcast on CBS Reality which specialises in reality television programmes. The licence for CBS Reality is held by CBS Chellozone UK Channels Partnership ("Chellozone" or "the Licensee").

A complainant alerted Ofcom to the use of the word "fuck" in the programme broadcast on 14 November 2013 at 11:00 and repeated at 16:00. A second complainant alerted us to the repeated use of offensive language in the same programme.

On reviewing the material we noted that approximately 23 minutes into the broadcast, the word "fuck" was clearly audible, followed in the subsequent four minutes by a further four uses of the same word and also Beth Chapman calling a man a "motherfucker". There were also across the programme as a whole, eight instances of the word "shit", two uses of the word "bitch", and 17 instances of bleeped offensive language.

Ofcom considered this material raised issues warranting investigation under the following Code rules:

Rule 1.14: "The most offensive language must not be broadcast before the watershed (in the case of television)...".

Rule 1.16: "Offensive language must not be broadcast before the watershed...unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed".

We therefore sought comments from the Licensee as to how the material complied with these rules.

Response

Chellozone fully accepted that the programme was in breach of Rules 1.14 and 1.16 of the Code and apologised for the broadcast of the programme and any offence caused.

The Licensee explained that the error resulted from a failure to follow correctly its internal compliance procedures. The programme was noted to have been "compliance viewed" and "peer reviewed". The programme was then uploaded ready for transmission although not all the edits recommended to make the programme compliant with the Code had been made.
The Licensee listed a number of measures it took once it became aware of the broadcast. These included the immediate removal of the programme from its

schedules, the deletion of the file from all of its playout systems, the re-editing of the material prior to rescheduling, and training sessions for the editing team. In addition, the Licensee said that the editor who failed to correctly comply the material prior to transmission had been "dealt with in line with company policy".

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content in order to ensure the standards objectives, including that "persons under the age of eighteen are protected". This objective is reflected in Section One of the Code.

Rule 1.14

Rule 1.14 states that the most offensive language must not be broadcast on television before the watershed. Ofcom's research on offensive language[1] clearly notes that the word "fuck" and variations of this word are considered by audiences to be among the most offensive language, particularly when used in an aggressive manner.

The broadcast of the word "motherfucker" and five instances of the word "fuck" were clear examples of the most offensive language being used in a programme broadcast before the watershed. This material therefore breached Rule 1.14.

Rule 1.16

Rule 1.16 states that offensive language must not be broadcast before the watershed, unless it is justified by the context; and that, in any event, frequent use of such language must be avoided before the watershed.

The words "shit" and "bitch" are considered by audiences to be mildly offensive terms[2]. We noted that there were ten instances of un-bleeped offensive language ("shit" and "bitch") during the programme. In addition there were 17 examples of bleeped offensive language.

As Ofcom has pointed out in Guidance, if the use of offensive language in a programme is frequent, such that pre-watershed broadcast of the programme requires multiple bleeping, there can be a cumulative effect on viewers similar to that of the offence caused by the repeated broadcast of the un-bleeped language itself[3]. Where frequent bleeping of offensive language is required for pre-watershed transmission, broadcasters may need to edit the programme more rigorously to take into account the cumulative effect, or consider whether the programme is not in fact, appropriate for pre-watershed broadcast at all.

In this case we considered that 17 examples of bleeped offensive language and ten un-bleeped examples of offensive language (for example "shit" and "bitch"), amounted to the frequent use of offensive language before the watershed. Ofcom

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

[2] See footnote 1.

[3] http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/protecting-under-18s.pdf

also took into account that the effect of these frequent uses of offensive language was exacerbated by six uses of the most offensive language in this programme. We were concerned that such frequent use of offensive language before the watershed was not justified by the context because it would have exceeded audience expectations, particularly at 16:00 when children are likely to be home from school.

Ofcom noted that in this case Chellozone accepted that this programme breached Rules 1.14 and 1.16, and took various steps after the broadcast to ensure it was not shown again before it was re-edited and to improve compliance.

Nonetheless, we considered that the programme breached Rules 1.14 and 1.16.

Breaches of Rules 1.14 and 1.16

In Breach

Our World – Sri Lanka's Unfinished War

BBC 1 and BBC News channel, 9 November 2013, 05:30

Introduction

Our World – Sri Lanka's Unfinished War was a 30 minute documentary on human rights abuses that have allegedly occurred since 2009, when the Sri Lankan civil war between the Sri Lankan Government and the Liberation Tigers of Tamil Eelam ("LTTE") ended.

A complainant alerted Ofcom to the inclusion in the report of scenes showing disturbing images, which the complainant did not consider to be appropriate for the early morning transmission time.

The documentary broadcast on BBC 1 included harrowing accounts of what had happened to various men and women who had allegedly been tortured and sexually abused by Sri Lankan Government forces. The material also included distressing images of dead, naked women and images of scars reportedly inflicted on Tamils by the use of burned cigarettes and hot metal rods.

In particular, we considered that the following six sequences were of concern:

- one featuring a Tamil called Vasantha being interviewed by presenter Frances Harrison. Vasantha detailed how she had been repeatedly raped and physically abused. Vasantha said the following: *"They raped me every three days...They burned me with cigarettes and they submerged my head into a barrel of water. They beat me with a cable on my arm"*;

- a sequence showing Siva (a former member of the LTTE) detailing the sexual abuse he witnessed of a captured woman LTTE fighter in a Colombo police station. Siva said the following: *"They stripped her naked in front of me. They stretched her legs wide open and inserted an empty coco-cola bottle into her private parts. She screamed in pain and fell unconscious..."*;

- images of the bodies of three dead, naked, reportedly Tamil, women, lying spread-eagled on the ground. These images were followed by an image of the dead, naked body of Isaipriya, a female member of the LTTE, who the programme reported may have been raped or the victim of sexual violence. Although the genitalia and breasts were blurred the images clearly showed scars on the victims' bodies and faces;

- a sequence featuring Anandhi, who said she was forced to join the LTTE during the civil war, and had been reportedly raped, beaten and burnt with cigarettes while in captivity. This was followed by Nandini (a Tamil civilian), who said she had been kidnapped and repeatedly raped;

- a sequence showing Ravi (who said he was forced into being an LTTE member for a duration of six months) giving a detailed account of the torture he suffered while being detained as part of the Sri Lankan Government's "rehabilitation

programme"[1]. Ravi said the following: *"They beat me, punched me in the stomach, burned me with cigarettes. I was beaten with big pipes filled with sand. They covered my head with a bag soaked in petrol, then they submerged my head in water...I was tortured in all the places I was kept in. They touched my private parts and crushed my testicles. They would take us to interrogation and question us. They would put my testicles into a draw and slam the draw shut. Sometimes I fell unconscious. Then they would bring someone and force me to have oral sex with him. Sometimes if we lost consciousness during the torture, they would urinate on us"*; and

- a sequence showing Siva (a former member of the LTTE) explaining, in graphic detail, the sexual abuse he endured. Siva said the following; *"I was forced to lie flat on the big table. I was stripped naked and my hands were tied down. They hit me with cricket wickets on my hips. I was screaming in pain and pleading with them not to hurt me. I told them I'd been tortured enough. They had plastic pipes filled with barbed wire. At first I didn't notice, they kept my head down and then they put the plastic tube into my rectum. When I screamed in pain they pulled the pipe out, leaving the barbed wire inside. Then they started pulling the wire out and I couldn't bear the pain. I told them anything, even lied"*.

In response to a request for comments about the broadcast of the programme on BBC 1, the BBC News channel informed Ofcom that the documentary was also broadcast at the same time on the BBC News channel (see below).

Ofcom considered the material raised issues warranting an investigation under Rules 1.3 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 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

We therefore sought comments from the BBC as to how the material complied with these rules.

Response

The BBC said that: "This was a significant scheduling error for which the BBC apologises". The broadcaster explained that the programme was correctly complied and editorially assessed for post-watershed transmission only. As a result when it was shown over the weekend of 9 and 10 November 2013 on the BBC News channel the scheduling of this programme was adjusted accordingly. However a mistake in the scheduling allowed this programme to remain in the BBC News channel schedule for broadcast at 05:30. Because the BBC News channel is simulcast on BBC 1 at this time, this programme was also broadcast on BBC 1 at this time.

In mitigation the BBC pointed out that: news and current affairs content is scheduled at 05:30 on BBC 1 seven days a week; audiences do not expect children's programming to be shown at this time on BBC 1; and that a strong editorial warning

[1] Under this programme, suspected Tamil rebels were detained in various centres by Sri Lankan government forces before being released.

was provided saying: *"This programme contains very graphic images and language which some viewers my find disturbing"*. It added that BARB figures[2] showed that only a small number of children watched either BBC1 or BBC News channel at the time of the broadcast for a minute or less, and that no children appeared to have been watching for up to three minutes of the programme. However, in light of the scheduling error, the BBC said it had changed its work practices "to prevent any repetition".

Decision

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

In reaching a Decision in this case, Ofcom has taken into account that broadcasters have a right to freedom of expression which gives the broadcaster a right to transmit and the audience a right to receive creative material, information and ideas without interference from a public body, but subject to restrictions prescribed by law and necessary in a democratic society. This is set out in Article 10 of the European Convention on Human Rights.

Appropriate scheduling

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the time of the broadcast; and likely audience expectations.

We first considered whether the programme contained material unsuitable for children.

Ofcom noted that the broadcast contained graphic images of dead, naked women. Although their genitalia and breasts were blurred the images clearly showed scars on the victims' bodies. During these sequences menacing music was played which heightened the impact of the material. In addition, the harrowing statements of the alleged victims included some detailed accounts of the torture and sexual abuse endured, as detailed in the Introduction. We therefore considered that the programme contained distressing material unsuitable for children.

We went on to assess whether the programme had been appropriately scheduled on BBC 1 and the BBC News channel.

The programme was broadcast on a Saturday at 05:30, after the time (05:30) when material unsuitable for children should not in general be shown[3]. Although Ofcom noted that the programme was preceded by a clear warning, the provision of such

[2] Broadcasting Audience Research Board (BARB) is the official source of television viewing figures in the UK.

[3] See the 'Meaning of "the watershed"' in Section One of The Code: "The watershed only applies to television. The watershed is at 2100. Material unsuitable for children should not in general, be shown before 2100 or after 0530."

information – while it may be useful as a guide to viewers in some circumstances – is not, in itself, sufficient to ensure that the material is appropriately scheduled. In our opinion the cumulative effect of the sequences, as detailed in the Introduction, had the potential to cause distress to any younger viewers. Because this programme preceded the BBC Breakfast Show on BBC 1, it was unlikely to appeal to a child audience. Similarly, the BBC News channel was unlikely to appeal to child viewers. Nonetheless, we were concerned that this material was broadcast on a these channels, when there was the potential for children to come across this potentially distressing material.

For these reasons we considered the broadcaster did not protect children from unsuitable material by appropriate scheduling, and Rule 1.3 was breached.

Offensive material

Rule 2.3 of the Code states that in applying generally accepted standards broadcasters must ensure that potentially offensive material is justified by the context. Context includes but is not limited to, editorial content of the programme, warnings given to viewers, the time of the broadcast and the service the material was broadcast on.

