

Ofcom Broadcast Bulletin

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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 objectives¹. 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 Act².

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 advertising³.
- 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.

Note to Broadcasters

Programming relating to the Scottish Independence Referendum

On 18 September 2014, the Scottish Independence Referendum will be held within Scotland.

Ofcom reminds all broadcasters that great care needs to be taken when broadcasting programming relating to the referendum. In particular, broadcasters should ensure that they comply with Section Five (Due Impartiality)¹ and Section Six (Elections and Referendums)² of the Code, as well as the prohibition of political advertising contained in section 321 of the Communications Act 2003.

The rules in Section Six apply during the “referendum period” which will commence on 30 May 2014.

Ofcom will consider any breach arising from referendum-related programming to be potentially serious, and will consider taking regulatory action, as appropriate, in such cases, including considering the imposition of a statutory sanction.

For further information about the Scottish Independence Referendum, broadcasters should visit the Electoral Commission website at www.electoralcommission.org.uk.

Broadcasters are also reminded that if they would find it helpful to have informal guidance on Sections Five and Six of the Code, they can contact Ofcom directly (adam.baxter@ofcom.org.uk).

¹ See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/section5.pdf> Ofcom’s published Guidance to Section Five of the Code can be found at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>.

² See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/section6.pdf> Ofcom’s published Guidance to Section Six of the Code can be found at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section6.pdf>.

Standards cases

In Breach

Winning Figure: Toning and Nutrition

The Active Channel, September 2013 to February 2014, various times

Introduction

The Active Channel is a satellite television channel aimed at viewers with an interest in sport and fitness. The licence for The Active Channel is held by The Active Channel Ltd (“The Active Channel” or “the Licensee”).

During routine monitoring, Ofcom noted *Winning Figure: Toning and Nutrition* (“*Winning Figure*”), a programme including fitness and nutrition advice and discussion. The programme was aired 19 times between September 2013 and February 2014.

Presented by Tim Sharp, the programme was shot in his house and featured a workout regime with a female client, nutrition advice and descriptions by the client of her lifestyle and fitness regime.

At the start of the programme the universal product placement logo¹ (a ‘P’ symbol) was displayed, indicating that the programme contained product placement. The symbol was not shown again.

At several points during the programme a tub of LA Muscle whey supplement was visible in shot. Twice in the programme the presenter referred directly to the placed product.

On the first occasion, while showing how to make a nutritionally efficient breakfast, the presenter stated:

“...we’ve got the energy there for our day, there we go, most important part is the energy. Now, the balance of the breakfast: we’ve got to bring up the protein as well. Here’s a really simple way of doing this, is whey protein. That’s what I do, it’s simple. [Fetched large tub of LA Muscle whey.] So the most important part is the protein, the muscle building, so what I’m going to bring in now is about 24g of whey protein. This tastes great. That is the way to do it, so, look at that: we just added a really simple whey, a great tasting whey protein from LA Muscle. What we’ve got there is the part of the breakfast that’s gonna build the muscle...”

Later in the programme the presenter discussed nutrition from behind a table on which there were baskets of fruit and vegetables and some LA Muscle supplements. He said:

“Where do we start with nutrition? What’s the plan we’re gonna make? OK here we go. Very, very simple. We need carbohydrate. Here we’ve got potatoes, we’ve got brown rice, those are the complex carbs. We’ve got great protein as well, remember we’ve got chicken, fish, turkey, that’s great too. [Reached across to the

¹ Guidance on the form, size and duration of the logo can be found in Annex 1 of Ofcom’s Guidance to Section Nine of the Code at:
<http://stakeholders.ofcom.org.uk/binaries/guidance/831193/section9.pdf>.

LA Muscle products – the products stayed in close up as presenter spoke.]
Obviously supplements plays a huge part in the plan that you're gonna be making as well – whey protein should be the backbone of your nutritional plan as well...".

The programme also featured comments by Mr Sharp's client, Rachel. At one point she talked about changes she had made to her lifestyle in order to lose weight. She was shown sitting in a living room with a table in the near background. She said:

"My name's Rachel and I'm 40 years old. I have three children and now I body build. It's hard to believe that over a year ago I was over 12 stone, a size 14 in clothes and really, really unhappy with my appearance and the direction of my life. So I decided to take control and charge of my life. The turning point was being too embarrassed to take my son swimming...being embarrassed, being embarrassed of my body, him being embarrassed of me also. So I decided to do something about it, really for him..."

At this point the camera zoomed into a packet of a product called SlimGum that was positioned on the table in the near background. The image of the packet was pulled into focus, emphasising the product, before the shot returned to Rachel, with the SlimGum packet still apparent in the background, but out of focus. Rachel continued:

"...So I changed my diet as much as I could. I'm a fully qualified aerobics instructor, so I know about nutrition, so I understand about food. So I decided to take control, get rid of all the treats, get rid of all the crisps, chocolates, snacky stuff and fill my fridge and my cupboards with the healthy options."

Ofcom therefore considered that the broadcast raised issues warranting investigation under the following rules:

- Rule 9.9 References to placed products, services and trade marks must not be promotional.
- Rule 9.14 Product placement must be signalled clearly, by means of a universal neutral logo, as follows:
- a) at the beginning of the programme in which the placement appears;
 - b) when the programme recommences after commercial breaks; and
 - c) at the end of the programme.

We therefore sought The Active Channel's comments under the above rules.

Response

The Active Channel emphasised that it wished to avoid falling foul of any Ofcom rules.

The Licensee explained that The Active Channel was a small channel with a small team of multi-skilled staff. Because of this, it said, there were gaps in its knowledge of "proper protocol". The Active Channel told us that it was raising "all levels of production" and working to ensure proper adherence to Ofcom rules. The Licensee said that this programme had been produced and edited by the previous post-holder and had only just been properly reviewed.

In respect of the product placement rules, the Licensee said that “Our production team believed that testimonials were allowed under product placement rules provided that the ‘P’ symbol was used.”

After receiving Ofcom’s enquiry the Licensee had suspended *Winning Figure* from its schedules. The Active Channel said that it would take any necessary steps to ensure the compliance of the programme with the Code.

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 specific standards objectives, including “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

The AVMS Directive contains a number of provisions designed to help maintain a distinction between advertising and editorial content, including a requirement that television advertising is kept visually and/or audibly distinct from programming in order to prevent programmes becoming vehicles for advertising.

In addition, the AVMS Directive and the Act prohibit product placement where, among other things, such placement directly encourages the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise. The AVMS Directive and the Act also require that viewers are clearly informed of the existence of product placement in programmes and that surreptitious advertising is prohibited.

Among others, Rules 9.9 and 9.14 of the Code reflect these requirements.

Rule 9.9 (no promotion of placed products)

Ofcom noted the Licensee’s view that it had understood ‘testimonials’ were permitted in programming providing that the product placement logo was shown. However, this is to misunderstand one of the principles behind the rules in Section Nine of the Code, to ensure that there is a clear distinction between editorial content and advertising. Programmes therefore cannot contain testimonials in the manner of advertising claims (other than where such an inclusion is editorially justified, such as in a consumer programme or documentary that is critically examining an advertiser’s claims). In particular, as Ofcom’s Guidance to Rule 9.9 of the Code makes clear:

“where a product, service or trade mark is included in a programme as a result of a product placement arrangement, a positive reference to it, whether in vision or audio, is likely to be perceived to be promotional in intent.”

The Guidance goes on to set out a list of factors that are likely to make a reference to a placed product in a programme promotional. These include:

- advertising claims;
- references (either explicit or implicit) to the positive attributes or benefits of the placed product, service or trade mark; and
- endorsements (either explicit or implicit).

In this case, we considered that the comments about the branded whey product made by the presenter could not be editorially justified. They were in Ofcom's view plainly promotional; they were positive references in the manner of advertising claims, which explicitly endorsed the placed product and encouraged its use:

... "So the most important part is the protein, the muscle building, so what I'm going to bring in now is about 24g of whey protein. This tastes great. That is the way to do it, so, look at that: we just added a really simple whey, a great tasting whey protein from LA Muscle. What we've got there is the part of the breakfast that's gonna build the muscle"; and

"Obviously supplements plays a huge part in the plan that you're gonna be making as well – whey protein should be the backbone of your nutritional plan as well..."

Both comments were made while the product was featured and, for the first statement, being used.

We were also of the view that the manner of the inclusion of the SlimGum product could not be editorially justified. The combination of the shot of the SlimGum packaging as Rachel described her successful weight loss clearly associated the product with the results she claimed:

"...It's hard to believe that over a year ago I was over 12 stone, a size 14 in clothes and really, really unhappy with my appearance... So I decided to do something about it..."

Because of this, we concluded that the way in which the SlimGum product was shown during Rachel's personal account promoted the placed product.

Ofcom therefore concluded that the programme breached Rule 9.9.

Rule 9.14 (product placement must be signalled)

Rule 9.14, which states that product placement must be signalled clearly at defined points during programmes, applies to programmes (including films made for cinema) produced or commissioned by the provider of the television programme service or any person connected with that provider. In this case, the programme was produced by the Licensee and Rule 9.14 therefore applied. This rule requires that where a programme contains product placement, the universal logo must appear at the beginning of the programme in which the placement appears, when the programme recommences after commercial breaks, and at the end of the programme.

Winning Figure displayed the logo only once at the start of the programme.

The programme was therefore in breach of Rule 9.14.

Conclusion

For the reasons set out above, each of the 19 transmissions of *Winning Figure* was in breach of Rules 9.9 and 9.14.

Ofcom noted the Licensee's willingness to suspend transmission of the feature and its confirmation that it will pursue a renewed focus on compliance with its licence and Code obligations. Although we noted the steps taken by the Licensee, in view of our

concerns about its compliance, we are requesting The Active Channel's attendance at a meeting to discuss its procedures.

Breaches of Rules 9.9 and 9.14

In Breach

Walton Golden Recipe

ATN Bangla, 13 January 2014, 17:55

Introduction

ATN Bangla is a news and general entertainment channel broadcast in Bengali and serving a Bangladeshi audience. The licence for ATN Bangla is held by ATN Bangla UK Limited (“ATN Bangla” or “the Licensee”).

Walton Golden Recipe was a cookery show during which the host cooked a meal and discussed the food’s nutritional benefits. We received a complaint about the prominence of placed products and branding in the programme.

Ofcom viewed the edition of *Walton Golden Recipe* broadcast on 13 January 2014, noting a number of commercial references throughout the programme. As the programme was predominantly in Bengali with some English, we commissioned an independent translation of the material.

We were concerned by the prominence given to commercial references for Walton, a manufacturer of kitchen appliances, during the programme. In particular we noted that:

- Throughout the programme, prominently placed brand references were shown. These included large ‘Walton’ stickers on the microwave and the oven shown on the set, a prominent ‘Walton’ logo on the front of the worktop used throughout the majority of the programme, and a large sign for ‘Walton’ which regularly could be seen behind the presenter.
- At points in the programme, the presenter discussed the merits of Walton goods, including the speed of an induction heater and the effectiveness of a rice cooker.

The Licensee confirmed to Ofcom that the references to Walton were product placed. Ofcom considered that these references raised issues warranting investigation under the following rules of the Code:

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

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

In addition, Ofcom noted that there was no signalling of product placement at any point in the programme. We considered, therefore, that this warranted investigation under Rule 9.14 of the Code:

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

- a) at the beginning of the programme in which the placement appears;
- b) when the programme recommences after commercial breaks; and

c) at the end of the programme.”

We asked ATN Bangla for comments on how the material complied with Rules 9.9, 9.10 and 9.14.

Response

The Licensee stated that “product placement was apparent as [the] name of ‘Walton’ was embedded in the programme”, but also highlighted that “Walton is a company in Bangladesh and it has no product, service or branch in the UK or any European country”. Accordingly, the Licensee considered that the “product placement thus had no promotional value”. ATN Bangla also noted that, while it “did not receive any financial benefit” from the product placement in the programme, its “mother station in Bangladesh” commissioned and “fully benefitted from the product placement [in] *Golden Recipe*”. Finally, the Licensee confirmed that it had subsequently dropped the programme from its schedule.

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”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

The AVMS Directive contains a number of provisions designed to help maintain a distinction between advertising and editorial content, including requirements that television advertising is kept visually and/or audibly distinct from programming in order to prevent programmes becoming vehicles for advertising, and limiting the amount of advertising shown in any clock hour. The AVMS Directive and the Act also prohibit product placement where, among other things, such placement:

- directly encourages the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise; and
- gives undue prominence to the products, services or trade marks concerned.

The AVMS Directive and the Act also include requirements about signalling product placement in programmes to the audience.

The requirements of the AVMS Directive and the Act are reflected in Section Nine of the Code, including Rules 9.9, 9.10 and 9.14 among others.

Prominence and promotional nature of product placement

Ofcom’s guidance accompanying Section Nine of the Code¹ makes clear that a breach of the product placement rules is likely to occur not only when clear promotional statements are made but also “where repeated implicit promotional content is broadcast (e.g. multiple references to a product that cannot be justified by the editorial requirements of the programme)”. The guidance also states that the level of prominence given to a product, service or trade mark will be judged against the

¹ Ofcom’s Guidance to Section Nine of the Code can be found at:
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

editorial context in which it appears. Consequently, while a product that is integral to a scene may justify a greater degree of product exposure, “where a product is used as a set prop, care should be taken to avoid close-up or lingering shots”.

In this case, we noted in addition to a reference to a Walton induction heater used in the programme and a Walton rice cooker given away as a gift to a guest, aspects of the set were covered in ‘Walton’ stickers and signs, including stickers placed on a microwave and an oven. Also, the worktop the presenter used to prepare food was branded with a large ‘Walton’ logo, and a large sign for ‘Walton’ could be seen behind the presenter for most of the duration of the programme.

In addition to these visual references, we noted that during the cooking demonstration the presenter stated the following:

“It’s a new product from Walton. It’s an induction heater. If you switch it on and select the function, the water will become hot in just, for example, in 30 seconds”.

As the presenter described how to use the product, the programme cut to a close-up shot of the presenter pressing buttons on the induction heater, with a studio guest commenting that the induction heater was “very quick”.

Later in the programme the presenter presented the guest with a Walton rice cooker and stated:

“Now that you have brought it up, let me give Afrin a Walton rice cooker from here”.

The presenter then went on to add:

“It is a very nice rice cooker. I will give you the instructions. It is as effective as any [rice cooker] made in other countries”.

In our view both the amount and nature of placement during the programme served a promotional rather than editorial purpose. We therefore considered that the amount and detail of the explicit and implicit references to placed products was promotional and the programme therefore breached Rule 9.9 of the Code. In addition, we did not consider that there was editorial justification for the placement that featured in the programme and it therefore breached Rule 9.10 of the Code.

Finally, we noted the Licensee’s argument that because Walton “has no product, service or branch in the UK or any European country” the product placement in the programme “had no promotional value”. However, the definition of product placement in the Code contains no exemption for products or services which are not available within Europe.

Product placement signalling

Rule 9.14, which states that product placement must be signalled clearly at defined points during programmes, applies to programmes (including films made for cinema) produced or commissioned by the provider of the television programme service or any person connected with that provider. In this case, the programme had been commissioned by the Licensee’s “mother station in Bangladesh”. Rule 9.14 therefore applied.

Ofcom noted that despite product placement featuring in the programme, the universal neutral logo² (a 'P' symbol) was not shown at any stage as a signal to the viewer.

We concluded, therefore, that the programme was in breach of Rule 9.14 of the Code.

Breaches of Rules 9.9, 9.10 and 9.14

² Guidance on the form, size and duration of the logo can be found in Annex 1 of Ofcom's Guidance to Section Nine of the Code, cited in footnote 1 above.

In Breach

Janice Dickinson Live

FilmOn.tv, 23 March 2014, 01:20

Introduction

FilmOn.tv is an entertainment channel broadcasting on digital satellite platforms. The licence for FilmOn.tv is held by FilmOn TV Limited (“FilmOn” or “the Licensee”). *Janice Dickinson Live* is a programme originally created for broadcast in the USA, which features celebrity guests in conversation with former model Janice Dickinson.

Ofcom was alerted to this broadcast of the programme by a complainant, who felt that its content was unsuitable. We assessed the material and noted the following exchange between a guest, Phoebe Phaigh, and the host, Janice Dickinson:

Phaigh: *“So do I get to plug here now?”*

Dickinson: *“Plug whatever you want.”*

Phaigh: *“OK, you can see that song that you guys saw today on the wonderful Janice... What show am I on?”*

Dickinson: *“You’re on Janice Dickinson’s show. You know who I am, bitch! I’m [bleeped] famous. I’m so famous I got my own TV show.”*

Phaigh: *“So go to [website given] and plug in Phoebe Phaigh, White Rabbit, and you can see that again if you’d like to.”*

Dickinson: *“My God, I’d rather stick pins in my eyes! Sorry.”*

Phaigh: *“Also you can go to Phoebe... No, I’m sorry, [website address given], I actually do readings, I’m a psychic...”*

Dickinson: *“Oh no, OK, let’s talk about this, what about me, why am I feeling, like, under the weather?”*

Phaigh: *“Because I’m taking over your show, bitch!”*

Ofcom considered that this sequence raised issues warranting investigation under Rule 9.4 of the Code, which states:

“Products, services and trade marks must not be promoted in programming.”

We therefore asked the Licensee for comments on how the material complied with this rule.

Response

FilmOn responded that it had experienced “several problems with our live output from the US”, as content which seemed “natural” in America was “not always” appropriate in the UK. The Licensee stated that as a consequence it had stopped “all original

production from America” and “95% of the live output”. FilmOn gave its assurance to Ofcom that the problem would not recur.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, one of which is “that 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 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.

The above requirements are reflected in, among other rules, Rule 9.4 of the Code, which states that products, services and trade marks must not be promoted in programming.

As Ofcom’s Guidance to Section Nine of the Code acknowledges, presenters and guests often discuss aspects of the guest’s personal life and career during magazine programmes and chat shows. This may involve discussion of book, film or music releases, television programmes, or fashion and beauty lines. However, licensees are expected to ensure that any such references are both editorially justified and presented in a way that does not raise concerns under Section Nine of the Code. In particular, any references to commercial products or services should be appropriately limited so as not to become promotional.

In this case, Ofcom noted that the programme guest, Phoebe Phaigh, made a specific request to promote her business interests on the programme, which was permitted by the host, Janice Dickinson. Having explicitly been given an opportunity to do so, Ms Phaigh referred viewers to a website where ‘psychic’ goods and services were sold:

Phaigh: *“Also you can go to Phoebe... No, I’m sorry, [website address given], I actually do readings, I’m a psychic...”*

Ofcom acknowledged that the exchange was in keeping with the chaotic and irreverent atmosphere *Janice Dickinson Live* sought to present. However, licensees are expected to brief presenters and guests about the limits of what they can discuss, especially if a reference (or references) to a product, service or trade mark is intended. The fact that references to a commercial product may be unscripted, unintentional, humorous and/or spontaneous does not necessarily prevent them from becoming promotional for the product concerned. Because in this case a guest was permitted to provide details and promote business interests including services that were unconnected with the other subjects discussed during *Janice Dickinson Live*, we concluded that the programme was in breach of Rule 9.4.

Ofcom noted the Licensee’s explanation that the commercial reference was the result of the different regulatory environments in the USA and the UK. However, as FilmOn should be aware, it is the responsibility of all licensees to ensure that material originally commissioned for broadcast outside the UK is fully compliant with the Code.

Ofcom has already expressed concern about FilmOn's compliance arrangements¹. Although we note FilmOn's decision to stop transmitting programmes originally created for broadcast in the USA, the Licensee must ensure that it has appropriate measures in place to ensure the material it does broadcast is compliant with the Code.

Breach of Rule 9.4

¹ See issue 248 of Ofcom's Broadcast Bulletin, 17 February 2014, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb248/obb248.pdf>.

In Breach

Retention and production of recordings

Peace FM, 9 to 15 January 2014, various times

Introduction

Peace FM is a community radio station primarily aimed at the African and Caribbean community in Manchester. The licence for this service is held by Peace Full Media Limited (“PFM Limited” or “the Licensee”).

Ofcom received a complaint that a presenter made insulting comments about the former Israeli Prime Minister, Ariel Sharon, shortly after his death¹.

We requested a recording of the content. However, the Licensee said it was unable to provide it.

Ofcom considered this raised issues warranting investigation under Conditions 8(2)(a) and (b) of PFM Limited’s Community Radio Licence which state:

“8(2) In particular, the Licensee shall:

- (a) make and retain, for a period of 42 days from the date of its inclusion therein, a recording of every programme included in the Licensed Service together with regular time reference checks; and
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction...”.

We therefore asked the Licensee for its comments on its compliance with these conditions.

Ofcom also asked PFM Limited how this situation arose, given the previous assurances the station had given to Ofcom about improved compliance recording measures following a licence condition breach for retention and production of recordings in issue 247 of Ofcom’s Broadcast Bulletin².

Response

PFM Limited said that it “had made all attempts to adhere to” its compliance recording obligations. It added that, following the previous decision³, it had adopted procedures to enable recordings to be provided to Ofcom, including an additional back-up compliance recording system. The Licensee stressed that this system was in

¹ Ariel Sharon died on 11 January 2014.

² See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb247/obb247.pdf> In that decision Ofcom recorded a breach of Conditions 8(2)(a) and (b) of the Licensee’s Community Radio Licence, because a computer failure had resulted in the station’s broadcast output not being recorded for four days in August 2013. In that case, PFM Limited had informed Ofcom that it: “now has a second computer [to] make a back-up recording of its output”.

³ Ibid.

place on 14 January 2014, the date from which Ofcom had requested a recording of broadcast content.

However, while attempting to retrieve the recording requested in this case, PFM Limited said it had been alerted by one of its technicians that an individual had been able to access the station's main compliance recording system and back-up recording systems and had deleted Peace FM's output from 9 to 15 January 2014.

In its view, PFM Limited stated that there had been previous "attempts of sabotage...to stop the station from functioning." The Licensee said this included a previous incident of criminal damage which had been reported to the police. It added that to maintain the continuity of its compliance recording systems in future, "additional security measures", including tighter restrictions on the access to recording systems, had now been implemented and all equipment has now been secured.

Decision

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster's licence there are conditions requiring the licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request to produce such recordings issued by Ofcom. Community Radio licences enshrine these obligations in Licence Conditions 8(2)(a) and (b).

Under Licence Condition 8(2)(a), Ofcom requires licensees to make a recording of every programme included in the service, and to retain these for 42 days after broadcast. Under Licence Condition 8(2)(b) Ofcom requires licensees to produce such recordings forthwith upon request.

Breaches of Licence Conditions 8(2)(a) and (b) are significant because they impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the relevant codes. This can therefore affect Ofcom's ability to carry out its statutory duties in regulating broadcast content.

In this case, Ofcom accepted that PFM Limited had been unable to provide the recordings for reasons outside of its control. Nevertheless, the ability to provide recordings is a fundamental requirement of any licensee. Therefore, the Licensee's failure to supply the broadcast material, and the loss of recorded programming across this period, amounted to clear breaches of Licence Conditions 8(2)(a) and (b).

We are concerned that, in this case, PFM Limited only became aware on 16 January 2014 that the station's output between 9 and 15 January 2014 had not been retained on its main and back-up compliance recording systems. We therefore expect the Licensee to monitor its compliance recording systems, as appropriate, to ensure that it is able to provide recordings of its content to Ofcom forthwith, when requested to do so.

We will monitor the Licensee's arrangements to retain and provide recordings to Ofcom in due course. We are therefore putting Peace FM on notice that should similar compliance issues arise Ofcom may take further regulatory action.

Breaches of Licence Conditions 8(2)(a) and (b)

In Breach

Retention and production of recordings

Castle FM (Leith), 10, 11 and 14 February 2014, various times

Introduction

Castle FM is a community radio station licensed to provide a service for the residents of Leith in Scotland. The licence is held by Leith Community Media Works Ltd (“LCMWL” or “the Licensee”).

Three listeners alerted Ofcom to offensive language, including the word “fuck” and variations of it, in music tracks broadcast at various times on 10, 11 and 14 February 2014.

Ofcom asked the Licensee to provide recordings of the output. The Licensee explained it had recently changed premises, and that the equipment used to record all its output remained at its old premises. Despite numerous attempts, it said that it had been unable to gain access to the old premises and was therefore unable to provide the recordings.

Ofcom considered that this raised issues warranting investigation under Conditions 8(2)(a) and (b) of LCMWL’s licence, which require that the Licensee will:

- “(a) make and retain, for a period of 42 days from the date of its inclusion, a recording of every programme included in the Licensed Service...
- (b) at the request of Ofcom forthwith produce to Ofcom any...recording for examination or reproduction;...”.

Ofcom therefore asked the Licensee for its formal comments on its compliance with this licence condition.

Response

The Licensee did not provide additional comments.

Decision

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster’s licence there are conditions requiring the licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request to produce such recordings issued by Ofcom. Community Radio licences enshrine these obligations in Licence Conditions 8(2)(a) and (b).

Under Licence Condition 8(2)(a), Ofcom requires licensees to make a recording of every programme included in the service, and to retain these for 42 days after broadcast. Under Licence Condition 8(2)(b) Ofcom requires licensees to produce such recordings forthwith upon request.

It is a condition of all radio licences that the licensee adopts procedures for the retention of recordings and produces recordings to Ofcom forthwith on request.

Ofcom noted that the Licensee's failure to provide Ofcom with the recordings was due to it being unable to access its recording equipment in its old premises. However, the Licensee is obliged under the terms of its licence to ensure that recordings of its output are retained for 42 days and provided to Ofcom on request.

The failure to provide Ofcom with the recordings requested is a significant breach of LCMWL's licence, which, in this particular case, significantly affects Ofcom's ability to assess the station's compliance with the Code.

In a separate case, the Licensee was similarly unable to provide Ofcom with recordings to enable us to assess its compliance with its Key Commitments. This is published as a separate Finding on page 33 of this issue of the Broadcast Bulletin.

We will monitor the Licensee's arrangements to retain and provide recordings to Ofcom in due course. We are therefore putting LCMWL on notice that should similar compliance issues arise Ofcom will consider taking further regulatory action which may include the consideration of the imposition of a statutory sanction.

Breaches of Licence Conditions 8(2)(a) and (b)

Resolved

BBC News at One

BBC 1, 18 February 2014, 13:00

Introduction

On 18 February 2014, the *BBC News at One* reported on the clashes between police and anti-government protesters in Bangkok, Thailand as police tried to re-take government ministries that had been occupied by anti-government protesters.

Ofcom received 15 complaints about this news report broadcast. The complainants alerted Ofcom to the inclusion in the report of scenes showing graphic and disturbing images, which the complainants did not consider to be appropriate for the time of transmission. We noted that it was the school half-term holidays.

The item was introduced by *BBC News at One* presenter Sophie Raworth who presented a pre-recorded news report on this story by BBC's South East Asia correspondent, Jonathan Head. The presenter introduced the report by saying: *"At least three people have been killed and dozens of others wounded in clashes between police and anti-government protesters in Thailand's capital, Bangkok. Violence erupted when riot police..."* This was accompanied by a studio background of a screen showing the text *"Thailand in Turmoil"*, set against an image of Thailand's flag.

The report included footage of anti-government protesters and riot police, as the latter attempted to negotiate with the protesters outside government buildings. The item included clips showing how the confrontation escalated from peaceful protests to violence between the two opposing sides and included an image of an injured policeman, with blood on his face, being carried into an ambulance on a stretcher. The footage was accompanied by the reporter explaining the growing tensions between the riot police and protesters, and giving details of the injuries sustained by both groups.

Our concern focused on a particular sequence of footage broadcast at about 13:22. The first shot featured a group of riot police officers, formed in a line, crouched down behind their protective shields, in the middle of the street. An additional police officer was shown running to join the front of the group. This was accompanied by the reporter stating: *"Then this. A grenade arched into the police line, landing at their feet"*. As the police officer crouched down beside his fellow officers, behind his protective shield, a grenade could be seen landing immediately in front of the policemen's shields.

The reporter said: *"One officer realised the danger"*. The next shot showed one police officer stand up, break away from the line of shields and aim a kick at the grenade. At the point the police officer's boot was about to make contact with the grenade, it exploded. The footage then showed what appeared to be a boot, falling from a cloud of smoke caused by the explosion. A very brief shot of the boot hitting the ground followed, accompanied by the reporter's voiceover stating: *"but too late"*.

The reporter stated: *"Four were injured. One lost his leg"*. He said these words as the cloud of smoke, caused by the explosion, dispersed to reveal a police officer lying on the ground and rolling over and a shot of another police officer lying still on the

ground. Although the shots of the police officers were brief and rather unclear it was evident that the police officer had injured his leg.

The report concluded with footage showing wounded protesters being carried away on stretchers and protesters reconstructing barricades to reclaim the street.

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

“Children must...be protected by appropriate scheduling from material that is unsuitable for them”.

We therefore sought comments from the BBC as to how the material complied with this rule.

Response

The BBC accepted that the sequence (as detailed in the Introduction): “showed particularly graphic violence”. The broadcaster said that the unsuitability of the material: “should have been recognised before it was transmitted”.

The BBC said it believed that the manner in which the report was introduced (as detailed in the Introduction) would have prepared viewers for “sequences showing violence and the effects of violence”.

The BBC said that although the reporter believed the police officer had lost his leg, based on the information available on the day, the broadcaster had since established that the injuries to the police officer leg had been successfully treated. However, the broadcaster said “whatever the precise facts...the impression created by the combination of words and images in this sequence went beyond what could be justified by the context irrespective of the number of children in the audience”.

The BBC explained the measures it took shortly after the end of the news bulletin. These included immediately alerting teams preparing news programmes across the BBC’s television channels and flagging the report in its on-line editing system: “so that they would not be used again without the appropriate context and referral to a senior editor”.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it be best calculated to secure the standards objectives, including that “persons under the age of eighteen are protected”. This duty is reflected in Section One of the Code.

In reaching a decision in this case, Ofcom had 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 the 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.

The Code contains no prohibition on showing distressing or graphic content before the watershed because there may be occasions where the broadcast of such material is appropriately scheduled or justified. Ofcom believes that, taking account

of the right to freedom of expression, it is important for news programmes to be able to report freely on events which the broadcasters consider to be in the public interest. However, when broadcasting distressing material, broadcasters must comply with Rule 1.3 (to protect the under-eighteens).

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; the likely audience expectations and the availability of children to view, taking into account school time, weekends and holidays

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

Ofcom noted that the news report included footage of a police officer's attempt to kick a grenade away from a group of fellow police officers. Although the shot was brief the impact of the explosion could be seen and heard at the point the police officer was about to make contact with the grenade. The footage showed a boot falling from a cloud of smoke caused by the explosion and a police officer lying on the ground after the explosion. We noted that the reporter provided details of the results of the violence, for example: "*One [policeman] lost his leg*". The commentary of the reporter compounded the already distressing image of the explosion, by reinforcing the dangerous and violent nature of the protests. We therefore considered that the news report contained distressing material unsuitable for children.

We went on to assess whether the news report had been appropriately scheduled.

Ofcom's guidance¹ on Section One of the Code states:

"It is accepted that it is in the public interest that, in certain circumstances, news programmes may show material which is stronger than may be expected pre-watershed in other programmes as long as clear information is given in advance so that adults may regulate the viewing of children".

We noted that the BBC said in its representations that the manner in which the report was introduced provided information to viewers to expect "sequences showing violence and the effects of violence". In Ofcom's view the information provided was too general and indirect, and did not provide a clear warning in advance about the distressing nature of the violent images relating to the grenade incident included in the report.

Also the news report was broadcast on a Tuesday at 13:20 during the school half-term holidays, when it was more likely that children were available to view. For these reasons this content exceeded audience expectations, and therefore on balance was not appropriately scheduled and Rule 1.3 was breached.

However, we noted that the BBC acknowledged that this report contained unsuitable material which should have been (but which was not) recognised before transmission. Further, the BBC took immediate steps to alert teams preparing news programmes across the BBC's channels to the content so it would not be used again without appropriate context.

¹ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>

In these circumstances, we considered this matter resolved.

Resolved

Resolved

90s at 9

Preston FM, 19 March 2014, 09:27

Introduction

Preston FM is a community radio station based in Preston. It plays a broad range of speech and music, comprising a mix of mainstream popular music from the 1960s onwards and specialist music programmes. The licence for this service is held by Preston FM Limited (“Preston FM” or “the Licensee”).

On 20 March 2014 Preston FM notified Ofcom of an incident of offensive language in a music track broadcast the previous day, a Wednesday, at approximately 09:27.

Ofcom noted the track *Don't Stop (Wiggle Wiggle)* by the Outhere Brothers, which included the word “*motherfuckers*” in the opening segment of the song, and the following lyrics repeated at intervals during the track:

*“Put your ass on my face, I love the way your pussy tastes.
Girl you know you are the one, shake that ass and make me come.
Girl you got to suck my dick, and you got to suck it quick”.*

The presenter apologised on air while the next track was playing:

“...we would just like to make an on-air apology for some of the lyrics in the previous song. We do apologise and we won't be playing that track again, and if you were offended by the words of the song, we sincerely apologise...back to the music, and once again apologies for the lyrics in the previous song, we do apologise”.