We first considered whether the programme contained material that was potentially offensive. As detailed above, the broadcast included a number of sequences with detailed images and descriptions of rape, torture and other alleged human rights abuses. In Ofcom's view these were capable of causing distress to viewers and had the potential to cause offence.

We went on to consider whether the broadcast of this material was justified by the context.

In Ofcom's view some of the images and descriptions of the alleged abuses were quite graphic and so capable of causing considerable offence to some viewers, especially those who came across them unawares. Some of the material broadcast was therefore likely to exceed viewers' expectations because they would not normally have expected to come across such potentially distressing images and graphic descriptions of violence between 05:30 and 06:00 on BBC 1 or the BBC News channel. We noted that a clear warning was broadcast at the start of the programme (*"very graphic images and language which some viewers may find distressing"*). We also took into consideration that the programme was shown on BBC 1 and the BBC News Channel which typically broadcast news and current affairs at 05:30 with a greater appeal to adults.

Ofcom noted that the BBC was aware of its *"significant scheduling error"* and that the programme had originally been complied for a post-watershed transmission. Nonetheless, on balance, we considered that the potentially offensive material was not justified by the context, and therefore rule 2.3 was also breached.

Breaches of Rules 1.3 and 2.3

In Breach

News

Bangla TV, 26 October 2013, 21:00 and 27 October 2013, 01:00 and 09:30

Introduction

Bangla TV is a news and general entertainment channel broadcast in Bengali and serving a Bangladeshi audience. The licence for Bangla TV is held by Bangla TV (UK) Ltd ("Bangla TV" or "the Licensee").

A complainant alerted Ofcom to an interview in a news bulletin on Bangla TV with Lutfur Rahman[1], the Executive Mayor of Tower Hamlets. This news item was broadcast three times: once on 26 October, and twice the following day. The complainant considered that the interview was "an advertorial" for Lutfur Rahman and was not duly impartial.

Ofcom commissioned a transcript of the interview with Lutfur Rahman, translated from the original Bangla into English by an independent translator. We noted that the interview was introduced by a newsreader and then consisted of statements from a reporter, from Lutfur Rahman, and it also included filmed 'vox pop' statements from three members of the public:

Newsreader: *"The Executive Mayor of Tower Hamlets Lutfur Rahman has completed three years of his term. While facing many obstacles, how successful has the mayor of the people been? In the British Bangladeshi community, he is a much talked-about mayor. Let's hear our chief reporter reporting his news, with Rezaul Karim Mridha as the cameraman".*

Reporter: *"Lutfur Rahman is the Executive Mayor of Bangladeshi populated Tower Hamlets. He was the first elected Mayor from the ethnic minorities. He failed to get a nomination from Labour Party. However he was elected as an independent candidate by getting 51% of the votes on 21 October of 2010".*

[Clip of the announcement of Lutfur Rahman's election victory]

Archive clip of Lutfur Rahman ("LR"):

"They want to see a Mayor with a clear mandate to serve the people of Tower Hamlets".

Reporter: *"'I will serve the people', was his promise to the people. The people have recognised that he has kept his promise".*

Member of the public 1:

"I will say we are extremely lucky to have a Mayor like him".

[1] Lutfur Rahman is the first directly elected Executive Mayor of Tower Hamlets, who was elected to office on 21 October 2010.

Member of the public 2:

"He has empowered our community".

Member of the public 3:

"I think we certainly need him for another three to four years".

Reporter: *"In his three years term, he has contributed in housing, education and crime control. During the severe funding cut by the central Government, he still managed to provide alternative education allowance, free school meals, construction of the highest number of social housing etc. Also he has been praised as he managed to hire police forces from his own funding".*

LR: *"Housing is a priority, education is another priority. Community safety, young people and social skills are the priorities. We have provided housing for 4,000 in last 3 years. Education is my passion. Education is my strong priority, my top priority. I want our kids to go to the top universities. I want them to do well in their studies and get good jobs and compete with the best in the country. Performance in GCSE exams has gone down in the whole country, while performance in our borough has gone up. There is a project of 380 million pounds for every school in Tower Hamlets, either the work has been completed, or is going on or it will soon start".*

Reporter: *"He has reached to the pinnacle of his success through his unparalleled contribution and determination... He is an example how you could form a dynamic team without being part of a political party".*

LR: *"If you are committed, if you are ambitious, if you are hard-working, you can deliver for the community. You don't need a party to deliver. Our institution has proved that. We are independent but we are hard-working".*

Reporter: *"Despite the pressure from different sides and close-monitoring by the media, the mayor wants to continue his work in the future. He has called Tower Hamlets 'the land of opportunities' and asked for help from everybody. Ibrahim Khalil, Bangla TV News London".*

On assessing these programmes, we also noted that a laptop was visible whenever the newsreader spoke to camera. The laptop, which was positioned so that the manufacturer's logo was clearly identifiable, was shown for an extended period during the studio-based material in each bulletin.

We considered that this content raised issues warranting investigation under Rules 5.1 and 9.5 of the Code, which state:

Rule 5.1: "News, in whatever form, must be reported with due accuracy and presented with due impartiality".

Rule 9.5: "No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:

- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
- the manner in which a product, service or trade mark appears or is referred to in programming".

We therefore asked the Licensee for its comments on how the content complied with these rules.

Response

In relation to Rule 5.1, Bangla TV said that as a Bengali language television channel and given "Tower Hamlets has got high concentration of Bengali speaking population" it therefore broadcast coverage of "almost all significant event[s] in that borough". In this case, the item featuring Lutfur Rahman was "a report on [the] third anniversary" of his election as the first directly elected Mayor of Tower Hamlets. The Licensee said that it broadcasts "without any political bias or intention to promote anybody", and added that in the past it had covered, for example, "conferences by all major political parties in Tower Hamlets including Labour, Conservatives and Liberal Democrats".

Bangla TV stated its belief that the information in the news item was "mostly correct" and that it had not received "any contradiction from any quarter about any information" contained within it. However, the Licensee stated that the news item could have been "more balanced" by incorporating "views from [the] opposite side of the mayor". It added that Bangla TV was temporarily off-air at the time it sent its comments to Ofcom (19 December 2013), but that when it recommenced broadcasting it would broadcast "a report of similar length to focus the view point of [the] mayor's opposition".

In relation to Rule 9.5, the broadcaster stated that the laptop had not been included in the programmes as a result of a commercial arrangement. It said that "due to a sudden break down of our news [teleprompter], a laptop was placed to enable the newsreader to present the news". Bangla TV said that due to the pressure of a live news transmission the "studio staff didn't notice" the prominence of the manufacturer's logo during the three broadcasts of this news bulletin. The Licensee added that the teleprompter was repaired the following day and apologised for the mistake.

In conclusion, Bangla TV said that it would be "very cautious" in undertaking its compliance in future.

Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that news on television and radio services is presented with due impartiality. This objective is reflected in Section Five of the Code.

In addition, the Act also requires Ofcom to set standards for broadcast content as appear to it best calculated to secure "that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with". Article 19 of the Audiovisual Media Services Directive ("the AVMS Directive") requires, among other things, that television advertising is kept visually and/or audibly distinct from programming. The purpose of this is to prevent

programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. Further, Article 23 of the AVMS Directive requires that television advertising is limited to a maximum of 12 minutes in any clock hour.

The above requirements are reflected in, among other Code rules, Rule 9.5, which prohibits the undue prominence of products, services or trade marks in programming.

Ofcom therefore considered the item's compliance with Rules 5.1 and 9.5 of the Code.

Rule 5.1

Rule 5.1 states:

> "News, in whatever form, must be reported with due accuracy and presented with due impartiality".

When applying the requirement to preserve 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. The right of freedom of expression encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. 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, against the requirement in the Code to preserve "due impartiality" on matters relating to political or industrial controversy or matters relating to current public policy.

Ofcom recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit to some extent freedom of expression. This is because its application necessarily requires broadcasters to ensure, for example, that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, in doing so broadcasters must always comply with the Code.

In reaching decisions concerning due impartiality, Ofcom underlines that the broadcasting of comments either criticising or supporting the policies and actions of any government, state, political organisation or elected politician is not, in itself, a breach of due impartiality. Any broadcaster may do this provided it complies with the Code. However, depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints in an appropriate way to ensure that Section Five is complied with.

The obligation in Rule 5.1 to present news with due impartiality applies potentially to any issue covered in a news programme, and not just to matters of political or industrial controversy and matters relating to current public policy. 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 assessing whether any particular news item has been reported with due impartiality, we take into account all relevant facts in the case, including: the substance of the story in question; the nature and context of the coverage; and, whether there are varying viewpoints on a news story, and if so, how a particular viewpoint or viewpoints on a news item could be or are reflected within news programming.

In this case, Ofcom noted that this news item included an interview with Lutfur Rahman during which he stated what, in his view, his administration had achieved since he was elected to the post of Mayor of Tower Hamlets. The item also featured statements from the news reporter who had interviewed Lutfur Rahman, as well as filmed 'vox pop' statements from three members of the public referring to Lutfur Rahman.

We recognise that this item of news dealt with an issue of interest to the UK Bangladeshi community in particular, namely the anniversary of the election of a Bangladeshi Mayor of Tower Hamlets, which is an area with a large Bangladeshi population. It is important that broadcasters – taking account of their and the audience's right to freedom of expression – are able to report such stories to their viewers or listeners. This is particularly the case when news stories concern subjects of interest to their target audience. The Code does not in any way prohibit news programmes from including views that refer to particular politicians and their policies – however that news must be reported with due accuracy and presented with due impartiality.

There were a number of statements which could reasonably be characterised as being supportive of Lutfur Rahman and his policies. For example, Lutfur Rahman said the following: *"We have provided housing for 4000 in last 3 years"*; *"*[p]*erformance in GCSEs in our borough has gone up"*; and *"There is a project of 380 million pounds for every school in Tower Hamlets, either the work has been completed, or is going on or it will soon start".* In addition, there were the following statements from three members of the public: *"I will say we are extremely lucky to have a Mayor like* [Lutfur Rahman]*"*; *"*[Lutfur Rahman] *has empowered our community"*; and *"I think we certainly need* [Lutfur Rahman] *for another three to four years".* Further, we noted that the reporter in this news item made various statements that were positive about Lutfur Rahman and his policies. For example, the reporter said that: *"The people have recognised that* [Lutfur Rahman] *has kept his promise"*; and *"*[Lutfur Rahman] *has reached to the pinnacle of his success through his unparallel contribution and determination".*

We took into account that at no point did the news item reflect any viewpoint to counter or otherwise to provide an alternative to the positive statements being made in support of Lutfur Rahman and his policies. Nothing critical about Lutfur Rahman's performance, actions or policies as mayor was included in the news item. We noted that Bangla TV said that there had not been "any contradiction from any quarter about any information" contained within the news item. However, in Ofcom's view, given the wholly positive nature of the statements made in support of Lutfur Rahman and his policies, it was incumbent on the Licensee to ensure the viewpoint of those individuals or political parties who are in opposition to the administration of Lutfur Rahman were reflected to some extent. In this regard, we noted that the Licensee stated to Ofcom that the news item in this case could have been "more balanced with views from [the] opposite side of the mayor" being reflected in the item.