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

“The most offensive language must not be broadcast...when children are particularly likely to be listening (in the case of radio).”

The broadcast of this material occurred at approximately 09:27 on a Wednesday during school term time, and therefore Ofcom considered that this was not a time when children would be particularly likely to be listening.

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

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language...”

Ofcom therefore requested comments from the Licensee on how the material complied with this rule.

Response

The Licensee explained that the track was included due to an administrative error.

Following requests by listeners to expand the range of music in the “90s” hour, the station uploaded more tracks to its music library. A duty manager “thought he would help out” the music team responsible for that task, but unfortunately moved some tracks into the main library before they had been checked. This occurred at the weekend when members of the music team and management team were not present to consult.

The Licensee said that the programme broadcasting at the time of this incident was automated, with the DJ presentation pre-recorded. However, as is usually the case, there were staff present at the studio which was how it was able to deliver an on-air apology very quickly after the incident.

The apology was instigated by the station manager, who had heard the song while driving to the station, and who had called the station while the track was still playing to order it to be taken off air immediately. This could not happen straightaway however for technical reasons. The song was consequently played in full. The station manager asked the presenter to make an immediate and full on-air apology, and he interrupted the next track to do so.

The Licensee confirmed that following the incident it had examined all of the music in the relevant playlist, and that the offending song had been removed and would not be broadcast again.

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material. These objectives are reflected in Section Two of the Code.

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material must be justified by the context. Ofcom therefore considered first whether the language in this programme was potentially offensive; and, if so, whether the offence was justified by the context. Context includes, for example: the editorial content of the programme; the service on which it is broadcast; the time of broadcast; the likely size and composition of the potential audience; and the likely expectation of the audience.

Ofcom research¹ on offensive language clearly notes that the word “fuck” and its derivatives are considered by audiences to be among the most offensive language. Therefore, the use of “*motherfuckers*” broadcast at 09:27 on a weekday clearly had the potential to cause offence to the audience. The lyrics that followed (“*Put your ass...suck it quick*”) were also, in Ofcom’s view, capable of causing offence.

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

Ofcom went on to assess the context. We note that our guidance² on offensive language on radio states (regarding Rule 2.3): “Ofcom’s 2010 audience research found that in general, listeners do not expect to hear strong language during the day on radio...In reaching any decision about compliance with the Code, Ofcom will take into account the likely audience expectations of a particular radio station at the time of broadcast.”

In our opinion the majority of listeners to a community radio station playing a broad range of music and speech at this time of day would not expect programmes to contain examples of the most offensive language or sexual references, as were broadcast here. As a result we concluded that the broadcast of this language was not justified by the context. The Licensee therefore did not apply generally accepted standards and breached Rule 2.3 of the Code.

However, Ofcom took into account that: the Licensee notified Ofcom of the matter; the offensive language was broadcast in error; a full apology was broadcast very shortly thereafter; and, the station has a good compliance record.

Given all of these circumstances, Ofcom considers this matter resolved.

Resolved

² Ofcom Guidance: Offensive Language on Radio, December 2011
(<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>)

Advertising Scheduling cases

In Breach

Advertisement: The Supplements Game – The Truth About Supplements

The Active Channel, September 2013 to February 2014, various times

Introduction

The Active Channel is a satellite television channel aimed at viewers with an interest in sport and fitness. The licence for The Active Channel is held by The Active Channel Ltd (“the Active Channel” or “the Licensee”).

During routine monitoring, Ofcom noted *The Supplements Game – The Truth About Supplements* (“*The Supplements Game*”), a 13-minute long ‘advertising feature’ promoting LA Muscle products. The feature was aired 1,062 times between September 2013 and February 2014.

Presented by Tom Croft, a professional rugby union player, *The Supplements Game* contained testimonials about LA Muscle products’ efficacy, a look at the manufacturer’s factory, contributions from nutritionists and various other people, and numerous claims about the products’ capabilities and effects.

Superimposed text stating “Advertising Feature” appeared frequently throughout the item. At no point during the item was there any direct offer for sale of any product or service.

Paragraph 3(h) of the Code on the Scheduling of Television Advertising (“COSTA”) defines teleshopping as:

“...television advertising which includes direct offers to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment”.

Although there is no upper limit on the duration of teleshopping windows¹, advertising material that does not contain direct offers cannot be classed as teleshopping. Because COSTA imposes limits on the amount of other advertising that a broadcaster can transmit in each clock hour, we therefore considered that the broadcasts of *The Supplements Game* between September 2013 and February 2014 raised issues warranting investigation under Rule 4 of COSTA, which states:

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

We therefore asked the Active Channel for its comments as to how the content complied with Rule 4 of COSTA.

¹ However, note that Rule 8 of COSTA states that teleshopping windows must be at least 15 minutes long. Further, teleshopping on ‘public service channels’, as defined under COSTA, may be scheduled only between midnight and 06:00.

Response

The Active Channel emphasised that it wished to avoid falling foul of any Ofcom rules.

The Licensee explained that The Active Channel was a small channel with a small team of multi-skilled staff. Because of this, it said, there were gaps in its knowledge of “proper protocol”. The Active Channel told us that it was raising “all levels of production” and working to ensure proper adherence to Ofcom rules. The Licensee said that this advertising feature had been produced and edited some time before and had only just been properly reviewed.

The Licensee said that its production team had believed that the “advertising feature” text shown frequently throughout the item had been sufficient to identify the item as teleshopping. The Licensee said that the feature shown between September 2013 and February 2014 was shorter than the item that had been commissioned originally, having been edited down for editorial reasons. The Active Channel told us that it had been an oversight that the feature became less than 15 minutes long, i.e. shorter than the minimum length of a teleshopping window permitted under Rule 8 of COSTA.

After receiving Ofcom’s enquiry the Licensee had suspended *The Supplements Game* from its schedules. The Active Channel said that it would take any necessary steps to ensure the compliance of the item with COSTA.

Decision

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

Article 23 of the Audiovisual Media Services (“AVMS”) Directive requires that television advertising and teleshopping spots are limited to a maximum of 12 minutes in any clock hour. This requirement is reflected in Rule 4 of COSTA.

Ofcom first considered whether the item constituted teleshopping as defined in COSTA. We noted that *The Supplements Game* had included recurring text stating it was an “advertising feature”. However, as the AVMS Directive make clear, because teleshopping windows are exempted from the minutage restrictions applied to other forms of advertising, they must adopt a particular character which is distinct from both spot advertising and programme content. The characteristics that items must show in order to constitute teleshopping are set out in the definition contain in COSTA. In addition, Ofcom has issued guidance, in a Note to Broadcasters in issue 193 of our Broadcast Bulletin, emphasising the need for teleshopping to contain very frequent (preferably constant) direct offers². Because no direct offers were made in

² Issue 193 of the Broadcast Bulletin is available at:
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb193/obb193.pdf>.

The Supplements Game, we did not consider it constituted teleshopping under the definition set out in COSTA.³

Further, Ofcom noted that *The Supplements Game* was 13 minutes in duration. As such, it exceeded the maximum length permitted under COSTA for television advertising shown in a single clock hour. Each of the 1,062 transmissions of the advertisement by The Active Channel between September 2013 and February 2014 was therefore in breach of Rule 4 of COSTA.

Ofcom noted the Licensee's willingness to suspend transmission of the feature and its confirmation that it will pursue a renewed focus on compliance with its regulatory obligations.

Breaches of Rule 4 of COSTA

³ Article 24 of the AVMS Directive places a minimum duration on teleshopping windows of 15 minutes. This is reflected in Rule 8 of COSTA. Because the amount of advertising and teleshopping spots shown in a single clock hour may not exceed 12 minutes, teleshopping items which are between 12 and 15 minutes in length may not be broadcast in a single clock hour. Although *The Supplements Game* advertisement was 13 minutes long, because Ofcom did not consider it met the definition of teleshopping set out in COSTA, Rule 8 did not apply in this case.

Broadcast Licence Condition cases

In Breach

Provision of licensed service and retention and production of recordings

Castle FM (Leith), 7 December 2013 to present

Introduction

Castle FM is a community radio station licensed to provide a service for the residents of Leith in Scotland. The licence is held by Leith Community Mediaworks Ltd (“LCMWL” or “the Licensee”).

‘Key Commitments’ form part of each community radio station’s licence with Ofcom and are contained in an annex to the 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.

We received a complaint that Castle FM was no longer broadcasting live programming and had instead been broadcasting an automated service.

Ofcom considered that this raised issues warranting investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to LCMWL’s licence. These state, respectively:

“The Licensee shall provide the Licensed Service specified in the Annex¹ 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 requested formal comments from LCMWL on its compliance with these licence conditions, and in particular how it was fulfilling its Key Commitment which requires that: “live daytime (08.00 to 19.00) output will typically comprise 70% music and 30% speech.”

In the course of our investigation, Ofcom requested recordings of recent output from the station, in order to help clarify what was being broadcast. The Licensee was unable to provide any of the requested recordings (see further below in Response).

Ofcom considered that this raised issues warranting investigation under Condition 8(2)(a) and (b) of LCMWL’s licence, which require that the Licensee shall:

- “(a) make and retain, for a period of 42 days from the date of its inclusion, a recording of every programme included in the Licensed Service...
-

- (b) at the request of Ofcom forthwith produce to Ofcom any...recording for examination or reproduction;...”.

We therefore also requested formal comments from the Licensee on its compliance with this licence condition.

Response

The Licensee stated that Castle FM ceased broadcasting on 7 December 2013 and that “on 10 December under emergency protocol and to meet the Ofcom Key Commitments Castle FM resumed live broadcasting from a temporary location, we were however fully aware that this was not an ideal premise from which to broadcast...This continued until Friday 27 December 2013 when Castle FM found new premises.” The Licensee’s representative (one of two directors) apologised for not keeping Ofcom in touch with developments but explained that he had been in hospital.

The Licensee explained that its broadcasts from 7 December 2013 onwards: “...consisted of continuous live broadcasting with hourly news updates and community news.....We have also managed to cover the Key Commitments under the conditions of the licence from 10 December 2013 and continue to do so.”

The Licensee explained subsequently: “It would appear that I have made some contradictions, when I said live broadcasting started/resumed on 10 December 2013 it should have said ‘our live broadcasting continued from 10 December at our temporary location’ and that ‘on Sunday 8 and Monday 9 December we still expected to resume broadcasting..., but this was unsuccessful despite numerous attempts to achieve this’.”

When Ofcom requested recordings of the station’s output at this time to clarify the position, the Licensee was unable to provide them. It explained that the equipment used to provide recordings of output remained at its old premises. Despite numerous attempts, it said that it had been unable to gain access to the old premises and was therefore unable to provide the recordings.

Decision

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. 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. This is reflected in 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 community radio programme output is provided. In addition, choice for listeners is reduced.

In this case, Ofcom has been unable to establish the exact nature of the content that was broadcast on Castle FM during December 2013. The Licensee was provided several opportunities to document exactly what type of output was being broadcast and when, but the information it provided was contradictory and ambiguous. Nevertheless, it is clear from the Licensee’s representations that no programming at all was broadcast on Sunday 8 and Monday 9 December. This means that, on these (and possibly other) dates, the Licensee was in breach of its Key Commitment that

“live daytime (08.00 to 19.00) output will typically comprise 70% music and 30% speech.”

Ofcom has therefore concluded that the Licensee is in breach of its licence for failing to provide a service in accordance with its Key Commitments. The Licensee also is put on notice that we are concerned that the station’s failure to deliver its Key Commitments may be ongoing, and we will carry out monitoring in due course to establish if this is the case. Ofcom may then conclude that further regulatory action is appropriate.

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster’s licence there are conditions requiring the licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request to produce such recordings issued by Ofcom. Community Radio licences enshrine these obligations in Licence Conditions 8(2)(a) and (b).

Under Licence Condition 8(2)(a), Ofcom requires licensees to make a recording of every programme included in the service, and to retain these for 42 days after broadcast. Under Licence Condition 8(2)(b) Ofcom requires licensees to produce such recordings forthwith upon request.

It is a condition of all radio licences that the licensee adopts procedures for the retention of recordings and produces recordings to Ofcom forthwith on request.

We noted that the Licensee’s failure to provide Ofcom with recordings of output was due to it being unable to access recording equipment in its old premises. However, the Licensee is obliged under the terms of its licence to ensure that recordings of its output are retained for 42 days and provided to Ofcom on request.

The failure to provide Ofcom with the recordings requested, for the reasons outlined above, is a significant breach of Castle FM Ltd’s licence, which, in this particular case, significantly affected Ofcom’s ability to assess Castle FM’s compliance with its Key Commitments.

We will monitor the Licensee’s provision of its service and its arrangements to retain and provide recordings to Ofcom in due course. We are therefore putting LCMWL on notice that should similar compliance issues arise Ofcom will consider taking further regulatory action which may include the consideration of the imposition of a statutory sanction.

In a separate case, the Licensee was similarly unable to provide Ofcom with recordings to enable us to investigate a complaint about the most offensive language being broadcast by Castle FM in song lyrics. This is published as a separate Finding on page 9 of this Bulletin.

Breaches of Licence Conditions 8(2)(a) and (b), and 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Leith Community Mediaworks Ltd (licence number CR000080BA)

Resolved

Provision of service

Ujima Radio (Bristol), 11 to 25 March 2014

Introduction

Ujima Radio is a community radio station licensed to provide a service for the African-Caribbean and other BME¹ communities based in the St Pauls and Easton areas of Bristol. The licence is held by Ujima Radio C.I.C. (“Ujima” or “the Licensee”).

‘Key Commitments’ form part of each community radio station’s licence with Ofcom and are contained in an annex to the 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.

A representative of the Licensee informed Ofcom that the electricity supply to the station’s studios had been disconnected, and that, as a result, Ujima was unable to broadcast in full compliance with its Key Commitments. The station was instead having to broadcast an automated music service direct from its FM transmitter site. The situation had arisen due to a dispute between the Licensee’s landlord and the electricity supplier. Ujima subsequently reported to Ofcom that it was able to resume live broadcasting, following the reconnection of its electricity supply.

Ofcom considered that this raised issues warranting investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to Ujima’s licence. These state, respectively:

“The Licensee shall provide the Licensed Service specified in the Annex² 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 requested formal comments from the Licensee on its compliance with these licence conditions.

Response

The Licensee confirmed that, between 11 and 25 March 2014, Ujima had been broadcasting an automated music service. It reported that: “The volunteers and community had a protest last Friday which led to the Mayor of Bristol’s intervention. This has resulted in the City Council working closely with Ujima Radio and the power company to restore power and provide us with our own meter source. We are still broadcasting music automation and intend to inform you of any further development/progress as it happens.”

¹ BME stands for Black and Minority Ethnic.

² Ujima Radio’s Key Commitments in full can be found here:
<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000116.pdf>.

Several days later, the Licensee confirmed that “the electricity bill was paid by Bristol City Council on behalf of our landlord, so our live shows are now back on....”.

It also explained that it had ensured that the station now had its own electricity meter, which should avoid problems of this nature occurring in the future.

Decision

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. 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. This is reflected in 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 community radio programme output is provided. In addition, choice for listeners is reduced.

In this case, while Ofcom acknowledged that Ujima Radio failed to provide the specified Licensed service during this period, we recognised that the Licensee worked quickly to address the situation and its actions led to a third party paying the bill on behalf of the landlord.

We also took into account that the Licensee had itself informed Ofcom that Ujima Radio had ceased broadcasting its licensed service and was instead providing an automated music service direct from the transmitter.

In addition, we noted the action the Licensee had taken to avoid a recurrence of this issue in the future.

In view of these steps, Ofcom considered the matter to be resolved.

Resolved

Fairness and Privacy cases

Upheld in part

Complaint by Mr Terry Dicks

Channel 4 News, Channel 4, 6 December 2013

Summary

Ofcom has upheld in part this complaint by Mr Terry Dicks of unjust or unfair treatment in the programme as broadcast.

An edition of *Channel 4 News* included a special feature on Mr Nelson Mandela who had died the day before. The programme included interviews from a number of contributors who spoke about Mr Mandela, the apartheid regime in South Africa, and the attitude of UK governments, in particular, that of the late Baroness Thatcher, to the anti-apartheid movement and the apartheid regime. The programme broadcast in December 2013 contained excerpts of an interview with Mr Dicks (a former Conservative Party MP) recorded in 2011. During the introduction to the programme, one of the programme's reporters stated that Baroness Thatcher had called the African National Congress ("the ANC") a terrorist organisation and that *"even today, some of her most ardent supporters still support that view to the hilt"*. Immediately following this statement, an excerpt of the interview with Mr Dicks, was shown in which he said:

"They [members of the African National Congress, including Mr Mandela] were just terrorists, not different from the Irish terrorists, perhaps no different to those we're fighting now, just a different background, maybe a different religion, but that's all. And a terrorist is a terrorist. I don't accept this view of freedom fighters one day, terrorists one day and freedom fighters the next, no".

Mr Dicks complained that the programme included footage from an interview recorded with him in 2011 without making it clear that, since the date of the interview, he had changed his views on Mr Mandela. He also complained the programme claimed that he was a supporter of the apartheid government of South Africa.

Ofcom found that:

- It was not incumbent on the broadcaster to have accepted Mr Dicks' claim at face value that his views about Mr Mandela had changed since the interview. However, the programme should not have presented Mr Dicks' views as being contemporaneous at the time of broadcast (i.e. at the time of Mr Mandela's death) without acknowledging, in some proportionate way, that Mr Dicks claimed to have changed his view on Mr Mandela since giving his interview. The programme's failure in this respect was likely to mislead viewers in a way that was unfair to Mr Dicks.
- The broadcaster took reasonable care to satisfy itself that the programme did not present, disregard or omit material facts, in particular with regard to Mr Dicks' views on the former apartheid government of South Africa, in a way that was unfair to Mr Dicks.

Mr Dicks' case was unusual and raised important points of principle relating to editorial discretion, freedom of expression and the ability of the media to report on elected public officials. Taking into account all the factors specific to this case, however, we considered that the broadcaster's decision not to refer to Mr Dicks' claim that he had changed his mind was not, on balance, editorially justified and a matter of editorial discretion and that this omission of a material fact resulted in unfairness to Mr Dicks.

Introduction and programme summary

On 6 December 2013, Channel 4 broadcast an edition of *Channel 4 News* which included a special feature on Mr Nelson Mandela who had died the day before. The programme looked at how Mr Mandela was being mourned around the world and included interviews with a number of contributors who spoke about Mr Mandela, the apartheid regime, and the attitude of successive UK governments, in particular the late Baroness Thatcher's government, to the anti-apartheid movement and the apartheid regime in South Africa.

During the opening introductory sequence to the programme, one of the programme's reporters stated that Baroness Thatcher had called the ANC a terrorist organisation and that *"even today, some of her most ardent supporters still support that view to the hilt"*. Immediately following this statement, an excerpt of an interview with Mr Dicks, was shown in which he said:

"They [members of the ANC, including Mr Mandela] were just terrorists, no different from the Irish terrorists. Perhaps no different to those we're fighting now, just a different background, maybe a different religion, but that's all. And, and a terrorist is a terrorist. I don't accept this view of uh freedom fighters one day, terrorists one day, freedom fighters the next. No. No."

Later in the programme, Baroness Thatcher's view of Mr Mandela, the ANC, and her government's policy towards apartheid in South Africa were explored. Two contributors, Lord Howe (former Foreign Secretary to Baroness Thatcher's government) and Lord Powell (described by the programme as *"Mrs Thatcher's Foreign Policy Adviser"*), said that the ANC was lumped together with the IRA and the PLO¹ and that race played a part, in that Baroness Thatcher was *"more instinctively sympathetic towards white people"*. Following this, the programme stated that *"...some of Mrs Thatcher's strongest supporters were also supporters of apartheid and passionate critics of Nelson Mandela"*. A clip of Mr Dicks was then shown in interview talking about Mr Mandela and the following exchange with Mr Gibbon, the Political Editor of *Channel 4 News* (the interviewer), took place:

Mr Dicks: *"The man [Mr Mandela] became, what was it, head of the armed wing of the ANC, was it... well, in 1961, around that time. And um, they were just terrorists, no different from the Irish terrorists. Perhaps no different to those we're fighting now, just a different background, maybe a different religion, but that's all. And, and a terrorist is a terrorist. I don't accept this view of uh freedom fighters one day, terrorists one day, freedom fighters the next. No. No. And, if they'd [i.e. the South African government at the time] been uh... if they...had wanted to, they could have uh executed him, seriously, they... Then you wouldn't have had all this fuss of I can live 27 years in prison."*

¹ The Irish Republican Army and the Palestine Liberation Organisation.

Interviewer: *It might have been better if they had [i.e. executed Mr Mandela]?*

Mr Dicks: *Well, he was a terrorist”.*

Immediately following this exchange, Lord Howe was asked in interview how strong the “*pro-apartheid regime voices*” were in the Conservative Party, to which he replied that he was aware of them because they were “*not far from Margaret Thatcher*” and that Mrs Thatcher had an “*instinctive bond*” with those holding those views.

Further on in the programme, it was reported that the current Prime Minister, Mr David Cameron MP, had, as a 23 year old researcher for the Conservative Party, visited South Africa on a trip paid for by a firm that opposed imposing sanctions on the apartheid regime. The reporter also stated that Mr Cameron had in the past spoken of “*Conservative [Party] mistakes over South Africa*”. The report also included an interview with the Mayor of London, Mr Boris Johnson, who said that the current Conservative Party felt that the anti-Mandela stance taken by some in the past had been “*completely wrong*”.

Towards the end of the programme, a live interview with three contributors was conducted outside the studio by Ms Cathy Newman, one of the presenters of *Channel 4 News*. Two of the contributors, namely Mr Derrick Lord (described by the programme as “*a Conservative lobbyist who took Mr Cameron on a trip to South Africa in 1989*”) and Mr David Lammy MP (a Labour MP), were asked for a response to the comments made by Mr Dicks shown earlier in the report. The following exchanges took place:

Presenter: *“Boris Johnson says the Tories made a mistake on Nelson Mandela, but when you hear the former MP Terry Dicks calling him a terrorist and saying that the regime could have executed him, people in your Party are still making mistakes today aren’t they?”*

Mr Lord: *...Nelson Mandela lived his life as a reconciliator, and died a man of peace. And I don’t think we should pay any credence whatsoever to Terry Dicks’ views.*

Presenter: *They’re abhorrent, surely?*

Mr Lord: *Of course they are.*

...

Presenter: *David Cameron has obviously admitted to mistakes, so has Boris Johnson, how do you think they should deal with what Terry Dicks has said?*

Mr Lammy: *Well I think Terry Dicks has been a very small figure on a huge occasion. No one here in Trafalgar Square agrees with him. Nelson Mandela was a freedom fighter, he was fighting a systemic system of oppression. By the end of his [Mr Mandela’s] life he becomes one of the biggest figures of the twentieth century. So, incredibly small, just 24 hours, to say something like that, frankly.*

Presenter: *So he should be kicked out of the Tory Party?*

Mr Lammy: *Look, there have been freedom fighters throughout the ages...Mandela was that figure in the twentieth century, fighting on behalf of all of us to have human rights, not just black men and women, all of us, to have that dignity throughout our lives”.*

Summary of complaint and the broadcaster’s response

Mr Dicks’ complaint

In summary, Mr Dicks complained that he was treated unjustly or unfairly in the programme as broadcast because material facts were presented, disregarded or omitted in a way that was unfair to him. In particular:

- a) The programme included footage from an interview with Mr Dicks recorded in 2011 without making it clear in the programme that, since the date of the interview, he had changed his views of Mr Mandela. Mr Dicks said that to show this material without making it clear that his views had changed was misleading and unfair to him.

By way of background, Mr Dicks said that in 2011 he was interviewed by Mr Gibbon, the Political Editor of *Channel 4 News*, to provide background material about Mr Mandela which would be used at a later date at the time of his death. Mr Dicks said that in January 2012 he had left messages for Mr Gibbon indicating his wish to withdraw his consent to the use of the interview material. Mr Dicks said that he had decided that it was in the best interests of his family to withdraw his consent owing to concern about how the interview would be referred to on social media websites such as Twitter and Facebook. Mr Dicks received a reply from the programme makers on 12 July 2012 which stated that they had the right to use the material if they chose to do so.

Mr Dicks explained in his complaint that after receiving the reply from the programme makers, he “decided to bring myself up to date on the background to the life of Mandela and subsequently came to the conclusion that many had seen much good about the man and that I should perhaps take a different approach. I did some research and came to realise that he had more to him than I had not been prepared to accept in the past and since his [Mr Mandela’s] release from prison”. On 3 August 2012, Mr Dicks wrote again to the programme makers explaining that his earlier views of Mr Mandela did not reflect the impact for good that he had throughout the world and that his “actions in earlier years appeared to have been a reaction to the suffering his people were facing at the time and his determination to bring about change”. Therefore, Mr Dicks said, to use the interview footage without mention of this change would be misleading and unfair to him. On 3 October 2012, the programme makers replied to Mr Dicks repeating that they had the right to use the interview footage and, on 6 December 2013, the day Mr Mandela died, footage from the interview was included in the programme.

- b) The programme claimed that Mr Dicks was a supporter of the apartheid government of South Africa, which he said was untrue. Mr Dicks said that anyone could have a view about the behaviour of an individual without being a supporter of the type of government that existed at the time.

Channel 4’s response – Background to the complaint

Before responding in detail to the specific heads of complaint made by Mr Dicks, Channel 4 provided Ofcom with background information to the complaint. It explained

that Mr Dicks is an active elected politician. He was formerly an MP between 1983 and 1997, and from 1999 to 2009, he was a member of Surrey County Council. Since 2011, Mr Dicks had been Councillor for Chertsey South and Row Town on the Runnymede Borough Council.

Channel 4 said that during his time as an MP, Mr Dicks “was well known for his outspoken and forthright views on a number of issues, including the ANC and Mr Mandela”. It said that Mr Dicks had gained notoriety in 1990 when Mr Mandela refused to meet the then Prime Minister, Baroness Thatcher, on a trip to London and had asked “How much longer will the Prime Minister allow herself to be kicked in the face by this black terrorist?”²

Channel 4 explained that in May 2011, the editorial team working for Channel 4 prepared an obituary about Mr Mandela and explained that it was usual for news organisations to conduct obituary interviews in advance of the death of very high profile public figures. It said that interviewees for such reports to be broadcast at the time of death are informed before giving their interview that it will not be broadcast straightaway, but at some unknown point in the future.

Channel 4 said that in this case, the editorial team had decided that Mr Dicks was a suitable person for interview “given his forthright and outspoken comments about Mr Mandela”. It said that it was important that the reporting of the death of Mr Mandela should reflect the fact that there had been differing views about Mr Mandela in the UK.

In May 2011, Mr Dicks provided Channel 4 with substantial comments about his views on Mr Mandela in a recorded interview and a full transcript of this interview was provided to Ofcom.

Following the interview, Channel 4 said that Mr Dicks and the programme makers exchanged correspondence prior to the broadcast of the interview. On 12 January 2012, eight months after recording the interview, Mr Dicks contacted Channel 4 and stated that: “For personal reasons, I am now asking that you do not use the clip of me nor the comments made”. Then, on 19 January 2012 and again on 25 February 2012, he wrote again to Channel 4 and said: “I have withdrawn permission for my interview to be used”.

On 21 June 2012, Mr Dicks wrote directly to the interviewer, Mr Gibbon, stating:

“Following legal advice I am now sending this by recorded delivery and would appreciate confirmation of receipt. For personal reasons I hereby withdraw my permission for the interview given by me towards the end of 2011 on the subject of Mr Mandela to be broadcast or used in full or in part”.

On 16 July 2012, the Deputy Editor of *Channel 4 News* responded to Mr Dicks. The Deputy Editor stated that the interview had been conducted with Mr Dicks’ consent, had not been obtained improperly, and that he had given his opinion as someone experienced in dealing with the media. He explained to Mr Dicks that, whether or not the interview would be used was a matter for editorial judgement to be made at the time and that Channel 4 would give no assurance that the interview would not be broadcast.

² Reported in *The Independent* newspaper, 9 July 1996 and confirmed by Mr Dicks in his interview with *Channel 4 News*, May 2011.

On 3 August 2012, Mr Dicks wrote back to *Channel 4 News* stating:

“Over time and as a result of personal research into the life and history of Nelson Mandela and South African politics, I have come to the conclusion that my earlier views on the man did not reflect the impact for good that he had, not only in South Africa but throughout the world. His actions in the earlier years appear to have been a reaction to the suffering his people were facing at that time and his determination to bring about change.

As you will appreciate, my interview with Gary Gibbon, if shown, would not now reflect my views on Nelson Mandela and his contribution to history. I am entitled to change my view on Nelson Mandela or on any other issue for that matter and I would respectfully ask that you accept the change that my recent research has brought about and do not use the earlier incorrect material.

A response from you at the earliest opportunity would be much appreciated and I do hope this matter can be brought to a satisfactory conclusion. This letter has been sent after consultation with my legal adviser”.

On 3 October 2012, *Channel 4 News* wrote to Mr Dicks explaining that the matter had been reviewed again. The letter stated that:

“The editorial team who carried out the interview has been made aware that your opinions on Nelson Mandela have now changed.”

The letter continued that whether or not the interview was used would:

“...depend on the facts on the day applying editorial judgements. However, as a news organisation this raises an important point of principle and we cannot give any assurances in advance limiting our editorial discretion”.

Following broadcast of the clip of the 2011 interview with Mr Dicks and programme on 6 December 2013 about the death of Mr Mandela as described above, Mr Dicks made a complaint to Ofcom dated 20 December 2013 about the inclusion of his comments in the programme.

Channel 4's response to head a) of the complaint

In response to the complaint set out at head a) above, Channel 4 explained that it was its editorial decision not to refer in the programme to what Mr Dicks had said in his correspondence to the programme makers following his interview, but prior to the programme's transmission. It said that this decision was made for several reasons:

Lack of credibility

Channel 4 said that there was a lack of credibility in what Mr Dicks had told the broadcaster:

- It said that in May 2011, Mr Dicks had given a “forthright and unequivocal” interview on his views on Mr Mandela. His opinion was that Mr Mandela was no better than a terrorist and this opinion was consistent with what he had said over many years and from which he had never publicly departed. Channel 4 highlighted sections of the interview transcript to illustrate this, including for example the following comments made by Mr Dicks:

“The guy [Nelson Mandela] was a terrorist. He’s no different from the, you know, [Gerry] Adams and the rest of them over there, [Martin] McGuinness, no different at all – no different from the – except they were different religious philosophies – than the Muslims here and people like that. And no different from Al-Qaeda, no different from Bin Laden at all, in my view, not at all.”

And,

“Well he [Mr Mandela] was a black terrorist. For the distinction, the reason of distinction – if you’re black, you get away with a lot of things, and if you’re white you don’t, okay. So what we’ve got here – of course, the trouble is now, if you like, with the current thing with the Islam people, they’re not quite one or the other. So everybody is being a bit delicate about it. But no, they were black terrorists because they wanted – they wanted, if you like, political freedom and they wanted to run their own government and they were Marxists – they called themselves Marxists”.

- Channel 4 said that Mr Dicks was “well aware” that the interview would be broadcast after Mr Mandela’s death and that “...despite this, he had no reservation or hesitation about making such a claim [that Mr Mandela was no better than a terrorist] – which many, many people would find particularly offensive in the aftermath of Mr Mandela’s death”. It said that Mr Dicks was not cajoled or coerced in any way, nor were his comments a slip of the tongue, or the result of him being cornered into making a statement open to interpretation. In the interview in 2011, Mr Dicks had expressed the same views he had expressed all his political life: namely, that Mr Mandela was a terrorist. Mr Dicks also made it clear in the interview that: “I say what I mean and mean what I say”. When asked by the interviewer: “is there any sense in which you re-think, regret what you have said about Nelson Mandela in the past?” Mr Dicks replied “Not at all”.
- The broadcaster said that Mr Dicks’ explanation as to why he did not want the interview broadcast changed many times over the course of the correspondence outlined above, which cast doubt on whether he had genuinely changed his views on Mr Mandela and regretted making the statements he did in the interview. For example, Channel 4 highlighted that, in initial correspondence about wishing to withdraw his comments, Mr Dicks had stated that this was due to family reasons, and in his complaint to Ofcom, he stated that:

“...it would be in the best interests of my family if I could arrange for my consent to be withdrawn. My family were concerned about the way this matter would be handled in the social media sites, especially Facebook and Twitter. My wife was particularly worried because of my health and personal well being”.

It also said that Mr Dicks had initially thought he had the right to prevent the material being used by withdrawing his consent and referred to the fact that he had sought legal advice. In the early correspondence about the matter, however, it said there was no mention that he had changed his opinion about Mr Mandela.