We noted that Bangla TV said that when it recommenced broadcasting it planned to broadcast "a report of similar length to focus the view point of [the] mayor's

opposition". Even if Bangla TV did broadcast such a report (and it has not informed Ofcom that it has done so), it would not be sufficient to ensure the original news item was presented with due impartiality on 26 and 27 October 2013. Alternative viewpoints must normally be reflected appropriately in the same item or bulletin, or sufficiently close in time, for it to be reasonable to conclude that the original news item was presented with due impartiality.

Ofcom emphasises that there is no requirement for broadcasters to provide an alternative viewpoint on all news stories or issues in the news, or to do so in all individual news programmes. It is also legitimate for a programme to be, for example, supportive of certain nation-states or political parties. However, all news stories must be presented with due impartiality: that is with impartiality adequate or appropriate to the subject and nature of the programme. Presenting news stories with due impartiality in news programmes very much depends on editorial discretion being exercised appropriately in all the circumstances.

Given the above, we concluded that the news item was not presented with due impartiality and was therefore clearly in breach of Rule 5.1 of the Code.

Rule 9.5

Rule 9.5 restricts the degree of prominence that can be given to references to products or services in programmes. Ofcom's Guidance Notes on Section Nine[2] state:

> "The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears. A product that is integral to a scene may justify a greater degree of product exposure, for example shots of a car during a car chase scene. However, where a product is used as a set prop, care should be taken to avoid close-up or lingering shots".

Ensuring that products do not receive undue prominence is particularly important in news bulletins where viewers should be able to expect that content is not subject to commercial influence. Although there are limited circumstances where news programmes may legitimately feature content that contains commercial references, the Code requires that such references to products and services are editorially justified and are not promotional or unduly prominent.

In the news bulletin described above, we noted that whenever the newsreader spoke to camera the laptop was placed on the desk in the foreground of the shot where it took up almost a fifth of the frame. We also noted that the way it had been positioned meant that the manufacturer's logo was clearly visible for an extended period during those sequences.

Ofcom accepts that the use of electronic devices such as laptops or tablets by presenters or reporters may be justified in news editorial content, and that, accordingly, brief and therefore limited visual references to the brand of the device may sometimes appear on-screen. In this case, we took into account that the laptop had been placed on the newsreader's desk by the production team "to enable the newsreader to present the news" while the Licensee's teleprompter was repaired.

However, we also noted that, in this case the laptop had been prominently positioned with the manufacturer's logo clearly visible whenever the newsreader was shown.

[2] http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf

Further, it seemed to us that the newsreader did not use the laptop at all during the broadcast and instead spoke directly to camera whenever he was shown. Consequently, the possible justification for the degree of exposure given to the laptop manufacturer during the bulletin, was significantly limited.

In light of the factors highlighted above, we concluded that the laptop had been given undue prominence during the bulletin, in breach of Rule 9.5.

We expect the Licensee to take steps to improve its compliance in relation to Sections Five and Nine of the Code.

In view of the fact that Ofcom recorded a breach of Section Five of the Code against Bangla TV in August 2013[3] and that there is an election for the post of mayor in Tower Hamlets taking place in May 2014, Ofcom will request a meeting as soon as possible with the Licensee to ensure it fully understands its obligations to comply with Sections Five and Six of the Code. Further, in the same Finding, Ofcom also recorded breaches under Section Nine of the Code. We will therefore use this opportunity to discuss the Licensee's compliance considerations in relation to Section Nine of the Code.

Breaches of Rules 5.1 and 9.5

[3] http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb236/obb236.pdf, dated 27 August 2013.

In Breach

Sponsorship of Balika Vadhu

Colors, 11 November 2013, 20:00

Introduction

Colors is a general entertainment channel broadcast in Hindi. The licence for Colors is held by Viacom 18 Media (UK) Limited ("Viacom" or "the Licensee").

A complainant alerted Ofcom to the sponsorship credits around the programme *Balika Vadhu* – an Indian soap drama sponsored by three companies.

Ofcom noted that the programme sponsorship arrangements were identified before the start and at the end of the programme with static cards bearing the name of each sponsor and a voiceover describing the sponsorship arrangement. However, when the cards were transmitted as the programme entered and came out of internal advertising breaks, no reference to the sponsorship arrangement was included.

Ofcom considered the credits broadcast around the internal advertising breaks raised issues warranting investigation under Rule 9.19 of the Code, which states that:

> "Sponsorship must be clearly identified by means of sponsorship credits. These must make clear:
>
> (a) The identity of the sponsor by reference to its name or trade mark; and
> (b) The association between the sponsor and the sponsored content".

We therefore sought comments from the Licensee regarding compliance with Rule 9.19(b).

Response

Viacom apologised for the failure to insert a voiceover when the programme entered and came out of internal advertising breaks, which it said was the result of an error by a member of its scheduling team. The Licensee said that it had "taken appropriate steps" to tighten processes and prevent further errors.

Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of 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 requires sponsored programmes to be "clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or end of the programmes". Such identification is usually achieved by way of sponsorship credits broadcast around sponsored programmes and is in intended to keep sponsorship material distinct from advertising content.

The requirements of the AVMS Directive to identify sponsorship arrangements are reflected in Rule 9.19 of the Code which states that sponsorship must be clearly identified by means of sponsorship credits, and that the sponsorship credits must make clear the identity of the sponsor and the association between the sponsor and the sponsored content.

The sponsorship credits for *Balika Vadhu* broadcast around internal advertising breaks during the programme did not make any reference to the sponsorship arrangement. Because the credits did not make clear the association between the sponsors and the programme, we have recorded a breach of Rule 9.19(b).

In a Finding published in issue 244 of Ofcom's Broadcast Bulletin[1], we put Viacom on notice that we would consider whether to take further regulatory action in the event of other breaches by the Licensee relating to sponsorship credits. Because the programme in this case was broadcast before we notified Viacom of the earlier breach Finding, we do not propose to take further action at this time. We reiterate, however, that Ofcom will consider whether additional measures are necessary if other compliance issues arise.

Breach of Rule 9.19(b)

[1] See: http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb244/.

Advertising Scheduling cases

Resolved

Resolved findings table

Code on the Scheduling of Television Advertising compliance reports

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

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

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
BT Sport 2	24 November 2013, 23:00	COSTA Rule 4	Ofcom noted during monitoring that BT Sport 2 exceeded the permitted advertising allowance on this date by 30 seconds. The licence holder for BT Sport 2, British Telecommunications Plc ("BT"), said the error occurred due to the late delivery of a programme scheduled from 22:00 to 24:00. That programme was longer than expected, and pushed some commercials intended for the 22:00 clock hour into the 23:00 clock hour. BT said its procedure required each clock hour to be checked. Due to the start time for the 24:00 programme being as originally scheduled, it had been incorrectly assumed that there were no issues with commercial breaks between 22:00 and 24:00, and this procedure was not followed on this occasion. BT confirmed it had taken steps to ensure that agreed procedures are followed on every occasion. **Resolved**

Capital TV	21 and 22 November 2013	COSTA Rule 4	Ofcom noted, during monitoring, that Capital TV exceeded the permitted advertising allowance in a clock hour on 21 and 22 November by 120 seconds and 22 seconds respectively. The licence holder for Capital TV, Global Music Television Limited ("Global"), said both incidents involved the broadcast of two successive longform programmes. Breaks in each individual programme had been inserted to comply with COSTA, but when broadcast in succession part of one break was pushed into the next clock hour. Although this error had been identified and amended manually in advance, a scheduling change by a new staff member had inadvertently moved the start time of the first programme on each date, resulting in additional commercials in the clock hour concerned. Global said these longform programmes were a departure from its usual music video scheduling, which meant these particular breaches were not identified in standard checks. Global confirmed it had reviewed procedures in light of this error, including retraining all staff and ensuring additional monitoring of longform programming before broadcast. **Resolved**

Broadcast Licence Condition cases

In Breach

Provision of licensed service

London Turkish Radio, 17 October 2013 to present

Introduction

London Turkish Radio ("LTR") is a local AM commercial radio station licensed to provide a local sound broadcast service for the Turkish and Turkish Cypriot community in North London under Part III of the Broadcasting Act 1990 (as amended) ("the Licence"). The Licence is held by Kirmizi Beyaz Kibris Ltd ("the Licensee").

During the week of 28 October 2013, it came to Ofcom's attention that LTR had ceased broadcasting its licensed service. The Licensee subsequently confirmed to Ofcom that the service ceased broadcasting on 17 October 2013.

Ofcom considered that this raised issues warranting investigation under Condition 2(1) contained in Part 2 of the Schedule of the Licence, which states that:

> "The Licensee shall provide the Licensed Service specified in the Annex for the licence period and shall secure that the Licensed Service serves so much of the licensed area as is for the time being reasonably practicable." (Section 106(2) of the Broadcasting Act 1990).

Ofcom therefore wrote to the Licensee to provide the Licensee with an opportunity to make representations about this (and, in particular, to make representations about what steps it intended to take to resolve the matter).

Response

The Licensee detailed some of the circumstances that had led to its current financial difficulties, which in turn had adversely affected its ability to sustain the service. In particular, it explained that it:

- had been erroneously receiving electricity from two different suppliers and that, as a result of non-payment to one of these suppliers, LTR's electricity supply had been cut in October (at which point the service ceased broadcasting); and

- had experienced slow/non-payment by individuals or companies that had advertised on LTR, and was required to pay significant amounts of money for studio rental arrangements and, to reinstate its electricity supply, the Licensee was required to pay a security deposit.

The Licensee also explained that it had been "expecting more help and advice from Ofcom regarding certain issues" since becoming responsible for the Licence in 2011, given that it was not experienced in the field of broadcasting.

Finally, the Licensee stated that it "was not aware of the breach in licensing and also cannot do much about it at present until I can transfer the studio. I still believe that LTR can remain on air." The Licensee did not, in making its representations, give any

firm indication to Ofcom of when it would be in a position to re-commence broadcasting the licensed service. However, a formal licence transfer request has since been received by Ofcom.

Decision

Ofcom has a range of duties in relation to radio broadcasting, including securing the provision of a range and diversity of local radio services within the United Kingdom. Further, Ofcom also has a range of more general duties which include securing the optimal use is made of the electromagnetic spectrum and the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests.

These matters find expression in, or are linked to, the licence condition requiring the provision of the specified licensed service. Where a licensed service is not being provided in accordance with the licence, none of the required commercial radio programme output is provided. Accordingly, optimal use is not being made of that radio spectrum and choice for listeners is reduced.

In this case, by ceasing to provide its licensed service from 17 October 2013, the Licensee breached Licence Condition 2(1) in Part 2 of the Schedule to the Licence. Ofcom has therefore formally recorded this breach by the Licensee.

The Licensee set out the circumstances that led to it ceasing to broadcast the service. In this case, the Licensee had stopped broadcasting as a result of the action of a third party (an electricity provider) because an outstanding invoice had not been paid by the Licensee.

While we acknowledge that the Licensee was experiencing financial difficulties which may be linked to some degree to third parties (e.g. customers and suppliers), it is the responsibility of a licensee to manage its affairs so that the service it is licensed to deliver continues to be provided.

No definitive plan was put forward by the Licensee in its representations for how the service would be resumed in the near future, beyond stating that the Licensee's electricity bill could be paid once monies owed to it were settled, and relocation could save significant amounts. These plans did not appear to be concrete; for example, we were not informed of any detail on plans to recover outstanding debts and, although the Licensee had since vacated its former premises, it had been unable to obtain replacement premises.

Since receiving the Licensee's representations, a formal licence transfer request has been received and is under consideration.

While taking account of the circumstances set out by the Licensee, and the fact that a licence transfer request has now been received, it remains the case that, by ceasing to provide its licensed service on its AM frequency, 1584 KHz, from 17 October 2013, the Licensee breached Licence Condition 2(1) in Part 2 of the Schedule to the Licence. In addition, as the Licensee has not resumed broadcasting, this breach by the Licensee is continuing. Provision by a Licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a commercial radio licence is granted.

Ofcom considers this on-going non-provision of the LTR service to be serious. **We have therefore put the Licensee on notice that we will consider this ongoing breach for the imposition of a statutory sanction which could result in, amongst other things, the revocation of the Licence.**

Breach of Licence Condition 2(1) in Part 2 of the Schedule to the commercial radio licence held by Kirmizi Beyaz Kibris Ltd (licence number AL000172BA/1) for North London.

In Breach

Providing a service in accordance with 'Key Commitments'

Biggles FM, 24, 25 and 27 July 2013

Introduction

Biggles FM is a community FM radio station licensed to provide a service for people in Biggleswade, Potton, and the surrounding area. The licence is held by Biggles FM (or "The Licensee").

Like other community radio stations, Biggles FM is required to deliver its 'Key Commitments'. 'Key Commitments' form part of each community radio station's licence. They set out how the station will serve its target community and 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.

Biggles FM's key commitments can be viewed here:
http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000196.pdf

Ofcom received a complaint that Biggles FM was failing to deliver certain Key Commitments, and under-delivering on others.

We therefore requested recordings of three days of Biggles FM's output, covering Wednesday 24 July, Thursday 25 July and Saturday 27 July 2013. After monitoring this output, and requesting a range of information from the Licensee, we identified a number of concerns about the Licensee's delivery of the following Key Commitments:

Live output

"The service will typically be live for 12 hours per day. (Live programming may include pre-recorded inserts, if applicable)."

The Licensee told us that the number of live hours it was broadcasting each day was below the 12 hours per day required by the Key Commitments.

Music to speech ratio

"Live output will typically comprise 75% music and 25% speech ('speech' excludes advertising, programme/promotional trails and sponsor credits)."

Following monitoring of daytime programming on Wednesday 24 July, Ofcom found the output of Biggles FM comprised 92% music and 8% speech (excluding advertising, programme/promotional trails and sponsorship credits). This was clearly below the 25% speech level required by the Key Commitments.

Local issues

"The station will feature local issues and cover items of community concern. It will invite people to participate in phone-in discussion programmes on a regular basis."

From our monitoring of Biggles FM's output, we found little or no evidence of any speech relating to local issues and/or items of community concern, or of regular phone-in discussions during programming.

Listener Panel

"The station will have a Listener Panel made up of community members to provide feedback on the station's service."

Following our request for information, the Licensee was unable to provide any evidence of the existence of a Listener Panel.

Ofcom considered that these issues warranted investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to Biggles FM's licence. These state, respectively:

> "The Licensee shall provide the Licensed Service specified in the Annex[1] for the licence period." (Section 106(2) of the Broadcasting Act 1990) and;
>
> "The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period." (Section 106(1) of the Broadcasting Act 1990).

We therefore wrote to the Licensee to request its comments on how it was complying with these Conditions, referencing specific Key Commitments.

Response

Live output

The Licensee confirmed that, on average, there were nine hours of live output broadcast across the three days in question (11.5, 6.5 and 9). The Licensee submitted that "the dates you requested – all three in the same week – are not a fair and typical representation of our broadcast year...less than one percent of our annual output." It added: "We lost a valued member of weekday daytime output during 2013 [and] this caused the live hours count to be lower than 12 on some days monitored."

Music to speech ratio

The Licensee said that its own monitoring of its output on Wednesday 24 July was higher than Ofcom's calculations of 92% music and 8% speech[2] and showed a ratio of 84% music to 16% speech. The Licensee again highlighted that "The dates you monitored were not representative of our music to speech output due to the fact that we were still seeking a replacement for our daytime presenter."

Local issues

The Licensee responded that "With your audio monitoring of less than one percent of our annual output you missed a lot of what we do." It added that: "Every Friday morning we link up with the Editor of the Biggleswade Chronicle and in this live chat

[1] Biggles FM's Key Commitments can be found at: http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000196.pdf.

[2] Ofcom calculates speech percentages excluding advertising, programme/promotional trails and sponsorship credits.

lasting about 15-20 minutes we discuss local breaking news stories and items of interest….listeners often phone, text, email or message us on Facebook".

With regard to the absence of regular phone-in discussions, the Licensee explained that: "We have tried to encourage telephone callers to contact us in answer to questions or statements – we don't set up callers like a lot of stations do."

Listener Panel

Responding to our concerns about how it was complying with the requirement for a Listener Panel, the Licensee said that: "We currently gather information directly from our listeners by email, text, phone and Facebook on all live shows. Every Friday we throw open the last hour of the Breakfast Show to the listeners' choice – from this we compile a list of the type and style of music they would like to hear."

Decision

Ofcom has a range of duties in relation to radio broadcasting, including securing a range and diversity of local radio services which are calculated to appeal to a variety of tastes and interests, and the optimal use of the radio spectrum. These matters are reflected in the licence condition requiring the provision of the specified licensed service. Provision by a Licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted.

Biggles FM is licensed to provide a service for the people of Biggleswade, Potton, and the surrounding area and as such, local speech content should reasonably be expected to be both a frequent and prominent part of its output.

Live output

The Licensee confirmed that, on the three days we monitored, it was under-delivering on the required 12 hours per day of live broadcasting which it attributed, in part, to losing a key volunteer. We noted that the Licensee had not made us aware of this situation at the time. The Licensee said that it had subsequently been delivering this Key Commitment following the recruitment of a new presenter.

Music to speech ratio

The Licensee was clearly failing to deliver the "typically 25%" speech required by its Key Commitments during live hours. The Licensee stated that the dates monitored were not representative of its typical speech levels due to the fact that it was still seeking a replacement for its daytime presenter. However, as already noted, the Licensee had not made us aware of this situation at the time.

Local issues

We noted that the Licensee had pointed us to other content it said it broadcasts each Friday that covers local issues. However we were concerned that, during the three days of monitoring, we found little or no evidence of any speech regarding local issues and/or items of community concern, as requred by the Key Commitments, and Biggles FM was unable to direct us to any. With regard to the provision of phone-in discussions, while Ofcom appreciates that it may not be easy to prepare and run regular phone-ins on a station of this size, it is nevertheless something that was promised by the Licensee at the time of licence award, and therefore formed part of its Key Commitments.

Listener Panel

While the Licensee stated in its representations that it gathers information directly from listeners by email, text, phone and Facebook, we do not consider this to be a suitable replacement for a formal Listener Panel, as currently required by the Key Commitments.

Conclusion

A key theme running through the Licensee's representations was that it did not consider three days of output to constitute a "fair and typical" representation of its broadcast year. Our view is that three days of audio taken from the same week should be an adequate amount of time for any community radio station to be able to demonstrate that it is delivering the bulk of its on-air Key Commitments, and should in most cases be sufficient to provide Ofcom with a reliable indication of the type and range of content being broadcast by the service.

Having considered the Licensee's representations, it remained our view that Biggles FM was not delivering some of the most important aspects of its current published Key Commitments, in particular, those relating to:

- the amount of live output broadcast each day;
- the amount of speech broadcast by the station;
- coverage of local issues; and
- the existence of a Listener Panel.

Ofcom has therefore concluded that Biggles FM is in breach of its licence for failing to provide a service in accordance with its 'Key Commitments.'

Breach of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Biggles FM (licence number CR000196BA)

Fairness and Privacy cases

Upheld

Complaint by Miss Laura Muirhead

Cherry Healey: Old Before My Time, BBC Three, 21 October 2013

Summary

Ofcom has upheld the complaint made by Miss Laura Muirhead of unwarranted infringement of privacy in the programme as broadcast.

The programme was part of a documentary series which examined the effects that excessive consumption of certain substances, in this case alcohol, had on young people in the UK. During the broadcast, some scenes were shown in a hospital where one of the programme's contributors was receiving treatment. The complainant, Miss Muirhead, a nurse at the hospital, was shown briefly unobscured a number of times in this part of the programme. This was, according to Miss Muirhead, despite her having been given specific assurances by both her employer (the hospital) and a cameraman that she would not be featured in the programme.

Ofcom found that, on balance and in the very particular circumstances of this case, Miss Muirhead had a legitimate expectation of privacy and that there was insufficient public interest to justify the infringement of Miss Muirhead's privacy by the inclusion of unobscured footage of her without her consent in the programme. Ofcom considered therefore that Miss Muirhead's privacy was unwarrantably infringed in the programme as broadcast.

Guidance

Ofcom acknowledges the practical difficulties faced by programme makers when recording in locations where some individuals may not wish to be filmed or shown in a programme as broadcast. It is reasonable and sufficient in many cases for a programme maker to rely on the sort of measures taken by the programme makers in this case to obtain consent: the general consent to film given by an employer and any key individuals in that organisation, filming notices put up at the time of recording, and as necessary or appropriate individual consents. Ofcom would be concerned if there were a chilling effect on the making of programmes about matters of public importance and interest because broadcasters considered that they must go to unreasonable lengths or take disproportionate measures to obtain consent from organisations or individuals while filming or before broadcasting a programme.

Introduction and programme summary

On 21 October 2013, BBC Three broadcast an edition of the documentary series *Cherry Healey: Old Before My Time*. In the series, the presenter, Ms Cherry Healey, examined how young people were increasingly affected by illnesses commonly attributed to older age groups due to excessive consumption of alcohol, drugs and fast food.

The episode in question focused on alcohol consumption and looked at a group of young people whose lives had been adversely affected by excessive drinking. One of the group, "Jo", had been admitted to the Freeman Hospital in Newcastle-upon-Tyne to have an operation to alleviate the build up of fluid that had been affecting her liver.

Jo was shown in her hospital bed being wheeled along a corridor. The complainant, Miss Muirhead, a nurse at the hospital, was shown opening a door to allow the bed through. Her face was fully visible for around two seconds. Miss Muirhead was shown again as she walked next to the bed, although this time her face was not visible on screen. The programme included footage of Jo's operation and of her being wheeled out of the operating theatre back to the ward. Footage of Miss Muirhead holding a door open for Jo's bed was shown and, again, her face was visible on screen for approximately two seconds.