Channel 4 said it was only after Mr Dicks was told in a letter dated 16 July 2012 that the interview may still be used, that he then said for the first time, and 14 months after the interview was recorded, that he had had a change of opinion about Mr Mandela. Channel 4 stated:

“Despite having held an absolute and forthright view about Nelson Mandela for nearly 25 years which was on the record – he was no better than a terrorist – yet within a matter of weeks Mr Dicks claimed that he had now changed his entire view of Mandela having undertaken research of his own. Based on Mr Dicks’ outspoken views of Mandela dating back nearly 25 years, *Channel 4 News* did not believe that this explanation was plausible particularly given his confirmation in interview that his views had not changed”.

- Channel 4 pointed out that Mr Dicks did not state that he had changed his opinion of Mr Mandela until 2012, many years after Mr Mandela’s release from prison in 1990. It said that the 2011 interview was not conducted at a time when there were “genuinely differing views of Nelson Mandela” but after Mr Mandela had served as President of South Africa and was universally acclaimed. By 2012, all of Mr Mandela’s major achievements had happened, including for example: his role in securing the peaceful transition in South Africa and the end of apartheid; his Nobel Peace Prize; and, the publication of his book *Long Walk to Freedom*. It said that the significance of Mr Mandela was: “evidenced by the almost unanimous international out-pouring of sadness following his death and the range of tributes to him as a Statesman and role model and one of the historically important figures of the 20th century”.

Based on the above, Channel 4 said that Mr Dicks’ point that he did “personal research” in 2012 which changed his view was “simply not credible” and it did not consider that he could have been unaware of the achievements of Mr Mandela before doing his research in 2012.

- Lastly, Channel 4 said that: “At no point has Mr Dicks provided any evidence or substantive explanation of his claim of a change of mind”. It considered that if Mr Dicks was genuine regarding his change of view, he would have wanted to set the record straight. It said he had not published anything publicly to set out his new position, despite the fact that being a politician he would have access to the means of making his views public.

Given the above, Channel 4 said that the “contention that Mr Dicks had changed his mind did not stand up to scrutiny.”

Political/public figure

Channel 4 said that it was relevant that Mr Dicks was a political figure and currently held public office as a councillor. It said that the justification for broadcast and for relaying information to the public was greater when the subject is a political figure and that political figures had to expect to be more closely scrutinised than the general public in the media.

Channel 4 said that Mr Dicks was an elected official who had chosen to enter the public domain, was used to dealing with the media, and understood the consequences of talking to the media. It said that politicians often said things in the media that they later regretted, and that this was often reported. Further, it said that: “Politicians need to be subject to public scrutiny, particularly on opinions they espouse that many would find offensive that could affect the way the electorate view them”. It said that Mr Dicks was well known for his controversial views on Mr Mandela long before the *Channel 4 News* interview.

Channel 4 argued that the role of the media was to act as a “watchdog” to ensure that matters of public interest and importance, like Mr Dicks’ controversial opinions of Mr Mandela, were reported. It said that Mr Dicks had given the interview in the recent past, i.e. 2011, and it was directly relevant to his role as a politician. The broadcaster said that many of the electorate may not have known that Mr Dicks held such views as recently as 2011.

It said that the broadcast of the interview also contributed to the debate about Mr Mandela and showed that there had been differing views on him.

Industry Practice

Channel 4 said that it was normal industry practice for an interview for an obituary to be broadcast without putting a date on it and, where applicable, without stating that the interviewee had asked the broadcaster not to broadcast the interview or that the interviewee had expressed a change of mind. It said that Mr Dicks gave his interview in 2011 fully aware of the fact that it could be broadcast any time, understood the purpose of the interview (for the purpose of broadcast after the death of Mr Mandela) and gave his views in a forthright and unequivocal manner.

Channel 4’s response to head b) of the complaint

In response, Channel 4 explained that the interview with Mr Dicks was included in the news broadcast after the reporter Mr Gibbon stated that: *“Behind her on the backbenches, some of Margaret Thatcher’s strongest supporters were also supporters of apartheid and passionate critics of Nelson Mandela”*.

It stated that the report was a wide-ranging item on the relationship between Mr Mandela and the UK. It explained that this was a general point being made about backbenchers. In any event, even if the report did suggest that Mr Dicks supported the apartheid government, Channel 4 said that there was a significant amount of evidence that supported this. For example:

- Throughout his political career, Mr Dicks had made comments highly critical of Mr Mandela and the ANC.
- Mr Dicks’ antipathy towards Mr Mandela and the ANC was also evidenced throughout his interview in 2011 with *Channel 4 News*.
- Channel 4 said many people would find Mr Dicks’ views highly offensive, and on the facts, it said there was more than sufficient evidence to suggest that Mr Dicks supported the apartheid regime, if that was the meaning of what was said. Channel 4 referred in particular to the interview he gave to *Channel 4 News* in 2011 and provided several examples from this of comments made by Mr Dicks, such as:

“The lives and quality of life for Blacks and White South Africans is no better now than it was under apartheid”.

In conclusion, Channel 4 said that in “most circumstances it would have been understandable that a reference to a change of mind would have been appropriate. However in this exceptional case...we believe it was editorially justified and a matter of editorial discretion not to refer [in the 6 December 2013 programme] to Mr Dicks’ claim that he had changed his mind...The decision rested on evaluating the evidence/facts in reaching a reasonable and justified decision”. Channel 4 therefore did not accept that the programme was unfair to Mr Dicks.

Representations on Ofcom's Preliminary View

Ofcom prepared a Preliminary View in this case that Mr Dicks' complaint of unjust or unfair treatment in the programme as broadcast should be upheld in part (i.e. upholding head a) of the complaint, but not upholding head b)). Both parties were given the opportunity to comment on the Preliminary View. Ofcom has summarised below the main points made by Channel 4 in its representations on the Preliminary View that were directly relevant to the complaint responded to by the broadcaster and considered by Ofcom. Mr Dicks did not submit any representations on the Preliminary View. However, he did provide comments on Channel 4's representations. Ofcom considered that Mr Dicks' comments were either not directly relevant to the complaint as entertained, or repeated arguments already made and addressed in the Preliminary View.

Channel 4's representations

In summary Channel 4 said that it did not agree with Ofcom's Preliminary View that head a) of the complaint should be upheld. It said that the decision of whether or not to include the reference to the complainant's stated change of mind was a matter of editorial judgement and that compelling a news service to reference a claim that was factually tenuous placed an unreasonable fetter on editorial discretion. Channel 4 explained that it was a conscious editorial decision not to include Mr Dicks' alleged change of mind and that it was a reasoned judgement based on the evidence available at the time. The broadcaster said that there was a lack of credibility that Mr Dicks had genuinely changed his mind, and that this belief was based on a number of facts, including:

- The forthright nature of the interview in 2011 which was consistent with Mr Dicks' well known and established controversial views;
- Mr Dicks for not wanting the interview broadcast;
- The unlikelihood that only after August 2012, following unspecified research, that Mr Dicks changed his mind about Nelson Mandela; and,
- The lack of any public statement or any substantive evidence that he had changed his mind.

Channel 4 also said that the context of the report was also important. It said that the report was an obituary of Mr Mandela and that it was highly unusual in an obituary to give a date for any of the interviews featured and it would have undermined the obituary editorially to divert the report to an account of what Mr Dicks did or did not believe at any particular time. The broadcaster said that the report concerned political speech and political figures and the comments of Mr Dicks, who was a seasoned elected politician, and that Mr Dicks gave the interview with his full consent.

In addition, Channel 4 said that Mr Dicks was given (after Mr Dicks' complaint had been entertained by Ofcom) an opportunity to give an interview on the issues and his change of opinion. However, he turned down this offer. It therefore considered that "a right to respond and set the record straight was offered but rejected".

Channel 4 did not agree with Ofcom's decision that it had breached the Code by not following Practice 7.9 (see the "Decision" section below where this Practice is set out in full). It said that it had taken "reasonable care" to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Dicks. Ofcom's Preliminary View had stated:

“Ofcom considered it was impossible for the programme makers and the broadcaster to know with certainty whether Mr Dicks’ claim to have changed his mind to be genuine or not. What was certain though was that since giving his interview in 2011 Mr Dicks had corresponded with the programme makers regarding his interview and had told them unequivocally albeit not until July 2012, that he had changed his mind about Mr Mandela and that his interview from 2011 no longer reflected his views”.

Channel 4 argued that the correct test had not been applied. It said:

“The Broadcasting Code does not require Channel 4 News to know ‘with certainty’ what is genuine or not – that is a very high test to meet. The standard of ‘certainty’ is not the correct test: the test is ‘reasonable care’ and the Preliminary View does not apply the correct test. In short the bar has been set too high”.

It said that although Ofcom may disagree with the editorial choice, the standard of “reasonable care” allowed for different editorial decisions to be reached and not just the one outcome.

Ofcom’s Preliminary View also stated:

“...the programme should have made clear that his comments were made two years prior to the broadcast (not at the time of Mr Mandela’s death) and that Mr Dicks claimed to have changed his view on Mr Mandela since giving his interview”.

Channel 4 argued that the Preliminary View was a cause for concern because, according to Channel 4, it meant that Ofcom was compelling the broadcaster to include a matter in the editorial report and for the editor to act in a specific way, therefore creating a positive regulatory obligation on a broadcaster to include a claim in a news programme that it believed was factually tenuous. It said that it did not accept that the requirement to provide context meant that a news report had to include in it a claim that lacked credibility or that there was a positive obligation to include in a news programme information that it did not consider credible. It said that Ofcom’s Preliminary View meant that a news organisation would be required to include something in a report that, on any objective assessment, was open to question regarding its accuracy.

The broadcaster also said that it would mean that a participant in a programme would simply have to say that they had changed their mind and this would then have to be included in the report – whether or not the claim had any credibility. It said that news reports could be undermined by interviewees who made inappropriate/controversial comments and then claimed later that they had changed their minds. Channel 4 said that broadcasters would be required to reflect this each and every time.

In conclusion, Channel 4 said that, where the factual evidence of a piece of information was tenuous, a news programme should not be required to include this.

Channel 4 reiterated that Mr Dicks was a highly experienced elected politician and a seasoned media commentator. It said that there was a greater latitude for freedom of expression in the area of political speech and reporting political matters. It argued that the interview with Mr Dicks and programme was of public interest and that it was important that news organisations have freedom to report political issues as they considered appropriate and be able to make editorial judgements about what is said

by politicians. To interfere with this, Channel 4 said, would be a fundamental interference with freedom of expression and journalistic freedoms.

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 this Decision, we carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, a transcript of the full interview, and both parties' written submissions and supporting material.

To assess whether or not the programme complained of created unfairness to Mr Dicks, Ofcom considered in turn each of the heads of the complaint as set out in the "Summary of the complaint and the broadcaster's response" section above.

When considering complaints of unfair or unjust 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. We had regard to this Rule when reaching our Decision in this case.

- a) Ofcom first considered the complaint that the programme included footage from an interview with Mr Dicks recorded in 2011 without making it clear in the programme that since the date of the interview he had changed his views of Mr Mandela.

In considering this head of complaint, Ofcom considered whether the broadcaster was fair in its dealings with Mr Dicks as a potential contributor to the programme (as outlined in Practice 7.2 of the Code). In particular, Ofcom considered whether Mr Dicks gave his "informed consent" to participate in the programme (as outlined in Practice 7.3).

The interview was conducted on the basis that it was for an obituary for broadcast after Mr Mandela's death. Ofcom noted Channel 4's comments that Mr Dicks was "...well aware that his interview would be broadcast in the aftermath of Mr Mandela's death and despite this he had no reservation or hesitation about making such a claim [that Mr Mandela was no better than a terrorist] – which many, many people would find particularly offensive in the aftermath of Mr Mandela's death". Given that Mr Dicks did not dispute that he was aware of the purpose of the interview, we considered that Mr Dicks was fully informed about the nature of the interview and its purpose before agreeing to participate and that he had given his "informed consent" to participate. Having established that the broadcaster had Mr Dicks' "informed consent" to include footage of the interview, recorded in May 2011, in the *Channel 4 News* broadcast of 6 December 2013,

Ofcom considered that it was not unreasonable that Channel 4 chose to broadcast the material.

However, Ofcom then went on to consider whether the broadcaster had been “fair” in its dealings with Mr Dicks, given that, after the interview and before the broadcast of the material, Mr Dicks had requested in writing on several occasions that his comments about Mr Mandela not be broadcast. In doing so, we had particular regard to Practice 7.9 which states that, before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

The Code recognises the importance of freedom of expression and the need to allow broadcasters the freedom to broadcast matters of a genuine public interest. Ofcom acknowledges that selecting and editing material for inclusion in a programme is an editorial decision for the programme makers and the broadcaster. However, in presenting material in programmes, reasonable care must be taken by broadcasters not to do so in a manner that causes unfairness to individuals or organisations in programmes. In this particular case, Ofcom considered that it was in the public interest for the programme to include varied contributions from people on the death of Mr Mandela, but that this needed to be done in a manner which was consistent with the Code.

In assessing whether the programme complained of created unfairness to Mr Dicks by not representing that he had changed his views on Mr Mandela, we considered a number of factors which we believed to be relevant in reaching our Decision.

Mr Dicks as a political figure

Ofcom recognised that generally, the justification for broadcast and relaying information to the public is greater when the subject is a political figure and that political figures should expect to be more closely scrutinised than the general public in the media.

Mr Dicks was an MP for 14 years and for nearly 20 years he has been an elected councillor. He is therefore a very experienced politician at both national and local level and his controversial views on Mr Mandela made over the course of his political career were well known. While we recognised that Mr Dicks was used to dealing with the media and was a person who understood the consequences of talking to the media (including his interview with *Channel 4 News* in 2011 about Mr Mandela) Ofcom considered that it was nonetheless incumbent on the broadcaster to treat Mr Dicks fairly and in a way that was consistent with the Code.

Freedom of expression and editorial discretion

This case raises important issues of freedom of expression and editorial discretion. It is particularly important that broadcast journalists are able to exercise editorial independence when taking decisions about what material to include or omit from their programmes, and how to present it. Once an individual has given his or her informed consent for an interview with a broadcaster and that interview has been recorded, that individual normally cannot withdraw that consent and does not have any right to compel the broadcaster not to show the interview or present it in any particular way. The broadcaster may edit and

transmit that interview when and how it wishes, provided the broadcast complies with the Code.

Normal industry practice

We took note of Channel 4's position that it is normal industry practice for an interview for an obituary to be broadcast without putting a date on it, or indicating that an interviewee had changed their views on an issue (unless it would be unfair not to do so).

Ofcom noted that Mr Dicks gave his interview aware of the fact that it could be broadcast at any time, understood the purpose of the interview (for the purpose of broadcast after the death of Mr Mandela) and gave his views in a forthright and unequivocal manner. However, Mr Dicks had informed the programme makers that since giving the interview in 2011 he had changed his mind about Mr Mandela and that to continue to broadcast the interview without reflecting this could mislead viewers and so be unfair to him.

We recognised that it may be normal editorial practice not to date interviews when included in obituaries and do not consider that it would normally be necessary to do so in the interests of fairness. However, in the context of this programme in which Mr Dicks' views were presented as current at the time of broadcast (despite Mr Dicks claims to have changed his mind since the interview) we were of the view that the decision not to date the interview had the potential to result in the unfair treatment of Mr Dicks.

Evidence in support of the credibility of Mr Dicks changing his views

It is not Ofcom's role to investigate and decide on whether or not in fact Mr Dicks had changed his mind in 2012 about Mr Mandela.

When a contributor to a programme claims to have changed their mind about the content of their contribution and makes this known to programme makers or a broadcaster after the date of that contribution, the broadcaster should take reasonable care to satisfy itself that the material facts of that contribution are not presented, disregarded or omitted in a way that is unfair to the contributor. The measures a broadcaster should take to satisfy itself in this regard (and so be able, if necessary, to demonstrate this at a later date) will depend on all the relevant circumstances of a particular case.

In assessing whether the decisions by Channel 4 not to go back to Mr Dicks to query his claim to have changed his mind, and not to refer to his claim in the programme, led to any unfairness to Mr Dicks, Ofcom had regard to the evidence related to Mr Dicks' claim that he had changed his mind.

Ofcom noted the following:

- In May 2011, Mr Dicks gave a forthright and unequivocal interview on his views on Mr Mandela. His view was that Mr Mandela was "a *terrorist*" and this opinion appeared to be consistent with public comments he had made over many previous years.
- Mr Dicks was aware that the interview recorded in 2011 would be broadcast at an unknown date in the future after Mr Mandela's death. Nonetheless he had no reservations about any of the comments he made, which, in Ofcom's

view, as an experienced politician used to being in the public eye, he should have understood would certainly have been offensive to some people if broadcast at the time of Mr Mandela's death. Mr Dicks made it clear in the interview that: "I say what I mean and mean what I say". When specifically asked by the interviewer "Is there any sense in which you re-think, regret what you have said about Nelson Mandela in the past?" Mr Dicks replied: "Not at all".