Summary of the complaint and the broadcaster's response

Miss Muirhead complained that her privacy was unwarrantably infringed in the programme as broadcast in that she was shown in the programme multiple times without her consent.

Miss Muirhead explained that she was informed by the hospital where she worked that she would not be filmed, but that if she was accidently filmed, then her face would be blurred. She also said that she had spoken to the cameraman on the day of filming and was assured by him that she "would not be shown on TV as you have to fill out forms for that". Miss Muirhead said that she was extremely annoyed that her face was shown in the programme after she had specifically made concerns known to the cameraman regarding this matter. Miss Muirhead said that she felt upset that her privacy had been breached. The complainant did not give any reason in her complaint why being included in the programme had caused her upset or concern.

In response, the BBC stated that the production company responsible for the programme had sought permission from the Freeman Hospital, where the filming took place, and also from a consultant at the hospital. It said that filming notices had been displayed in the larger hospital departments and that there was an assistant producer who was responsible for collecting consent forms from those who were involved in filming, which were judged on a case-by-case basis.

The BBC added that on the day of the filming involving Miss Muirhead, only one member of the production company was present, who was filming Jo as she was preparing for surgery. This was in an area of the hospital which was not open to the general public. The BBC said that consent was obtained from Jo, but that due to an oversight, Miss Muirhead's consent was not obtained.

The BBC said that it and the production team apologised for any upset caused to Miss Muirhead. It further explained that the programme has been edited for any future broadcasts, including the online version of the programme to ensure that Miss Muirhead would not appear again in the episode unobscured.

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 unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes 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, consistent and targeted only at cases in which action is needed.

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording and a transcript of the programme as broadcast, and both parties' written submissions and supporting material. The parties chose not to make any representations on Ofcom's Preliminary View in this case (which was that Miss Muirhead's privacy was unwarrantably infringed in the programme as broadcast).

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 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.

In considering Miss Muirhead's complaint that her privacy was unwarrantably infringed in the broadcast of the programme because footage of her was shown without her consent, Ofcom had regard to Practice 8.6 of the Code. This 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 also had regard to Practice 8.8 of the Code which states that, in potentially sensitive places, such as hospitals, separate consent for broadcast should normally be obtained from those in sensitive situations (unless not obtaining consent is warranted).

In considering whether or not Miss Muirhead's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first assessed whether she had a legitimate expectation of privacy in respect of the broadcast of footage of her working at the hospital.

Having watched the programme, and as set out in the "Introduction and programme summary" section above, we noted that Miss Muirhead appeared very briefly in the programme. Her face was visible on more than one occasion for two seconds. This resulted in Miss Muirhead being identifiable from the footage shown. Further, we noted that Miss Muirhead was filmed in her place of work, a hospital, while carrying out routine tasks in her job as a nurse, namely escorting a patient to and from the operating theatre and opening doors.

Ofcom took the view that the footage of Miss Muirhead did not show her engaged in any conduct or action that could reasonably be regarded as particularly private, sensitive or confidential in nature. Nor did Miss Muirhead give any reason in her complaint as to why the broadcast of very brief footage of her doing her normal work in the hospital should in itself cause her upset and concern. We also note that the production company had obtained permission from the Freeman Hospital and a consultant to film there, filming notices were displayed in the hospital and a number of consent forms were distributed and signed by staff (but not the complainant). However, we noted: that the filming took place in a hospital, which in itself is a sensitive environment (and specifically recognised to be so by Practice 8.8 of the Code), with consequent restrictions on filming without permission; that according to

the complainant she was given and relied on an unequivocal specific assurance by the cameraman that she would not be shown unobscured on television; and, that the programme makers did not obtain her specific consent to be filmed and/or to be shown unobscured on television.

As a result, on balance, we considered that Miss Muirhead did have a legitimate (albeit limited) expectation of privacy in relation to the broadcast of unobscured footage of her working in the hospital without her consent.

Ofcom noted that the broadcaster accepted that Miss Muirhead's consent for the footage of her to be included in the programme unobscured was not obtained. According to the BBC, the programme makers had failed to obscure Miss Muirhead's face in the programme as broadcast "due to an oversight". Given the context of the footage, i.e. the filming taking place in a potentially sensitive environment where the general public did not have access, the programme makers and the broadcaster should have satisfied themselves that Miss Muirhead's consent for the broadcast of the footage had been obtained.

Having found that Miss Muirhead had a legitimate expectation of privacy, Ofcom went on to consider the broadcaster's competing right to freedom of expression and the audience's right to receive information and ideas without unnecessary interference. We assessed whether there was sufficient public interest or other reason to justify the infringement of Miss Muirhead's privacy in the broadcast.

Ofcom considered that there was a genuine public interest in the programme's examination of the effects of over-consumption of alcohol on young people in the UK. However, we took into account that a hospital is a sensitive environment and that Miss Muirhead said in her complaint that she was specifically advised by, and relied on assurances from, both the hospital and a cameraman that she would not feature in the programme as broadcast, and that if she did she would be obscured. Moreover, we considered that, in the circumstances of this case, the broadcaster could have fulfilled the public interest without disclosing Miss Muirhead's identity and therefore without infringing her privacy.

Having taken all the factors above into account, Ofcom found that there was insufficient public interest and no other sufficient reason, to justify the infringement of Miss Muirhead's privacy in the broadcast. On balance, we considered that the broadcaster's right to freedom of expression, and the audience's right to receive information and ideas without interference, did not outweigh Miss Muirhead's expectation of privacy as regards the broadcast of material in the circumstances of this case.

Ofcom acknowledges the practical difficulties faced by programme makers when recording in locations where some individuals may not wish to be filmed or shown in a programme as broadcast. It is reasonable and sufficient in many cases for a programme maker to rely on the sort of measures taken by the programme makers in this case to obtain consent: the general consent to film given by an employer and any key individuals in that organisation, filming notices, and as necessary or appropriate individual consents. Ofcom would be concerned if there were a chilling effect on the making of programmes about matters of public importance and interest because broadcasters considered that they must go to unreasonable lengths or take disproportionate measures to obtain consent from organisations or individuals while filming or before broadcasting a programme.

Ofcom's decision is therefore that in the very particular circumstances of this case (and despite the fact that the complainant did not explain how, if at all, she was adversely affected by being shown unobscured going about her normal work at the hospital), Miss Muirhead's privacy was unwarrantably infringed in the programme as broadcast.

Accordingly, Ofcom has upheld Miss Muirhead's complaint of unwarranted infringement of privacy in the programme as broadcast.

Not Upheld

Complaint by Mr Chris Reynard

Cowboy Traders, Channel 5, 27 June 2013

Summary

Ofcom has not upheld this complaint of unjust or unfair treatment in the programme as broadcast made by Mr Chris Reynard.

This edition of *Cowboy Traders* focused on a holiday company, Skiing Europe, which provided ski holidays to schools in the UK. The programme alleged that the company, which was owned and operated by Mr Reynard, *"took hundreds of thousands of pounds from schools and parents – and children up and down the country went without the trip they've been promised"*. The final section of the programme included a meeting between Mr Reynard and one of the programme makers who had pretended to be a youth worker wanting to book a ski trip for a children's group. On this pretext, Mr Reynard was confronted by Mr Dominic Littlewood (one of the programme's presenters) in the car park of a public house.

Ofcom found that Mr Reynard was not treated unfairly in the programme as broadcast. This is because the use of deception to obtain the interview with Mr Reynard was warranted in the circumstances of this case and the programme gave viewers an accurate picture of the nature of the deception practised on him and his response to it and the interview which followed.

Introduction and programme summary

On 27 June 2013, Channel 5 broadcast an edition of *Cowboy Traders*, a series which seeks to expose traders who have provided defective goods and services to the general public. The programme is presented by Mr Dominic Littlewood and Ms Melinda Messenger.

This particular edition focused on a holiday company, Skiing Europe, which provided ski holidays to schools in the UK. The programme alleged that the company *"took hundreds of thousands of pounds from schools and parents – and children up and down the country went without the trip they've been promised"*. Throughout the programme, one of the presenters, Mr Littlewood, was shown investigating Mr Reynard and following up on information he had received about him and his company. At one point, Mr Littlewood said: *"Before I go after Chris Reynard, I need to investigate whether he is a rogue trader or just a victim of the recession".*

The programme included contributions from a number of schools which alleged that through Skiing Europe they had bought and paid for ski holidays abroad which did not subsequently happen. One of these schools, Meole Brace School, told the programme that it had paid over £40,000 for an Easter skiing holiday only to be told by Mr Reynard ten days before the trip that he did not have sufficient funds to book the flights. Another school, Mount Grace School, claimed it had paid £62,000 for a ski trip to Austria that was never provided. Mr Littlewood explained that Mr Reynard called the school to tell it that he was unable to book flights or accommodation as agreed because he had cash flow problems. He said that Mr Reynard had asked for an additional £20,000 from the school to save the trip from falling through. The school refused to pay.

Mr Littlewood explained that, after publicising that he was investigating Mr Reynard, a number of schools contacted him with similar stories. One such school, Chinthurst School, had, the programme claimed, *"narrowly escaped being completely stranded in the Swiss Alps".* The school told the programme makers that it was copied in to an email addressed to Mr Reynard from the hotel specified for its trip (City Hotel Oberland). The email explained that the hotel would no longer do business with Mr Reynard because he did not meet the prepayment conditions. The presenter noted that Mr Reynard had contacted the school only two days before the planned trip saying that he was trying to make other arrangements for the holiday and that he had been let down by the hotels. Mr Littlewood said the school felt it had no other option but to remain in the UK.

Mr Littlewood explained that Mr Reynard had first set up a business 50 years ago and noted an article from 2000 which stated that Mr Reynard had been banned from acting as a company director for ten years and was described as *"wholly unfit to a marked degree to be a director of a limited company"*. The presenter said that Mr Reynard had appealed that decision and that the appeal judge had disagreed with the previous assessment of his dishonesty and so reduced the ban to five years. It was after this five-year ban that Mr Reynard became the director of Skiing Europe. In addition, Mr Littlewood referred to county court judgments against Mr Reynard and his companies amounting to over £250,000. The presenter also said that Mr Reynard was made bankrupt following a court case involving a sports equipment firm, but that he was currently appealing against that judgment.

Later in the programme, Mr Littlewood was shown speaking with three of Mr Reynard's ex-employees who represented the company abroad. The presenter said that in their opinion Mr Reynard was: *"intentionally sending school groups on trips that haven't been paid for, knowing they will end up having to pay his bills"*.

Mr Littlewood stated that the programme makers had written to Mr Reynard requesting an interview and received: *"a long response...much of his letter is irrelevant and relates to a company he owned some years ago but there is a small amount which deals with the questions I've asked."* The presenter was then shown reading out in detail several of the points made by Mr Reynard in his letter.

In the final section of the programme, Mr Reynard was shown being confronted by Mr Littlewood in the car park of a public house. This meeting had been set up by a member of the programme making team who had arranged the meeting with Mr Reynard by pretending to be a youth worker wanting to book a ski trip for a children's group. During the interview in the car park, Mr Reynard stated that:

- he had given the programme makers *"a very full response"*;
- the email from City Hotel Oberland was *"sub judice"* and therefore he could not comment on the position with that hotel, but there were other hotels which were in breach of their contracts with Skiing Europe. (Mr Littlewood commented that the contracts were not honoured because money they were owed was not paid);
- there was an insurance company that should have reimbursed the schools but instead had *"done the dirty"*. Mr Reynard explained that he had been *"totally truthful"* with the insurance company;
- a judge (i.e. the appeal judge who reduced Mr Reynard's directorship ban to five years) had said that Mr Reynard was completely honest; and
- he was not bankrupt. Mr Littlewood then said that Mr Reynard had been made bankrupt in a court case with a sports equipment firm and was currently appealing that decision. Mr Reynard said that issue was *"quite different"*.

After the interview, Mr Littlewood turned to the camera and said: *"you've seen what he looks like, you know his name, it's Chris Reynard, network amongst yourselves and make sure that no one ever gives that man business".* The presenter then went on to add other points subsequently made by Mr Reynard in his post-interview correspondence with the programme makers. These included some specific responses to parts (as opposed to the entirety) of the allegations made against Skiing Europe by Meole Brace, Chinthurst and Mount Grace Schools.

Summary of the complaint and the broadcaster's response

Mr Reynard complained that he was treated unjustly or unfairly in the programme as broadcast because the programme makers used lies and deception in obtaining the interview with him.

Mr Reynard said that in order to obtain the interview one of the programme makers posed as a potential customer and arranged a meeting with him. On this pretext, Mr Reynard was confronted by the programme's presenter in the car park of a local public house. Mr Reynard said that the programme makers justified this filming by explaining that there was a public interest in his previous history. He said that his previous history was not included in the programme.

In response, Channel 5 said that its decision to broadcast footage of an interview with Mr Reynard, which was secured through a minor deception, was justified because:

- it was in the public interest to broadcast the story of Mr Reynard's dealings with the various schools featured in the programme;
- Mr Reynard refused to provide relevant responses to the substantive allegations which had been made about him/his company and there was no other way to secure footage of Mr Reynard facing those allegations; and
- the deception was based on Mr Reynard's belief that one of the programme makers was a potential client willing to pay for advice about a skiing holiday (i.e. the activity which was the subject of the programme).

The broadcaster said that it had sought and been declined an interview with Mr Reynard. It had also written to him setting out the substance of the allegations which might be made against him in the programme and offered him an opportunity to respond. However, although Mr Reynard wrote a lengthy letter to the programme makers, he included little in direct response to the specific allegations made about him and/or the actions of his company. Channel 5 added that it was clear from this correspondence that Mr Reynard was not prepared properly to answer these allegations. (Copies of the correspondence between the programme makers and Mr Reynard prior to the on-camera interview were provided to Ofcom.) Therefore, the programme makers were unable properly to represent Mr Reynard's position in the programme and viewers were unable to judge his truthfulness for themselves.

Channel 5 said that, because Mr Reynard lived in a property which was not accessible to the public, there was no possibility of securing footage of Mr Reynard having the allegations put to him directly without the use of deception. It added that Mr Reynard was not compelled to participate in the on-camera interview once he realised he had been deceived. He was at all times free to leave. However, instead of staying silent and walking to his car, Mr Reynard engaged with Mr Littlewood before driving away.

Further representations

Mr Reynard submitted further representations on Channel 5's statement in response to his complaint. Ofcom considered some of the matters raised by Mr Reynard to be directly relevant to Ofcom's consideration of this complaint and decided to admit his representations. It also provided Channel 5 with an opportunity to respond.

Mr Reynard said that:

- gaining the interview with him through deception was not justified because he was willing to answer all the programme makers' queries at length. He added that he had made this clear to Channel 5 in a letter dated 1 June 2013 and that he had provided "the very fullest and self-disclosing of answers"; and

- in contrast to the broadcaster's claim, he was not truly free to walk away from the interview because doing so would have given the impression he had something to hide.

Mr Reynard also repeated his complaint that the programme did not include his previous history despite claiming that it was in the public interest for it to do so.

In response to Mr Reynard's further representations, Channel 5 said that "doorstepping", the practice of filming an interview with someone without prior warning, is permitted under the Code if it is warranted. It said that, in this case, it was warranted. This was because Mr Reynard's correspondence was full of obfuscation and he failed to respond to many of the serious allegations which had been put to him prior to the time the doorstepping occurred.

Channel 5 said that Mr Reynard's response to the allegations made by Meole Brace School – the first matter put to him during the interview – was typical and that he dealt with almost all of the allegations put to him in the same manner. On 6 November 2012, the programme makers had written to Mr Reynard setting out in detail this school's allegations. Mr Reynard did not respond to these allegations directly. Rather, in a letter to the programme makers, dated 27 November 2012, he said that the schools which had complained (as noted above, the programme featured several schools which claimed not to have got the holidays for which they had paid Skiing Europe) were "the most emotive" and "failed to understand" that they lost money because an unnamed insurance company had "done the dirty", and that almost all of the schools were late in making payments. Channel 5 said that both these responses were included in the programme, but that Mr Reynard did not make clear either what the insurance policy was for or on what basis he had been denied insurance coverage. It also said that Meole Brace School was not late in making its payments.

Channel 5 detailed Mr Reynard's subsequent correspondence with the programme makers about Meole Brace School. However, it also said that the correspondence after the 11 January 2013 interview in the car park – including the 1 June 2013 letter referred to by Mr Reynard – "could not affect the appropriate nature of the doorstepping".

With regard to whether Mr Reynard was free to not take part in the interview, Channel 5 reiterated its position that, once confronted by Mr Littlewood and the camera crew, Mr Reynard could have walked away and argued that it was his failure to respond in any meaningful way which gave the impression he had something to hide.

The broadcaster said, although Mr Reynard wanted the programme to include a detailed catalogue of his previous successes in the industry, he did not understand that any successful history was not particularly relevant to the specific allegations, which concerned his conduct in a particular period of trading and activity, which formed the basis of the programme. Channel 5 said that the programme included details of Mr Reynard's history to the extent that they were relevant and necessary and nothing the programme makers said to Mr Reynard suggested that a discussion of his **entire** (broadcaster's emphasis) business history was in the public interest.

Representations on Ofcom's Preliminary View

Ofcom prepared a Preliminary View on this case that Mr Reynard's complaint should not be upheld. Both the complainant and Channel 5 commented on that Preliminary View. The main points made by Mr Reynard which could be regarded as relevant to the complaint as entertained and Channel 5's responses to those points were, in summary, as follows.

Mr Reynard repeated his view that it was not warranted for the programme makers to obtain the interview with him by deception and then use footage of it in the programme because he had already answered their allegations. He also said that the programme makers did not like the responses he had given prior to the interview because in them he had made it clear that someone else (most notably the insurance companies which he, Mr Reynard, was taking legal action against) was responsible for the demise of his business – and thereby the fact that a number of schools lost money. He said that Channel 5 refused to accept "the fact that the insurance company had done the dirty and we were taking action against those that were to blame for what had happened".

With regard to the interview itself, Mr Reynard said that however well he "knew the situation nothing can prepare one for that sort of ambush" and that it was not accurate to say that he was aware of the specific allegations being made about him because there were "at least two points put to [him] in that interview that had never been put to [him] previously".

Mr Reynard also reasserted his position that he was treated violently by Mr Littlewood during the interview and asked that Ofcom study the unedited footage of this section of the programme.

In response to the complainant's comments on the Preliminary View, Channel 5 said that, in contrast to his assertions, Mr Reynard:

- did not answer all of the allegations which were put to him; and
- did not indicate which of the allegations put to him were factually incorrect.

Channel 5 also said that the programme had represented Mr Reynard's position that "the insurance company had done the dirty...". However, it could do no more because, despite repeated requests by the programme makers, Mr Reynard failed to provide relevant details about the claim(s) he said he was making against the insurer (for example, the name of the insurer; the type of policy concerned; the nature of the claim(s) he was making against the insurer; or the details of any correspondence he had with the schools/individuals concerned about restitution). The broadcaster added that it was "difficult to see how any insurer could...be liable...for a school being misled as to the nature of bookings made on their behalf when no such bookings were made".

Channel 5 did not respond to Mr Reynard's further comments about whether or not he was prepared to answer the questions put to him by Mr Littlewood during the interview or his claim that he was treated violently by Mr Littlewood.

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 unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes 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 our Decision, we carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, unedited footage provided by Channel 5 and both parties' written submissions. Ofcom also took careful account of the representations made by the complainant and by Channel 5 in response to Ofcom's Preliminary View on this complaint. However, we concluded that the representations did not raise any substantive points which affected Ofcom's Preliminary View not to uphold the complaint.

Ofcom considered Mr Reynard's complaint that he was treated unjustly or unfairly in the programme as broadcast because the programme makers used lies and deception to obtain an interview with him. In particular, Mr Reynard said that one of the programme makers posed as a potential customer and arranged a meeting with him and, on this pretext, Mr Reynard was confronted by the programme's presenter in the car park of a public house.

Before addressing the specific complaint by Mr Reynard as set out in the preceding paragraph, Ofcom noted that Mr Reynard also complained that the programme did not include his previous business history – although he said the programme makers told him it was this history which justified their obtaining the interview with him through deception (the broadcaster denied that this was the case). However, our consideration of this complaint is not contingent upon the extent to which Mr Reynard's previous business history was represented in the programme. Rather, it is concerned with whether the obtaining of the interview though deception was warranted given the previous correspondence between Mr Reynard and the programme makers; and if the way in which the interview was included in the programme resulted in unfairness to Mr Reynard. Therefore, this issue was not relevant to our consideration of the complaint.

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

In considering Mr Reynard's complaint, Ofcom had particular regard to Practice 7.2 of the Code which states that broadcasters and programme makers should normally

be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise. Ofcom also had regard to Practice 7.14 of the Code which states that broadcasters or programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception. (Deception includes surreptitious filming or recording.) However, it may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means.

In assessing whether it was warranted to obtain and then use material obtained by deception in this case, Ofcom first took account of the pre-interview correspondence between Mr Reynard and the programme makers. The programme makers wrote to Mr Reynard on 6 November 2012 explaining the aims and purpose of the programme and included a very detailed list of specific allegations made against Skiing Europe and/or Mr Reynard by a number of schools and hotels which had previously had dealings with the company. The letter also offered Mr Reynard an opportunity to respond to these allegations via an on-camera interview and asked for a response to this offer within seven days. On 12 November 2012, the programme makers sent a follow-up letter to Mr Reynard asking for a response to their offer of an interview by 19 November 2012. On 13 November 2012, Mr Reynard acknowledged his receipt of the earlier (6 November 2012) letter, denied the offer of an on-camera interview and said that he would be "more than happy to give [the programme] a substantial reply", but that this would "take a little while to do" and he would "be back in contact...within a few weeks". Between 13 November and 3 December 2012, the programme makers and Mr Reynard exchanged further correspondence regarding the deadline for the programme's receipt of Mr Reynard's written response (the final deadline was set at 7 December 2012). The programme makers continued to repeat their offer of an on-camera interview to Mr Reynard in this correspondence.