- His comments were part of an extended interview and could not be construed in any way to be a "slip of the tongue".
- Mr Dicks' explanation as to why he did not want the interview broadcast changed several times. In initial correspondence with *Channel 4 News* about wishing to withdraw his comments, Mr Dicks stated that this was due to "personal reasons" and that he was withdrawing "his permission for the interview...to be broadcast" (see for example his letter of 21 June 2012 as referenced in the "Summary of complaint and the broadcaster's response" section above). There was no mention at that time that he was reviewing, or had changed, his opinion about Mr Mandela. On 16 July 2012, Channel 4 News confirmed in a letter to Mr Dicks that it could not give any assurance that Mr Dicks' comments would not be broadcast and that it reserved the right to broadcast the interview. Mr Dicks said for the first time, in a letter dated 3 August 2012 to *Channel 4 News*, and 14 months after the interview was recorded, that he had had a change of opinion about Mr Mandela "as a result of personal research".
- Based on the correspondence written by Mr Dicks, he did not change his opinion of Mr Mandela until late July or early August 2012, many years after Mr Mandela's release from prison (in 1990), his winning the Nobel Peace Prize in 1993, his serving as President of South Africa from 1994 to 1999, and his retirement from public life in 2004. The 2011 interview was also recorded many years after these events, by which time Mr Mandela was widely acclaimed for his political and other achievements.
- Mr Dicks did not provide Channel 4 or Ofcom with any evidence or substantive explanation of his claim to have changed his mind other than the brief statements in his correspondence with Channel 4 and Ofcom dating from August 2012 onwards. There is no evidence, for example, that Mr Dicks has ever made public his new position on Mr Mandela in any forum, despite the fact that being an experienced politician he had access to the means of making his views public.

Taking into account all the circumstances (but in particular those immediately above), Ofcom appreciated the view expressed by Channel 4 that the evidence of Mr Dicks changing his mind about Mr Mandela from late July 2012 onwards was not, according to the broadcaster, sufficiently compelling for it necessarily to have been required to either: go back to Mr Dicks to query his claim to have changed his mind; or reflect Mr Dicks' claim of a change of mind in the programme, to avoid unfairness to him.

However, Ofcom considered that it was impossible for the programme makers and the broadcaster to know with certainty whether Mr Dicks' claim to have changed his mind to be genuine or not. What was certain, though, was that since giving his interview in 2011, Mr Dicks had corresponded at length with the

programme makers regarding his interview and had told them unequivocally, albeit not until July 2012, that he had changed his mind about Mr Mandela and that his interview from 2011 no longer reflected his views.

The programme as broadcast

In considering this head of complaint of unfairness, we also had regard to the special report about Mr Mandela as a whole, and the live interviews with Mr Lord and Mr Lammy, broadcast after the pre-recorded report which featured Mr Dicks (see “Introduction and programme summary” above). Ofcom noted that there were references in this sequence to Mr Dicks’ comments about Mr Mandela being a “terrorist”, and the interviewees were invited to condemn his views and give their opinion of how the Conservative Party should react to them.

In particular, we noted the following excerpts from the programme (emphasis added by Ofcom):

In the introductory section of the programme, one of the programme’s reporters stated that:

*“even today, some of her [the late Baroness Thatcher’s] most ardent supporters **still support that view to the hilt**”.* [Emphasis added by Ofcom].

Immediately following this, an excerpt of Mr Dicks’ interview was shown.

Later in the programme, Ms Newman, one of the programme’s presenters, asked Mr Lord in a live interview:

*“...but when you hear the former MP Terry Dicks calling him [Mr Mandela] a terrorist and saying that the regime could have executed him, people in your Party [i.e. the Conservative Party] are **still making mistakes today aren’t they?**”* [Emphasis added by Ofcom].

We also noted that another contributor to the live interview, Mr Lammy, said of Mr Dicks and his comments that:

*“So, **incredibly small, just 24 hours** [i.e. after the death of Mr Mandela], to say something like that, frankly”.* [Emphasis added by Ofcom].

From the above extracts from the programme (and in particular the use by the presenter of “*even today*”), there is no doubt in Ofcom’s opinion that Mr Dicks’ comments were presented by the programme as contemporaneous (and that Mr Lord’s and Mr Lammy’s comments were made on the assumption that Mr Dicks still held the views he had given in his 2011 interview at the time of Mr Mandela’s death). To present Mr Dicks’ comments as contemporaneous was in our view misleading to viewers and unfair to Mr Dicks.

Ofcom’s Conclusion

This is a difficult case. Ofcom has taken into account all the relevant circumstances and carefully balanced in particular the obligation on the broadcaster not to treat Mr Dicks unfairly against its right to freedom of expression and the importance of editorial discretion. On balance, however, Ofcom concluded that while it was not incumbent on the broadcaster to have accepted Mr Dicks’ claim at face value that his views about Mr Mandela had

changed, there was nevertheless an obligation on the broadcaster to present Mr Dicks' comments in the proper context. Specifically, in the interests of fairness, the programme should not have presented Mr Dicks' views as being contemporaneous at the time of broadcast (i.e. at the time of Mr Mandela's death) – in particular through the use of the phrase “*even today*” – without acknowledging, in some proportionate way, that Mr Dicks claimed to have changed his view on Mr Mandela since giving his interview over two years before.

Ofcom considered that the broadcaster's failure in this respect would have left viewers with the clear impression that Mr Dicks had made his comments very recently and that he still held those views on the day, or the day after, the death of Mr Mandela. By presenting Mr Dicks' comments in the programme as being made contemporaneously and not reflecting in some proportionate way that Mr Dicks had since claimed to have changed his mind, Ofcom considered that the programme was likely to have materially and adversely affected viewers' perceptions of Mr Dicks in a way that was unfair to him.

In the very particular circumstances of this case, Ofcom considered on balance that Channel 4 did not take sufficient care to satisfy itself that the material facts relating to Mr Dicks' contribution were not presented, disregarded or omitted in a way to avoid unfair to him.

Ofcom noted the comments made by Channel 4 in its representations on the Preliminary View and that it disagreed with Ofcom's Preliminary View to uphold head a) of Mr Dicks' complaint. We took into account, in particular, Channel 4's concern that Ofcom (by upholding head a)) was, in effect, compelling the broadcaster to include a matter in the editorial report and for the editor to act in a specific way, therefore creating a positive regulatory obligation on a broadcaster to include a claim in a news programme that it believed was factually tenuous.

This was not Ofcom's intention. We considered that, based on the very particular facts of this case, Channel 4 should have ensured that Mr Dicks' comments were presented in the proper context, i.e. Mr Dicks' comments (recorded two years and seven months previously) should not have been presented as being contemporaneous without reflecting in some proportionate way in the programme that Mr Dicks' claimed to have changed his mind about Mr Mandela. We do not consider that Channel 4 had an obligation to indicate in the programme that Mr Dicks had changed his views, but only – given that Channel 4 had clearly suggested during the broadcast that the viewpoints Mr Dicks had expressed in the interview represented his current position – that Mr Dicks had *claimed* to have changed them after the interview had been recorded. In this way, the programme could not be construed as presenting “factually tenuous” information to viewers, but simply providing them with information from which they could reach their own conclusions about Mr Dicks' claim.

Ofcom acknowledged Channel 4's concerns that the Preliminary View might potentially lead to a broadcaster feeling obliged to refer to claims by participants that they had changed their views regardless of whether or not the claim had credibility. It is important to note, however, that Ofcom assesses every complaint on an individual basis taking account of the specific circumstances of that case. Where a contributor to a programme claims to have changed their mind about the content of their contribution at a later date and makes this known to a broadcaster, the broadcaster should take reasonable care to satisfy itself that the material facts of that contribution are not presented, disregarded or omitted in a way that is unfair to the contributor. The measures a broadcaster should take to

satisfy themselves in this way (and so be able if necessary to demonstrate at a later date) will depend on all the relevant circumstances of the particular case.

Ofcom does not, however, consider that normally where a contributor simply claims at a later date that they have changed their mind about an aspect of their contribution that the broadcaster is in any way necessarily obliged to include a reference to that claim in the broadcast to avoid unfairness. It will all depend on the individual facts of a particular case. In reaching our Decision in this case, we have had careful regard to the importance of the broadcaster's and audience's right to freedom of expression in the context of reporting on political speech and opinions. Broadcasters of news programmes in particular must be free to report the news frankly and honestly from their editorial perspective, but in taking editorial decisions they are obliged - as required by statute - to avoid unjust or unfair treatment of individuals or organisations.

Ofcom's Decision is therefore that, on balance and based on the particular facts of this case, Mr Dicks was treated unfairly in this regard.

- b) Ofcom next considered the complaint that the programme claimed that Mr Dicks was a supporter of the apartheid government of South Africa, which he said was untrue.

In considering this head of complaint, we had regard to Practice 7.9 which states that, before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom noted that the interview with Mr Dicks was included in the news broadcast immediately after the reporter Mr Gibbon stated:

"Behind her on the backbenches, some of Margaret Thatcher's strongest supporters were also supporters of apartheid and passionate critics of Nelson Mandela".

We took into account that the report was a wide-ranging report on the relationship between Mr Mandela and the UK and that Channel 4 explained, in its response to the complaint, that the above comment was a general point being made about Conservative backbench MPs. Having watched the programme, we considered that this statement, although made immediately before the interview footage of Mr Dicks was broadcast, was not specifically describing the opinions of Mr Dicks at the time when Mrs Thatcher was Prime Minister.

In any event, we considered that even if some viewers interpreted the report to suggest that Mr Dicks supported the apartheid government, there was a significant amount of evidence from the unedited footage of the interview with Mr Dicks that he had held the view, at least at the time he was interviewed, that there were a number of positive features about the apartheid government. For example, he said:

"The lives and quality of life for Blacks and White South Africans is no better now than it was under apartheid. People keep coming back and saying 'Well now they have freedom'. Well, what sort of freedom do you have when you can't eat anything? What sort of freedom is it when you can't go outside your front door? What sort of freedom is it when you have to have gated estates – not like this where the gate opens – but with armed guards there? You know.

And, what sort of freedom is it when you can't stop your car at traffic lights in Pretoria or Cape Town, in case somebody opens the door and takes your wrist watch or whatever they do or your car? What sort of freedom is that? I don't understand that at all".

And,

"You couldn't say what I've just said and expect to be heard even, let alone listened to, about what I said about apartheid giving a better standard of life to the Black people there at the time than they are getting now. And I'd fight – I'd fight that corner any time with anybody, but you wouldn't be allowed to say that. People would get up and walk away from the table now".

Taking these factors into account, Ofcom's Decision is therefore that the broadcaster had taken reasonable care when presenting this material about Mr Dicks' views on apartheid to do so in a way that was not unfair to Mr Dicks.

Therefore, Ofcom has upheld in part this complaint of unjust or unfair treatment in the programme as broadcast made by Mr Dicks.

Upheld in part

Complaint by Mr Stephen Kennedy and Mrs Olivia Kennedy

Motorway Cops, BBC 1, 23 September 2013

Summary

Ofcom's has upheld the complaint, made by Mr Stephen Kennedy and his wife Mrs Olivia Kennedy of unjust or unfair treatment in the programme as broadcast, but not upheld the complaint of unwarranted infringement of privacy in the programme as broadcast.

The programme, which followed the work of traffic police as they patrolled the country's roads, showed the investigation into a road traffic accident involving a collision between three cars and two horses. One of the motorists died as a result of the accident as did the two horses which belonged to the complainants. At the end of the programme, the narrator stated:

"A coroner's enquiry into the accident concluded that the driver's death was accidental. Just how the horses escaped from the field onto the road remains a mystery".

Ofcom found that:

- The programme had not adequately reflected the Coroner's findings about the events leading up to the accident and this was unfair to the complainants.
- While the complainants had a limited legitimate expectation of privacy in the material broadcast, in the circumstances of this case, the BBC was not obliged to inform Mr and Mrs Kennedy in advance of the broadcast of the programme. Therefore Mr and Mrs Kennedy's privacy was not unwarrantably infringed in the programme as broadcast.

Introduction and programme summary

On 23 September 2013, BBC 1 broadcast an episode of *Motorway Cops*, a reality documentary series which followed the work of traffic police as they patrolled the country's roads. This episode showed police officers investigating a road traffic accident involving a collision between three cars and two horses (which belonged to the complainants). The programme was introduced with: *"Now on BBC 1 a sensitive shift for the motorway cops attending a fatal accident involving some runaway horses"*.

The segment of the programme in which the accident was featured was introduced by the programme's narrator as:

"PC Lindsey Pickles and PC Andy Barron have just received a call to assist with a crash on the A58...It's another accident involving cars and horses loose on the road. This time it's cost a human life".

The programme's narrator then stated:

“Officers will soon be on their way to inform the deceased man’s family. Lindsey also works as a family liaison officer so understands what a tough call that can be”.

PC Pickles explained that it was a difficult part of the job having to tell someone that a family member had died:

“You’ve got to hope that you say the right things. You know what you’ve got to say and it’s the most tragic news that you’re ever gonna, you’re ever gonna tell anybody. You can’t imagine really what it’s like for somebody to tell you that you’ve lost your ah, your son, your daughter. You can never imagine it”.

PC Pickles then spoke about the particular accident:

“We knew how serious the incident was whilst we were en route. But, the actual gravity of what we were met by is hard to describe to be honest. Literally, as we get to the scene we’re more or less upon the horses that are in the road. It was horrific”.

Footage of the accident scene was included throughout the segment, including close-up images of the two dead horses lying in the road and close-up images of the vehicles involved in the accident. The car in which the motorist had died was shown several times in close-up. It had substantial damage from the accident; its front was crushed and the roof on the driver’s side of the vehicle was almost flattened from where one of the horses had hit it.

Police officers were shown discussing the possible cause of the accident, including trying to ascertain where the horses had come from. PC Pickles commented that:

“An adult horse can weigh as much as a small car so the impact of a horse on a vehicle, depending on where it, where it actually hits, is going to be massive”.

PC Barron then added:

“There was an extreme amount of damage [to the deceased driver’s car], the roof was pushed, pushed down, and yeah the driver wouldn’t have had much of a chance”.

The narrator commented that:

“The owner of the horses has been told of the accident, but the cops now need to find out why they were in the road in the middle of the night”.

PC Barron further explained that:

“There is a possibility that the fencing had been tampered with and we may have been looking at criminal damage. There is a theory that the horses could have jumped the fence, but unfortunately we’ve got no witnesses or credible evidence at this time which will say for certain which one of those theories it is”.

Collision investigation officers were shown arriving at the scene and trying to reconstruct the accident.

Police officers were then featured visiting the hospital where one of the injured drivers had been taken. The driver, who was shown lying in a bed with a neck brace on, explained to them his recollection of the accident:

“Spotted two cars obviously together on the right hand side of the carriageway and hazard lights on, so I thought there’d been an accident, so I slowed down and thought I’ll go and see, cos I’m first aid trained and I smashed into a dead horse on my side of the carriageway, went right over the top of that, came down and my car veered over to the right, and I managed to stop it. So I got out, and there was another guy coming towards me and it was very apparent that the other guy in the car was dead. I managed to feel that there was no pulse, I managed to see there was no breathing, but I couldn’t get in to do any emergency resuscitation at all. It was obvious that that was probably going to be a waste of time anyway”.

PC Barron then gave his view on the cause of the accident:

“I don’t think we will ever get to the bottom of why those horses were in the middle of the road. There are many reasons why these animals might get on to the road and they quite often do. And, quite often, it’s through no fault of the owners. And, quite often, it’s through no fault of the drivers. It could be one of those few collisions where it’s just an unfortunate accident and it’s happened with no one entirely to blame”.

At the end of the programme, the narrator stated:

“A coroner’s enquiry into the accident concluded that the driver’s death was accidental. Just how the horses escaped from the field onto the road remains a mystery”.

Summary of the complaint and the broadcaster’s response

Unjust or unfair treatment

In summary, Mr and Mrs Kennedy complained that they were treated unjustly or unfairly in the programme as broadcast because material facts were presented, disregarded or omitted in a way that was unfair to them.

In particular, Mr and Mrs Kennedy said that the programme had not made clear that the Coroner had said that, as summarised by Mr and Mrs Kennedy, they had been victims of crime themselves, and that a criminal act by other unidentified people (unauthorised tampering with fences in an attempted theft of the horses) had led to the horses being on the road. They said that the programme had highlighted (at the end of the item) that it was “a mystery” as to how the horses had got onto the road, the inference being that they had not been tethered appropriately and that the owners bore some responsibility for the accident. Mr and Mrs Kennedy argued that it had been a criminal act that had led to their horses being on the road, and that this was not made clear in the programme, despite the assurances given to them by the programme makers that the Coroner’s verdict would be reflected in the programme.