On 4 December 2012, the programme makers received a letter from Mr Reynard (dated 27 November 2012) regarding the claims made about him and his company. In this letter Mr Reynard denied any wrongdoing and said that when a company goes out of business there will be many angry people who think that they have lost money. Mr Reynard also said that an insurance company which was meant to be protecting the schools' money had "done the dirty" and that "numerous" schools were in breach of the company's booking conditions because they were late with payments. Mr Reynard then went on to talk about his unhappy experience of dealing with the media over the preceding 20 years and his long history of success in the holiday industry.

Following receipt of Mr Reynard's 27 November 2012 letter, the programme makers wrote back to him on 5 December 2012. They assured him that his responses would be included in the programme where appropriate but also said: "we note that you have left unanswered many of the substantial allegations being made, and what you have told us contradicts the material evidence we have gathered in the course of our investigation". They then offered Mr Reynard another chance to give an on-camera interview so that the programme: "may fairly represent your responses to all of the serious allegations that have been made against you". On 8 December 2012, Mr Reynard wrote back saying that he would not be interviewed and that he had already given "an extensive response".

As noted above, on 11 January 2013, Mr Reynard was confronted by Mr Littlewood and a camera crew in the car park of a public house where Mr Littlewood asked him questions about the allegations made about Skiing Europe, notably those made by Meole Brace and Chinthurst Schools. Mr Reynard had agreed to come to the public

house believing that he was meeting a potential client. However, this person was actually one of the programme makers.

Having taken careful account of the pre-interview correspondence, Ofcom considered whether the deception used to obtain this interview footage was warranted in the circumstances. There is no doubt in our view that the matters raised by the programme makers in their correspondence to Mr Reynard were serious: they concerned claims that he repeatedly took significant sums of money from schools while being aware that the holidays for which the schools were paying were unlikely to take place. It is clear from both the initial submissions and the subsequent representations that the parties to this complaint disagreed with regard to whether or not Mr Reynard answered all of the allegations which were put to him prior to the programme makers deciding to gain an interview with him by the use of deception. However, Ofcom considered the evidence available, namely the correspondence between the programme makers and Mr Reynard prior to the interview. We observed that, in his letter of 27 November 2012, Mr Reynard had denied any wrongdoing. However, we also noted that in this letter Mr Reynard did not respond to any of the specific claims made about Skiing Europe by the individual schools or hotels mentioned in the programme makers' letter of 6 November 2012 and subsequently featured in the programme. Nor did Mr Reynard provide any information to the programme makers about the nature of the insurance claims he said he was making with regard to the aborted school trips or his plans to repay any of these schools.

In addition, prior to the interview with Mr Reynard, the programme makers had given Mr Reynard a number of opportunities to give an on-camera interview in order to address the substance of the allegations made against him. As noted above, the last of these made it clear that in the programme makers' view Mr Reynard had not addressed these allegations in his letter of 27 November 2012. Mr Reynard refused every such offer.

With regard to the deception itself, Ofcom noted that Mr Reynard lived on a private estate and that, therefore, it would not have been possible for the programme makers to have approached him directly without having first persuaded him to leave his property. We noted that the programme makers achieved this by inviting Mr Reynard to meet a potential client for his new business (a consultancy for group skiing holidays). Ofcom considered that a deception of this nature was relatively minor. Taking all of these factors into account, we took the view that there was a public interest in the programme makers confronting Mr Reynard to try to obtain a candid and meaningful response to the allegations made about him, and that the deception practised on Mr Reynard in order to enable them to do so was warranted.

Ofcom next considered the manner in which Mr Reynard was confronted by the programme makers and whether the way in which this was reflected in the programme created unfairness to him. We noted the meaning of "doorstepping" as set out in the Code as "filming or recording of an interview...with someone, or announcing that a call is being filmed or recorded for broadcast purposes, without prior warning" and that Practice 8.11 of the Code states that it should not take place unless "a request for an interview has been refused...and it is warranted to doorstep". Although Practice 8.11 is in Section Eight of the Code (Privacy), in Ofcom's view it can be helpful to take account of it when assessing complaints about fairness. Doorstepping, in our view, has the potential to create unfairness to contributors because of the lack of opportunity afforded to them to prepare their response to serious allegations and the potential adverse impression it can give to viewers about a complainant who has been approached in this manner.

Given the pre-interview correspondence between the programme makers and Mr Reynard (as detailed above), and notwithstanding Mr Reynard's claim in his representations that there were "at least two points put to [him in his interview] that had never been put to [him] previously", we considered that, before he was approached by Mr Littlewood and the camera crew, Mr Reynard would have been sufficiently aware of both the general nature of the claims being made about him and the specific allegations made by each school featured in the programme to have had adequate opportunity to prepare a response to questions about those allegations and to answer the questions put to him by Mr Littlewood in this situation. In our view, there was no unfairness to Mr Reynard in this respect.

Ofcom next went on to consider how the relevant material was presented in the programme as broadcast. Ofcom noted that prior to this section of the programme the presenter said that he had written to Mr Reynard to put the allegations to him and that Mr Reynard had responded. Our consideration of this complaint is concerned with whether the use of deception to obtain the interview with Mr Reynard resulted in unfairness to him in the programme as broadcast. Ofcom is not considering whether or not the way in which his letter of response to the programme was represented resulted in unfairness to him. However, we noted in any event that those elements of Mr Reynard's letter of 27 November 2012 which were relevant to the claims made in the programme were included within it.

With regard to the footage of the interview itself, Ofcom noted that the presenter introduced this part of the programme by explaining the deception the programme makers had used to get Mr Reynard to the public house. Mr Littlewood was shown confronting Mr Reynard, and Mr Reynard responding to the presenter's claims before being shown walking to his car and driving away. Having examined the footage of the interview included in the programme (and unedited footage of the final seconds of this interview – i.e. the part when Mr Reynard got into his car and drove away), we noted that Mr Reynard appeared to consider Mr Littlewood's questions before volunteering responses to him and that Mr Littlewood accompanied Mr Reynard as Mr Reynard walked over to and got into his car. Once Mr Reynard was in the car, Mr Littlewood stood between the open driver-side car door and the car itself and continued to ask Mr Reynard questions while Mr Reynard twice tried to close the car door. In addition, a cameraman walked in front of the car for a few seconds. However, after a few moments Mr Reynard drove forward slowly leaving Mr Littlewood behind before closing the car door and driving away. At no point did there appear to be any physical contact between Mr Reynard and either Mr Littlewood or any other member of the film crew as he walked towards his car and then got into it and drove away. In addition, at no point did Mr Littlewood hold on to any part of the car.

Given the above factors, Ofcom considered that the programme made sufficiently clear to viewers the exact nature of the deception used to get Mr Reynard to the public house and then gave an accurate picture of his response to being deceived and subsequently confronted by Mr Littlewood. We also considered that, while Mr Littlewood followed Mr Reynard to his car and stood in front of the open car door, thereby delaying his departure by a few moments, Mr Littlewood did not prevent Mr Reynard from leaving.

Therefore, Ofcom found that the deception employed to obtain the interview with Mr Reynard was warranted by the public interest. Also the programme informed viewers about the nature of the deception practised on Mr Reynard and gave an accurate picture of his response to both the deception and Mr Littlewood's questions. There was therefore no unfairness to Mr Reynard in the programme as broadcast.

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

Complaints Assessed, not Investigated

Between 4 and 17 February 2014

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	Numer of complaints
5 News at 5	Channel 5	24/01/2014	Generally accepted standards	1
50 Best R'N'B Videos Of The 00s	Kiss	26/01/2014	Scheduling	1
Allianze NFL Dublin V Kerry	Premier Sports	01/02/2014	Outside of remit / other	1
Ant and Dec's Saturday Night Takeaway	ITV	06/04/2013	Violence and dangerous behaviour	1
Audio Description	Various	Various	Television Access Services	1
Babylon	Channel 4	09/02/2014	Scheduling	8
BBC Coverage of the Winter Olympics	BBC	Various	Outside of remit / other	1
BBC News	BBC 1	16/02/2014	Outside of remit / other	1
BBC News at One	BBC 1	03/02/2014	Outside of remit / other	1
Bewitched	Channel 5	01/02/2014	Scheduling	1
Birds of a Feather	ITV	23/01/2014	Scheduling	1
Births, Deaths and Marriages	ITV	11/02/2014	Generally accepted standards	1
Blast 106 Saturday Nights	Blast 106 FM	11/01/2014	Materially misleading	1
Breakfast	BBC 1	01/02/2014	Offensive language	1
Brian Taylor's Big Debate	BBC Radio Scotland	31/01/2014	Outside of remit / other	1
Britain's Great War	BBC 1	03/02/2014	Generally accepted standards	1
Capital Breakfast With Bodg, Matt & Jojo	Capital North East	08/02/2014	Disability discrimination/offence	1
Channel 4 News	Channel 4	05/02/2014	Due impartiality/bias	1
Channel 4 News	Channel 4	07/02/2014	Offensive language	1
Channel ident "Gay Mountain"	Channel 4	Various	Generally accepted standards	21
Children in Need 2013	BBC 1	15/11/2013	Generally accepted standards	1
Classic Albums	Sky Arts 1	17/01/2014	Scheduling	1
Come Dine with Me	Channel 4	01/02/2014	Scheduling	1
Coronation Street	ITV	03/02/2014	Promotion of products/services	1
Coronation Street	ITV	10/02/2014	Offensive language	1
Coronation Street Omnibus	ITV2	26/01/2014	Television Access Services	2
Coronation Street Omnibus	ITV2	01/02/2014	Television Access Services	1
Dancing On Ice	ITV	02/02/2014	Generally accepted standards	4

Dancing on Ice	ITV	09/02/2014	Generally accepted standards	1
Daybreak	ITV	10/02/2014	Television Access Services	1
Daybreak	ITV	11/02/2014	Offensive language	1
Dickinson's Real Deal	ITV	05/02/2014	Generally accepted standards	1
Dinner Date	ITV2	05/02/2014	Disability discrimination/offence	1
Doctors	BBC 1	04/02/2014	Offensive language	1
Doctors	BBC 1	17/02/2014	Outside of remit / other	1
Don't Tell the Bride	BBC 3	10/02/2014	Offensive language	2
Don't Tell the Bride	Really	16/02/2014	Offensive language	1
EastEnders	BBC 1	16/01/2014	Drugs, smoking, solvents or alcohol	1
EastEnders	BBC 1	31/01/2014	Religious/Beliefs discrimination/offence	1
EastEnders	BBC 1	03/02/2014	Generally accepted standards	1
EastEnders	BBC 1	03/02/2014	Scheduling	6
EastEnders	BBC 1	14/02/2014	Generally accepted standards	2
EastEnders	BBC 1	14/02/2014	Race discrimination/offence	2
EastEnders	BBC 1	Various	Violence and dangerous behaviour	1
Emmerdale	ITV	05/02/2014	Scheduling	2
Emmerdale	ITV	13/02/2014	Generally accepted standards	1
Emmerdale	ITV	13/02/2014	Religious/Beliefs discrimination/offence	1
Have I Got News For You	Dave	09/02/2014	Offensive language	1
Hawksbee and Jacobs	Talksport	29/01/2014	Generally accepted standards	1
How I Met Your Mother	E4	28/01/2014	Offensive language	1
Hunted (trailer)	Channel 4	04/02/2014	Scheduling	2
Ice Road Truckers	Channel 5	31/01/2014	Offensive language	1
Ice Road Truckers	Channel 5	07/02/2014	Offensive language	2
Inventions that Shook the World	Discovery World	28/12/2013	Materially misleading	1
ITV News and Weather	ITV	09/02/2014	Animal welfare	1
ITV News Lookaround	ITV Border (Scottish)	07/01/2014	Due accuracy	1
Jamie and Jimmy's Friday Night Feast	Channel 4	02/02/2014	Gender discrimination/offence	2
Ja'mie: Private School Girl	BBC 3	06/02/2014	Harm	1
Jim Davidson: At Least I'm Not Boring	Channel 5	10/02/2014	Offensive language	1
Jonathan Vernon Smith	BBC Three Counties Radio	06/02/2014	Materially misleading	1
Julia Hartley Brewer	LBC 97.3 FM	06/02/2014	Disability discrimination/offence	1

Julia Hartley Brewer	LBC 97.3FM	05/02/2014	Race discrimination/offence	2
Live PGA Golf	Sky Sports 4	06/02/2014	Gender discrimination/offence	1
Longmire & Played	5USA	Various	Television Access Services	1
Loose Women	ITV	24/01/2014	Violence and dangerous behaviour	2
Lorraine	ITV	05/02/2014	Materially misleading	1
Mahabharat	Star Plus	16/01/2014	Religious/Beliefs discrimination/offence	1
Match of the Day	BBC 1	08/02/2014	Generally accepted standards	14
Mid Mornings with Steve Jennings	Tone FM	17/01/2014	Due impartiality/bias	1
Newsbeat	BBC Radio 1	11/02/2014	Scheduling	1
Obsessive Compulsive Cleaners	Channel 4	Various	Materially misleading	1
Outbreak	Channel 5	26/01/2014	Scheduling	2
Pac-Man and The Ghostly Adventures	Disney XD	01/02/2014	Race discrimination/offence	1
Party Political Broadcast by the Scottish National Party	STV	30/01/2014	Due accuracy	1
Playboy Chat	Playboy Chat	Various	Outside of remit / other	1
Police Interceptors	Channel 5	17/02/2014	Offensive language	1
Press Preview	Sky News	20/01/2014	Due impartiality/bias	1
Programming	BBC	Various	Outside of remit / other	1
Question Time	BBC 1	13/02/2014	Outside of remit / other	2
Rock FM Drive With Matt Stokes	Rock FM	23/01/2014	Scheduling	1
Room 101	BBC 1	31/01/2014	Generally accepted standards	1
Ross Kemp: Extreme World	Sky1	21/01/2014	Generally accepted standards	1
Sally Pepper	BBC Radio Derby	04/02/2014	Outside of remit / other	1
Sam Ar y Sgrin	S4C Digital	31/01/2014	Materially misleading	1
Scholl 2 In 1 Express Pen's sponsorship of US Crime Drama	Channel 5	04/02/2014	Sponsorship credits	1
Scotland's Top Ten Battlegrounds	BBC 2 (Scotland)	11/02/2014	Outside of remit / other	1
Sean Moncrief	Newstalk	05/02/2014	Outside of remit / other	1
Sham e gazal	Unity 101	06/01/2014	Race discrimination/offence	1
Sherlock Holmes	ITV 3	Various	Advertising minutage	1
Signing	Various	Various	Television Access Services	1
Silent Witness	BBC 1	30/01/2014	Religious/Beliefs discrimination/offence	1
Smoking	Various	Various	Drugs, smoking, solvents or alcohol	1
Snog, Marry, Avoid?	BBC 3	11/02/2014	Generally accepted standards	1

Soccer A.M.	Sky1	08/02/2014	Generally accepted standards	1
Splash!	ITV	15/02/2014	Nudity	1
Station Ident	Talksport	22/01/2014	Age discrimination/offence	1
Studio 66 Mornings	Studio 66 TV1	29/01/2014	Sexual material	1
Studio 66 Mornings	Studio 66 TV1	31/01/2014	Sexual material	1
STV News at Six	STV	17/01/2014	Due impartiality/bias	1
Styx	Shorts	22/12/2013	Violence and dangerous behaviour	1
Subtitling	Various	Various	Television Access Services	1
Subtitling on Freesat	Various	Various	Generally accepted standards	1
Sunday Politics	BBC 1	09/02/2014	Gender discrimination/offence	1
Super Bowl (trailer)	Channel 4	28/01/2014	Generally accepted standards	1
Super Bowl (trailer)	Channel 4	02/02/2014	Generally accepted standards	3
Superscoreboard	Clyde 1	06/02/2014	Outside of remit / other	1
Take Me Out	ITV	18/01/2014	Gender discrimination/offence	1
Text Santa	ITV	21/12/2013	Premium rate services	1
The Alan Titchmarsh Show	ITV	06/02/2014	Animal welfare	1
The Alan Titchmarsh Show	ITV	07/02/2014	Scheduling	1
The Andrew Marr Show	BBC 1	26/01/2014	Product placement	1
The Big Benefits Row: Live	Channel 5	03/02/2014	Due impartiality/bias	11
The Big Benefits Row: Live	Channel 5	03/02/2014	Generally accepted standards	2
The Chase	ITV	14/02/2014	Outside of remit / other	3
The Dog Rescuers	Channel 5	11/02/2014	Generally accepted standards	1
The Go-Between	BBC 2	11/01/2014	Sexual material	1
The Hotel Inspector	Channel 5	09/02/2014	Offensive language	1
The Hotel Inspector	Channel 5	12/02/2014	Offensive language	2
The Jeremy Kyle Show	ITV	28/01/2014	Violence and dangerous behaviour	1
The Jeremy Kyle Show	ITV	04/02/2014	Animal welfare	1
The Jeremy Kyle Show	ITV2	06/02/2014	Materially misleading	1
The Jonathan Ross Show	ITV	23/01/2014	Violence and dangerous behaviour	1
The Jonathan Ross Show	ITV	01/02/2014	Offensive language	18
The Jonathan Ross Show	ITV	05/02/2014	Generally accepted standards	1
The Jump	Channel 4	28/01/2014	Drugs, smoking, solvents or alcohol	1
The Last Leg	Channel 4	31/01/2014	Gender discrimination/offence	1
The Last Leg	Channel 4	31/01/2014	Generally accepted standards	1
The Last Leg (trailer)	Channel 4	28/01/2014	Scheduling	1
The Legend of Shelby the Swamp Man	History Channel	06/02/2014	Animal welfare	1

The Magic Breakfast Show	Magic FM	13/02/2014	Gender discrimination/offence	1
The One Show	BBC 1	05/02/2014	Violence and dangerous behaviour	1
The Radio 1 Breakfast Show with Nick Grimshaw	BBC Radio 1	n/a	Generally accepted standards	1
The Super Bowl: American Football Live	Channel 4	02/02/2014	Flashing images/risk to viewers who have PSE	2
The Wright Stuff	Channel 5	27/11/2013	Due impartiality/bias	1
The Wright Stuff	Channel 5	07/02/2014	Generally accepted standards	1
The Wright Stuff	Channel 5	07/02/2014	Television Access Services	1
Thunderpants	Channel 5	08/02/2014	Offensive language	1
Tim Key's Late Night Poetry Programme	BBC Radio 4	29/01/2014	Generally accepted standards	1
Timmy Time	CBeebies	27/01/2014	Scheduling	1
Today	BBC Radio 4	10/02/2014	Outside of remit / other	1
Today	BBC Radio 4	13/02/2014	Outside of remit / other	1
Top Gear	BBC 2	02/02/2014	Generally accepted standards	6
Top Gear	BBC 2	02/02/2014	Scheduling	10
Top Gear	BBC 2	02/02/2014	Violence and dangerous behaviour	1
Top Gear	BBC 2	03/02/2014	Scheduling	6
Top Gear	BBC 2	09/02/2014	Offensive language	1
Top Gear	BBC 2	09/02/2014	Scheduling	1
Top Gear	BBC 2	16/02/2014	Generally accepted standards	1
Top Gear	BBC 2	16/02/2014	Violence and dangerous behaviour	1
Top Gear	BBC 3	11/01/2014	Religious/Beliefs discrimination/offence	1
Top Gear	BBC 3	08/02/2014	Crime	1
Top Gear	Dave	03/02/2014	Sexual material	1
Top Gear	Dave ja vu	04/02/2014	Sexual orientation discrimination/offence	1
Tough Young Teachers	BBC 3	06/02/2014	Offensive language	1
Trax FM Breakfast show	Trax FM	14/02/2014	Outside of remit / other	1
Twitter and Facebook references	BBC	Various	Outside of remit / other	1
Ultimate Emergency Bikers	Channel 5	05/02/2014	Outside of remit / other	1
Will and Grace	Channel 4	11/02/2014	Scheduling	1
Winter Olympics	BBC	Various	Outside of remit / other	1
Winter Olympics	BBC	Various	Outside of remit / other	1
Winter Olympics	BBC 2	09/02/2014	Outside of remit / other	4
Winter Olympics	BBC 2	11/02/2014	Outside of remit / other	2
Winter Olympics	BBC 2	14/02/2014	Outside of remit / other	1
Yukon Men	Discovery Channel	04/02/2014	Generally accepted standards	1

Investigations List

If Ofcom considers that a broadcaster may have breached its codes, a condition of its licence or other regulatory requirements, it will start an investigation.

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 licence or other regulatory requirements being recorded.

Here are alphabetical lists of new investigations launched between 6 and 19 February 2014.

Investigations launched under the Procedures for investigating breaches of content standards for television and radio

Programme	Broadcaster	Transmission date
Advertising minutage	Samaa	25/12/2013
BBC News at One	BBC 1	18/02/2014
Ben Fogle: New Lives in the Wild	Channel 5	2/02/2014
Benefits Street	Channel 4	Various
Harbour Radio	Harbour Radio	30/01/2014
Nothing to Declare	Sky Living	20/01/2014
Occupy the Airwaves	Phonic FM	25/01/2014
Real Housewives of Beverly Hills	Lifetime	23/01/2014
You've Been Framed!	ITV	16/02/2014

For more information about how Ofcom assesses complaints and conducts investigations about content standards, go to: http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/.

Investigations launched under the General Procedures for investigating breaches of broadcast licences

Licensee	Licensed Service
Peace Full Media Limited	Peace FM
Oldham FM Limited	96.2 The Revolution (Oldham)

For more information about how Ofcom assesses complaints and conducts investigations about broadcast licences, go to: http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/general-procedures/.