By way of background, Mr and Mrs Kennedy said that by 10:00 on the day of the accident, 16 October 2012, the police had confirmed to them that their fences had been tampered with, including the cutting of an electric fence, and that the horse perimeter fence had been smashed down and wires cut. Mrs Kennedy said that she had discussed this point with the programme makers on 9 April 2013, and was

assured that, when the inquest was complete, commentary would be included at the end of the programme to clarify the facts of the case.

In response, the BBC acknowledged that to say, as the programme did, that it was “a *mystery*” as to how the horses came to be on the road, did not adequately reflect what the Coroner had said about this at the inquest. The BBC accepted that the programme’s commentary should have reflected the fact that, while there was no conclusive proof, the Coroner had believed it likely that someone had tried to steal the horses. The BBC apologised for this inaccuracy and for any distress this may have caused the complainants. It gave its assurance that should the programme be broadcast again that this line of commentary would be removed or rewritten to reflect more accurately the Coroner’s view.

The BBC also said that while the explanation given in the programme for the horses being on the road allowed for the interpretation that the complainants might have been negligent, it did not actually allege or suggest this. It pointed out that the complainants were not identified in the programme, nor was any geographical information provided which was precise enough for a viewer, who did not already know them, to establish the location of their property. It considered that Mr and Mrs Kennedy would only have been identifiable to people who already knew them and were aware of the incident.

Unwarranted infringement of privacy

In summary, Mr and Mrs Kennedy complained that their privacy was unwarrantably infringed in the programme as broadcast in that they were not informed in advance of the broadcast of the programme. Mr and Mrs Kennedy said that the broadcast of “graphic horrific pictures” of their dead horses had caused them “untold shock and distress”. They explained that their horses were:

“...part of our family...Purdy [one of the horses] had lived with us for 15 years. Our horses were like our children”.

They said that no attempt had been made by the broadcaster to reduce the potential distress to them.

By way of background, Mr and Mrs Kennedy said that, despite requesting that they be informed of the date of transmission (by emails to the programme makers on 7 August, 6 September and 10 September 2013), they were not provided with this information.

In response, the BBC explained that there had been a “breakdown in communications” which meant that the complainants were not kept informed about progress in completing the programme and, in particular, when it would be broadcast. It said that this was due to the fact that the series producer, who had been in contact with the complainants, had left the production company after filming, but before the broadcast of the programme. The BBC said that his email account was not checked, which meant that the production company was unaware of Mr and Mrs Kennedy’s efforts to obtain information. The BBC said that this should not have been allowed to happen and that new protocols had been put in place to ensure that it did not happen again. It said that efforts were made to contact the complainants by telephone on the day of broadcast; however it accepted that this was inadequate.

The BBC said that, having reviewed the way in which the footage of the dead horses was used, it did not consider that, on balance, it was unduly graphic and that they

believed the footage was “the minimum required to give a realistic portrayal of the accident scene”. However, it said that it could understand that seeing these images might have been distressing because the complainants had not been given sufficient notice that they would appear and it apologised for the fact that sufficient notice was not given to them.

However, the BBC said that to find a breach of privacy arising from a failure to give due notice to interested parties in this case would be to go beyond what seemed to be envisaged by Ofcom’s Broadcasting Code (“the Code”). The BBC said that:

“While we understand that the particular examples of surviving victims and immediate families are not exhaustive, the distance between those and the case of animals and their owners is so great that we find it difficult to credit that [Practice] 8.19 [of the Code] was intended to encompass the latter”.

While it regretted any distress caused to Mr and Mrs Kennedy by the failure to keep them properly informed, the BBC said it did not consider the complainants’ privacy had been breached.

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 this Decision, we carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, both parties’ written submissions and supporting documentation, including documentation from the Coroner’s office¹ provided by the BBC. The parties chose not to make any representations on Ofcom’s Preliminary View.

Unjust or unfair treatment

When considering complaints of unfair treatment, Ofcom has regard to whether the broadcaster’s actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code. Ofcom had regard to this Rule when reaching its decision. When considering this complaint, Ofcom also took into consideration Practice 7.9 of the Code which states that, before broadcasting a factual programme, broadcasters should take reasonable

¹ The Coroner’s office explained that the recording equipment failed on the day of the inquest into the incident in question and that therefore there was no transcript available of the Coroner’s findings. The Coroner was however able to provide a redacted page of a statement which he explained was a summary of the police investigation report prepared by a Detective Superintendent in the Major Collision Enquiry Team. The Coroner’s office confirmed to Ofcom that the conclusion reached by the Coroner was consistent with the view expressed in this police report.

care to satisfy themselves that material facts have not be presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom considered Mr and Mrs Kennedy's complaint, in summary, that it was unfair for the programme not to reflect the Coroner's findings, that as stated in a summary of the police investigation report "...it was highly probable that someone tried to remove the horses in an attempt to steal them and as a result...they [the horses] have been in collision with [the motorist] which resulted in all their deaths". The complainants objected that the programme highlighted that it was "*a mystery*" as to how the horses had got onto the road, the inference being that they had not been tethered appropriately and that the owners bore some responsibility for the accident.

Ofcom noted that, although Mr and Mrs Kennedy were not named or otherwise specifically identified in the programme, they were referred to as "*the owners of the horses*". Ofcom considered whether the programme had presented, disregarded or omitted material facts relating to the involvement of their horses in the accident in a way which was unfair to them in that context.

Several comments were made throughout the programme by the police officers trying to establish how the accident occurred (as outlined in the "Introduction and programme summary" section above). Having carefully watched the programme, we did not consider that the various comments made by the police officers were likely to lead viewers to believe that the owners of the horses were responsible for causing the accident. The comments were clearly speculative as to what had happened and viewers would have understood that the police officers and collision investigators had not established conclusively, at the time of filming, the events of the evening leading up to the accident or what had caused it.

At no time, Ofcom noted, did the programme state that the accident was caused by the owners of the horses, i.e. Mr and Mrs Kennedy.

However, the complainants objected in particular to the programme's commentary which stated at the end of the programme:

"A coroner's inquiry into the accident concluded the driver's death was accidental. Just how the horses escaped from the field onto the road remains a mystery."

We assessed the concluding statement in the programme. While Ofcom acknowledged that it did not actually allege that the complainants had been negligent, nor specifically identify the complainants, in Ofcom's view it did allow for the interpretation that the complainants may have been negligent in some way. The BBC provided Ofcom with an extract of a summary of the police investigation report (which as explained above, Ofcom understood the Coroner accepted) which concluded that:

"With no firm evidence of what occurred that night, I have to report that in consideration of all the facts it is highly probable that someone has tried to remove the horses in an attempt to steal them and as a result of them being freed from their enclosure they have run away and onto Rochdale Road when they have been in a collision with [a motorist] which has resulted in all their deaths".

Having considered this extract and compared it with the statement made in the programme, Ofcom considered that the programme did not reflect adequately the Coroner's findings as to the probable cause of the horses being on the road. In our view the statement made in the programme had the potential to mislead viewers in a

way that would materially and adversely affect their opinion of the owners of the horses, i.e. that Mr and Mrs Kennedy may have been negligent in the care of their horses leading to the death of a motorist. Ofcom noted that the BBC had offered its apologies to the complainants for this and provided its assurance that if the programme was repeated that the line of commentary in question would either be removed or rewritten to reflect the Coroner's findings more accurately.

Taking all the factors above into account, Ofcom's decision is that the broadcaster had not taken reasonable care to satisfy itself that the material facts were not presented, omitted or disregarded in a way that was unfair to the complainants. The complainants were therefore treated unfairly in the programme.

Unwarranted infringement of privacy

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

This is reflected in how Ofcom applies Rule 8.1 of the Code, which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

Ofcom considered Mr and Mrs Kennedy's complaint, in summary, that their privacy was unwarrantably infringed in the programme as broadcast because they were not informed in advance of the broadcast of the programme. Mr and Mrs Kennedy said that the broadcast of "graphic horrific pictures" of their dead horses had caused them "untold shock and distress". They explained that their horses were:

"...part of our family...Purdy [one of the horses] had lived with us for 15 years. Our horses were like our children".

They said that no attempt had been made by the broadcaster to reduce the potential distress to them.

Ofcom considered that the complaint related solely to whether the complainants should have been informed in advance of the programme's intended broadcast. Ofcom therefore did not assess whether or not Mr and Mrs Kennedy's consent was required for the material to be broadcast (as set out under Practice 8.6 of the Code).

In considering Mr and Mrs Kennedy's complaint that their privacy was unwarrantably infringed in the programme as broadcast because they were not informed in advance of the broadcast of the programme Ofcom had regard to Practice 8.19 of the Code which states:

"Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual programmes.

- In particular, so far as is reasonably practicable, surviving victims, and/or the immediate families of those whose experience is to feature in a programme,

should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past”.

To establish whether the BBC was required to comply with this Practice in relation to the programme, Ofcom began by considering whether, and if so to what extent, the complainants had a legitimate expectation of privacy under the Code in respect of the particular material broadcast regarding the involvement of their horses in the accident.

The guidance on the meaning of “legitimate expectation of privacy” (which introduces the Practices under Section Eight) makes clear that such expectations are circumstance specific and “will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place”.

Ofcom would generally consider individuals to have a legitimate expectation of privacy regarding their private and family life. In this case, we examined whether it was appropriate to consider the concept of private and family life to encompass animals or pets owned by a family and the grief and distress which could be caused to their owners in the event of their death in violent circumstances. We noted that Mr and Mrs Kennedy had described their horses as:

“...part of our family...Purdy [one of the horses] had lived with us for 15 years. Our horses were like our children”.

We therefore acknowledged that the complainants in the particular circumstances of this case clearly regarded their horses to be a close part of their family.

In this context, we noted the footage of the accident included in the programme (as set out above in the “Introduction and programme summary” section) and, in particular, the various close-up images of the two dead horses lying in the road, and the fact that the report referred several times to the escape of the horses directly causing a fatal road accident.

Ofcom recognised from Mr and Mrs Kennedy’s complaint that the broadcast of this material had caused them personal distress. In our view, in the particular circumstances of this case, there was a degree of sensitivity and privacy, personal to Mr and Mrs Kennedy, with regards to the material of the horses included in the programme. These circumstances were:

- the distress caused by seeing relatively graphic footage of their dead horses (which they regarded as part of their family), which had been killed in a violent collision with passing cars; and,
- the stress and anxiety created by the knowledge that their horses had caused a serious road traffic accident which had resulted in a motorist being killed.

As a result Ofcom concluded, on balance and in the circumstances of this particular case, that the complainants had a legitimate expectation of privacy under the Code in respect of the particular material broadcast in the programme. However, Ofcom recognises that this expectation was limited because the material was filmed openly and on a public highway and information about the accident was already in the public domain.

We therefore went on to consider whether Practice 8.19 was applicable in this case.

Ofcom recognised from Mr and Mrs Kennedy's complaint that the broadcast of the footage of the accident scene and their dead horses lying in the road had caused them personal distress.

It is clear from the terms of the bullet point to Practice 8.19 that it does not guide or require broadcasters to obtain (prior) consent or permission from relevant surviving victims and/or immediate relatives to broadcast material, but it contemplates broadcasters seeking to reduce potential distress to victims and/or relatives by, "*so far as is reasonably practicable*", informing them of the "*plans for the programme and its intended broadcast*". The bullet point is also expressed to apply "*even if the events or material to be broadcast have been in the public domain in the past*", which was the case to some extent in the circumstances of this complaint, since the fact that the complainants' horses had been involved in a fatal accident had been reported at a coroner's inquest.

Practice 8.19 starts by stating that: "Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise." Ofcom's view is that although in most cases Practice 8.19 should be interpreted to mean distress caused to victims and/or relatives by past events involving trauma to people, in principle the trauma which might affect victims and/or relatives could have a number of causes – including as in this case the death of, or serious injury caused to, animals. For these reasons, Ofcom was of the view that on balance Practice 8.19 was applicable here.

However it is important that Practice 8.19 is applied proportionately: it should not place an unreasonable burden on broadcasters and not infringe inappropriately on their right to freedom of expression.

This programme focussed on, and therefore needed to illustrate, the varied and often difficult incidents experienced by traffic police in their work. Ofcom's view was that the footage of the dead horses included in this programme was not excessive, and played a legitimate editorial role in illustrating this incident in a realistic way. We had regard to the distress which the broadcast of the footage of the dead horses clearly caused to the complainants. But, we also had regard to the fact that, in our opinion, it would have been difficult for the broadcaster to assess in advance what level of distress or trauma might have been caused to the complainants (as opposed to the public in general) by showing this material. In our opinion it was reasonable for the broadcaster to decide in this case that the nature of the incident, and consequent likelihood of causing a sufficiently serious level and type of trauma to "victims and/or relatives", were such that it was not under any **obligation** to inform the complainants in advance of the broadcast in accordance with Practice 8.19. The fact that it was reasonably practicable for the BBC in the particular circumstances of this case to inform Mr and Mrs Kennedy in advance of the broadcast, and that they attempted to do so on the day of transmission, should not affect Ofcom's decision on this point: the BBC's wish to inform the complainants in advance in this case resulted in our view from courtesy and good professional practice, rather than from any requirement imposed by Practice 8.19 and Rule 8.1 of the Code.

For these reasons in our view the use of this material was therefore warranted in the editorial context of this particular programme, the BBC acted in accordance with Practice 8.19 on the particular facts of this case, and the privacy of the complainants was not unwarrantably infringed.

We noted that the BBC regretted the “injury to the...feelings” of Mr and Mrs Kennedy and that they were not “properly informed” in advance of the broadcast. The broadcaster said that this resulted from a “breakdown in communications”, due to the series producer leaving the company after filming but before the broadcast of the programme and his email account becoming dormant. It said that the production company were therefore unaware of the complainants’ requests for information about the intended broadcast of the programme.

Ofcom’s decision is therefore that Mr and Mrs Kennedy’s privacy was not unwarrantably infringed in the programme as broadcast.

Therefore, Ofcom has upheld Mr and Mrs Kennedy’s complaint of unfair treatment in the programme as broadcast, but not upheld their complaint of unwarranted infringement of privacy in the programme as broadcast.

Complaints Assessed, Not Investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 22 April and 5 May 2014 because they did not raise issues warranting investigation.

Complaints assessed under the Procedures for investigating breaches of content standards for television and radio

For more information about how Ofcom assesses conducts investigations about content standards, go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Honey 2	4Music	21/04/2014	Generally accepted standards	1
One Direction vs Little Mix: Tweet To Beat	4Music	25/04/2014	Offensive language	1
The Hunt for the Boston Bombers (trailer)	4Seven	12/04/2014	Generally accepted standards	1
Dreams Beds' sponsorship of "Easter"	5*	13/04/2014	Religious/Beliefs discrimination/offence	1
Gypsies on Benefits and Proud	5*	20/04/2014	Generally accepted standards	1
Dreams Beds' sponsorship of "Easter"	5USA	20/04/2014	Religious/Beliefs discrimination/offence	1
Christian O'Connell Breakfast Show	Absolute Radio	22/04/2014	Offensive language	1
Ambur Radio	Ambur Radio 103.6 FM	21/04/2014	Fairness	1
BBC News at One	BBC 1	23/04/2014	Offensive language	2
BBC News at One	BBC 1	02/05/2014	Outside of remit / other	1
BBC News at Six	BBC 1	22/04/2014	Outside of remit / other	1
BBC News at Six	BBC 1	29/04/2014	Generally accepted standards	1
BBC News at Six	BBC 1	30/04/2014	Outside of remit / other	1
BBC News at Ten	BBC 1	25/04/2014	Outside of remit / other	1
Breakfast	BBC 1	29/04/2014	Generally accepted standards	1
Breakfast	BBC 1	02/05/2014	Outside of remit / other	1
Casualty	BBC 1	19/04/2014	Materially misleading	1
Doctors	BBC 1	02/05/2014	Scheduling	1
EastEnders	BBC 1	22/04/2014	Scheduling	2
EastEnders	BBC 1	24/04/2014	Animal welfare	1
EastEnders	BBC 1	24/04/2014	Generally accepted standards	1
EastEnders	BBC 1	01/05/2014	Drugs, smoking, solvents or alcohol	1
EastEnders	BBC 1	01/05/2014	Outside of remit / other	1
Fake Britain	BBC 1	01/05/2014	Outside of remit / other	1

Happy Valley	BBC 1	29/04/2014	Violence and dangerous behaviour	4
Have I Got News for You	BBC 1	11/04/2014	Generally accepted standards	1
Have I Got News for You	BBC 1	18/04/2014	Generally accepted standards	1
Jamaica Inn	BBC 1	21/04/2014	Outside of remit / other	3
Jamaica Inn	BBC 1	22/04/2014	Outside of remit / other	3
Over to Bill	BBC 1	29/04/2014	Outside of remit / other	1
Parking Mad	BBC 1	24/04/2014	Race discrimination/offence	1
Parking Mad	BBC 1	01/05/2014	Violence and dangerous behaviour	1
Shetland	BBC 1	15/04/2014	Outside of remit / other	1
The Graham Norton Show	BBC 1	18/04/2014	Generally accepted standards	1
The Graham Norton Show	BBC 1	25/04/2014	Generally accepted standards	1
The Guess List	BBC 1	19/04/2014	Generally accepted standards	1
The Michael McIntyre Chat Show	BBC 1	14/04/2014	Generally accepted standards	1
Inside Edinburgh Airport	BBC 1 Scotland	24/04/2014	Animal welfare	3
News coverage of Scottish Referendum	BBC 1 Scotland	Various	Outside of remit / other	1
Reporting Scotland	BBC 1 Scotland	01/05/2014	Outside of remit / other	1
Newsnight	BBC 2	17/04/2014	Generally accepted standards	1
QI	BBC 2	n/a	Race discrimination/offence	1
Restaurant Wars: The Battle for Manchester	BBC 2	21/04/2014	Offensive language	1
Restoration Home	BBC 2	21/08/2013	Outside of remit / other	1
Rev	BBC 2	07/04/2014	Generally accepted standards	1
Don't Tell the Bride	BBC 3	27/04/2014	Nudity	1
Gavin and Stacey	BBC 3	22/04/2014	Offensive language	1
Russell Howard's Good News	BBC 3	24/04/2014	Generally accepted standards	1
Sweat the Small Stuff	BBC 3	20/04/2014	Generally accepted standards	1
The Call Centre	BBC 3	08/04/2014	Generally accepted standards	2
The Call Centre	BBC 3	09/04/2014	Generally accepted standards	1
The Call Centre	BBC 3	23/04/2014	Offensive language	1
Programming	BBC Radio 1	21/04/2014	Race discrimination/offence	1
Simon May	BBC Radio 2	25/04/2014	Outside of remit / other	1
Any Questions	BBC Radio 4	05/04/2014	Outside of remit / other	1
Down the Line	BBC Radio 4	08/04/2014	Generally accepted standards	1
Down the Line	BBC Radio 4	08/04/2014	Scheduling	1
You and Yours	BBC Radio 4	24/04/2014	Outside of remit / other	1

Doug Paterson – The Mid-Morning Show	BRFM 95.6	17/04/2014	Scheduling	1
Capital Breakfast	Capital FM	25/04/2014	Scheduling	1
The Amazing World of Gumball	Cartoon Network	06/04/2014	Generally accepted standards	1
Alan Carr: Chatty Man	Channel 4	18/04/2014	Harm	1
Alan Carr: Chatty Man	Channel 4	22/04/2014	Harm	1
Cardinal Burns (trailer)	Channel 4	21/04/2014	Generally accepted standards	1
Channel 4 News	Channel 4	25/04/2014	Elections/Referendums	1
Channel 4 News	Channel 4	30/04/2014	Due impartiality/bias	10
Come Dine with Me	Channel 4	21/04/2014	Race discrimination/offence	1
Continuity announcement	Channel 4	24/04/2014	Outside of remit / other	1
Continuity announcement	Channel 4	29/04/2014	Disability discrimination/offence	1
Derek	Channel 4	30/04/2014	Disability discrimination/offence	1
Embarrassing Bodies	Channel 4	22/04/2014	Scheduling	1
Embarrassing Bodies	Channel 4	29/04/2014	Nudity	1
Fargo	Channel 4	20/04/2014	Generally accepted standards	1
Game Face	Channel 4	23/04/2014	Generally accepted standards	1
Game Face	Channel 4	23/04/2014	Offensive language	1
Gogglebox	Channel 4	18/04/2014	Due impartiality/bias	7
Gogglebox	Channel 4	18/04/2014	Generally accepted standards	1
Gogglebox	Channel 4	25/04/2014	Animal welfare	1
Gogglebox	Channel 4	25/04/2014	Elections/Referendums	1
HMRC advertisement	Channel 4	11/04/2014	Political advertising	1
Jimmy Carr: Telling Jokes	Channel 4	23/04/2014	Generally accepted standards	2
Marley and Me	Channel 4	13/04/2014	Offensive language	1
One Born Every Minute	Channel 4	28/04/2014	Generally accepted standards	1
Posh Pawn	Channel 4	17/04/2014	Materially misleading	1
Posh Pawn	Channel 4	24/04/2014	Materially misleading	1
Posh Pawn	Channel 4	01/05/2014	Materially misleading	1
Secret Eaters	Channel 4	09/04/2014	Under 18s in programmes	1
Secret Eaters	Channel 4	16/04/2014	Generally accepted standards	1
The Last Chance School	Channel 4	29/04/2014	Generally accepted standards	1
Unreported World	Channel 4	25/04/2014	Generally accepted standards	1
5USA promotion	Channel 5	27/04/2014	Scheduling	1
Britain's Crime Capitals	Channel 5	09/04/2014	Materially misleading	1
Dreams Beds' sponsorship of "Easter"	Channel 5	15/04/2014	Religious/Beliefs discrimination/offence	1
Dreams Beds' sponsorship of "Easter"	Channel 5	17/04/2014	Religious/Beliefs discrimination/offence	1

Freaky Friday	Channel 5	27/04/2014	Outside of remit / other	1
GPs Behind Closed Doors (trailer)	Channel 5	29/04/2014	Generally accepted standards	1
Gypsies on Benefits and Proud	Channel 5	11/04/2014	Generally accepted standards	8
Gypsies on Benefits and Proud	Channel 5	11/04/2014	Race discrimination/offence	11
Gypsies on Benefits and Proud	Channel 5	17/04/2014	Generally accepted standards	2
Harold Shipman: Catching Dr Death (trailer)	Channel 5	23/04/2014	Scheduling	1
It Takes a Thief to Catch a Thief	Channel 5	27/03/2014	Offensive language	1
Promotion for drama on Channel 5	Channel 5	23/04/2014	Scheduling	1
The Gadget Show	Channel 5	25/04/2014	Crime	1
The Wright Stuff	Channel 5	27/03/2014	Disability discrimination/offence	1
The Wright Stuff	Channel 5	18/04/2014	Materially misleading	24
The Wright Stuff	Channel 5	21/04/2014	Materially misleading	1
UFC Fight Night London: Live	Channel 5	08/03/2014	Materially misleading	2
Amader Khobor	Channel i	05/03/2014	Due accuracy	1
Adventure Time	CITV	15/04/2014	Scheduling	1
News	CNN	20/04/2014	Outside of remit / other	1
Anger Management (trailer)	Comedy Central	20/04/2014	Gender discrimination/offence	1
Channel promotion	Comedy Central	21/04/2014	Hypnotic and other techniques	1
Two and a Half Men	Comedy Central	07/04/2014	Race discrimination/offence	1
Workaholics (trailer)	Comedy Central	16/04/2014	Drugs, smoking, solvents or alcohol	1
Just Eat's sponsorship of programmes on Dave	Dave	16/04/2014	Generally accepted standards	1
Channel promotion	Disney Junior	25/04/2014	Offensive language	1
Continuity announcement	Disney XD	23/04/2014	Scheduling	1
Escape from Sobibor	Drama	18/04/2014	Scheduling	1
2 Broke Girls	E4	n/a	Generally accepted standards	1
Channel ident	E4	27/04/2014	Generally accepted standards	1
The Other Woman/Made in Chelsea ad	E4	21/04/2014	Advertising/editorial distinction	1
American Dad	Fox	26/04/2014	Offensive language	1
Man Up (trailer)	Fox	03/03/2014	Gender discrimination/offence	1
Geo News	Geo News and Geo Tez	Various	Race discrimination/offence	1
Breakfast Show	Hallam FM	14/03/2014	Scheduling	1
118118.com's sponsorship of movies on ITV	ITV	Various	Generally accepted standards	1

Britain's Got Talent	ITV	12/04/2014	Generally accepted standards	1
Britain's Got Talent	ITV	12/04/2014	Offensive language	1
Britain's Got Talent	ITV	19/04/2014	Animal welfare	1
Britain's Got Talent	ITV	19/04/2014	Generally accepted standards	2
Britain's Got Talent	ITV	19/04/2014	Outside of remit / other	4
Britain's Got Talent	ITV	19/04/2014	Scheduling	1
Britain's Got Talent	ITV	19/04/2014	Violence and dangerous behaviour	12
Britain's Got Talent	ITV	26/04/2014	Generally accepted standards	17
Britain's Got Talent	ITV	26/04/2014	Offensive language	1
Britain's Got Talent	ITV	26/04/2014	Outside of remit / other	1
Catchphrase	ITV	20/04/2014	Outside of remit / other	1
Catchphrase	ITV	27/04/2014	Age discrimination/offence	1
Catchphrase	ITV	27/04/2014	Generally accepted standards	1
Comparethemarket.com's sponsorship of Coronation Street	ITV	Various	Generally accepted standards	1
Coronation Street	ITV	11/04/2014	Generally accepted standards	1
Coronation Street	ITV	11/04/2014	Scheduling	2
Coronation Street	ITV	18/04/2014	Product placement	3
Coronation Street	ITV	21/04/2014	Product placement	1
Coronation Street	ITV	21/04/2014	Race discrimination/offence	1
Coronation Street	ITV	21/04/2014	Scheduling	1
Coronation Street	ITV	23/04/2014	Generally accepted standards	1
Daybreak	ITV	23/04/2014	Outside of remit / other	1
Dreams Beds' sponsorship of "Easter"	ITV	Various	Religious/Beliefs discrimination/offence	1
Emmerdale	ITV	23/04/2014	Generally accepted standards	2
Emmerdale	ITV	23/04/2014	Scheduling	2
Emmerdale	ITV	Various	Crime	1
Endeavour	ITV	20/04/2014	Scheduling	2
Good Morning Britain	ITV	29/04/2014	Generally accepted standards	1
Good Morning Britain	ITV	02/05/2014	Due accuracy	1
ITV News and Weather	ITV	21/04/2014	Due impartiality/bias	1
ITV News and Weather	ITV	25/04/2014	Due impartiality/bias	1
ITV News and Weather	ITV	25/04/2014	Outside of remit / other	1
ITV News at Ten and Weather	ITV	22/04/2014	Elections/Referendums	1
Let Me Entertain You	ITV	26/04/2014	Scheduling	1
Let Me Entertain You	ITV	27/04/2014	Scheduling	1
Loose Women	ITV	22/04/2014	Materially misleading	32
Loose Women	ITV	24/04/2014	Scheduling	1

Loose Women	ITV	29/04/2014	Offensive language	1
Morrisons' sponsorship of Britain's Got Talent	ITV	26/04/2014	Generally accepted standards	1
Prey	ITV	28/04/2014	Outside of remit / other	1
Prey (trailer)	ITV	26/04/2014	Scheduling	1
The Jeremy Kyle Show	ITV	07/04/2014	Scheduling	1
The Jeremy Kyle Show	ITV	11/04/2014	Generally accepted standards	1
The Jeremy Kyle Show	ITV	30/04/2014	Scheduling	1
This Morning	ITV	24/04/2014	Competitions	1
This Morning	ITV	28/04/2014	Generally accepted standards	1
Tonight	ITV	17/04/2014	Materially misleading	2
UEFA Champions League Live	ITV	22/04/2014	Advertising scheduling	1
UEFA Champions League Live	ITV	29/04/2014	Outside of remit / other	1
UEFA Champions League Live	ITV	29/04/2014	Violence and dangerous behaviour	1
Undeniable	ITV	14/04/2014	Materially misleading	1
Vera (trailer)	ITV	19/04/2014	Generally accepted standards	1
ITV Tyne Tees News	ITV Tyne Tees	21/11/2013	Fairness	1
Britain's Got More Talent	ITV2	30/04/2014	Race discrimination/offence	1
Britain's Got Talent	ITV2	20/04/2014	Offensive language	1
Celebrity Juice	ITV2	22/04/2014	Generally accepted standards	1
Celebrity Juice	ITV2	24/04/2014	Sexual orientation discrimination/offence	3
Crazy Beaches	ITV2	19/04/2014	Gender discrimination/offence	1
The Jeremy Kyle Show	ITV2	17/04/2014	Generally accepted standards	1
The Jeremy Kyle Show	ITV2	22/04/2014	Scheduling	1
You've Been Framed!	ITV2	16/04/2014	Violence and dangerous behaviour	1
You've Been Framed!	ITV2	28/04/2014	Animal welfare	1
Foyle's War	ITV3	24/04/2014	Advertising minutage	1
Motogp Highlights	ITV4	28/04/2014	Outside of remit / other	1
Station ident	Jack FM (Oxfordshire)	18/04/2014	Religious/Beliefs discrimination/offence	1
Ken Livingstone and David Mellor	LBC 97.3 FM	19/04/2014	Generally accepted standards	1
Steve Allen	LBC 97.3 FM	29/04/2014	Generally accepted standards	1
Southland	More4	10/04/2014	Advertising scheduling	1
Big Brother	n/a	n/a	Outside of remit / other	1
The Greenhouse	Nickelodeon	04/04/2014	Violence and dangerous behaviour	1
News	RT	Various	Due impartiality/bias	2
The Dog Thrower (trailer)	Sky Arts 1	01/05/2014	Animal welfare	1

Thronecast	Sky Atlantic	14/04/2014	Disability discrimination/offence	1
America's Next Top Model	Sky Living	10/04/2014	Harm	1
Paper Review	Sky News	22/04/2014	Elections/Referendums	1
Sky News	Sky News	22/04/2014	Elections/Referendums	11
Sky News at 6 with Andrew Wilson	Sky News	18/04/2014	Generally accepted standards	1
Sky News with Isabel Webster	Sky News	30/04/2014	Generally accepted standards	1
Sky News with Kay Burley	Sky News	25/04/2014	Elections/Referendums	1
Sunrise	Sky News	28/04/2014	Animal welfare	1
Sunrise	Sky News	30/04/2014	Generally accepted standards	1
Sunrise	Sky News	02/05/2014	Violence and dangerous behaviour	1
Premier League Football	Sky Sports 1	13/04/2014	Offensive language	1
Premier League Football	Sky Sports 1	19/04/2014	Outside of remit / other	1
Premier League Football: Everton v Manchester	Sky Sports 1	20/04/2014	Generally accepted standards	1
Visit Scotland advertisement	Sky Sports 1	16/04/2014	Political advertising	1
Hannibal (trailer)	Sky Sports News	10/04/2014	Scheduling	1
The Smooth Drive Home	SmoothRadio	11/04/2014	Generally accepted standards	1
Talk Show	Spectrum Radio	22/03/2014	Religious/Beliefs discrimination/offence	1
Talk Show	Spectrum Radio	03/04/2014	Religious/Beliefs discrimination/offence	1
STV News at Six	STV	17/04/2014	Due impartiality/bias	1
Visit Scotland advertisement	STV	14/04/2014	Political advertising	2
Visit Scotland advertisement	STV	Various	Political advertising	1
Trolljägarna	TV3	03/04/2014	Generally accepted standards	1
Advertisements	Various	Various	Advertising minutage	1
Coverage of Oscar Pistorius trial	Various	Various	Generally accepted standards	1
News	Various	23/04/2014	Disability discrimination/offence	1
Programming	Various	30/04/2014	Harm	1
Voice of Salvation	Venus TV	01/03/2014	Violence and dangerous behaviour	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 24 April and 7 May 2014.

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

Programme	Broadcaster	Transmission date
Advertising scheduling	Channel 5	8 March 2013
Advertising scheduling	Channel 1	12 April 2014
Breaking News	Sikh Channel	8 March 2014
Har Lamha Pur Josh	Ary News	29 March 2014
Here Comes Honey Boo Boo	TLC	18 April 2014
Legal Advice	CHSTV	2 May 2014
Programming	Channel 5	Various
Sex and the City	Comedy Central Extra	6 April 2014
Sky News	Sky News	24 April 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 Procedures for the consideration and adjudication of Fairness and Privacy complaints

Programme	Broadcaster	Transmission date
BBC Scotland Investigates: Lawyers Behaving Badly	BBC 1 Scotland	15 January 2014
Left for Dead	Channel 5	5 March 2014

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints, go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.

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

Licensee	Licensed Service
DM Global Media Limited	DM News Plus
International Television Channel Europe Limited	NTV

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/>.