

# **Ofcom broadcast bulletin**

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# Introduction

Ofcom's Broadcasting Code took effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). This Code is used to assess the compliance of all programmes broadcast on or after 25 July 2005. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

The Rules on the Amount and Distribution of Advertising (RADA) apply to advertising issues within Ofcom's remit from 25 July 2005. The Rules can be found at <http://www.ofcom.org.uk/tv/ifi/codes/advertising/#content>

The Communications Act 2003 allowed for the codes of the legacy regulators to remain in force until such time as Ofcom developed its own Code. While Ofcom has now published its Broadcasting Code, the following legacy Codes apply to content broadcast before 25 July 2005.

- Advertising and Sponsorship Code (Radio Authority)
- News & Current Affairs Code and Programme Code (Radio Authority)
- Code on Standards (Broadcasting Standards Commission)
- Code on Fairness and Privacy (Broadcasting Standards Commission)
- Programme Code (Independent Television Commission)
- Programme Sponsorship Code (Independent Television Commission)
- Rules on the Amount and Distribution of Advertising

From time to time adjudications relating to advertising content may appear in the bulletin in relation to areas of advertising regulation which remain with Ofcom (including the application of statutory sanctions by Ofcom).

## Standards Cases

### In breach

#### 4Homes Magazine

*As promoted on Channel 4 and More4*

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#### Introduction

Channel 4's commercial arm, 4Ventures, launched a magazine entitled "4homes" in April 2006. The magazine was promoted around a range of property and lifestyle programmes on Channel 4 and More 4, including *Relocation, Relocation, Relocation; Selling Houses; Streets Ahead; Ramsay's Kitchen Nightmares; and Gordon Ramsey's F Word*.

We were contacted by the Producers' Alliance for Cinema and Television ("Pact"). Pact is a trade association that represents and promotes the commercial interests of independent feature film, television, animation and interactive media companies in the UK.

Pact queried the basis upon which the 4homes magazine was being promoted in promotional airtime (that is, airtime outside programmes that does not count towards advertising minutage). It did not believe that this promotion was consistent with the requirements of the Broadcasting Code.

Rule 10.3 of the Broadcasting Code states:

*"Products and services must not be promoted in programmes. This rule does not apply to programme-related material."*

According to Section Ten of the Broadcasting Code, the meaning of 'programme-related material' is:

*"...products or services that are both directly derived from a specific programme and intended to allow listeners or viewers to benefit fully from, or to interact with, that programme."*

Pact queried how the 4homes magazine could be described as being "directly derived from a specific programme". In particular, it did not accept that the magazine was directly derived from any one of the programmes broadcast on Channel 4 and More 4, around which it had been trailed. Pact therefore did not believe that the magazine was able to be promoted as programme-related material ("PRM").

We asked Channel 4 for its comments.

#### Response

Channel 4's response focussed on the provisions contained in the Programme Code of one of Ofcom's predecessor regulators, the Independent Television Commission ("the ITC"). The ITC Programme Code ("the Programme Code") was superseded in July 2005 by the Ofcom Broadcasting Code. The broadcaster contrasted the wording

of the current definition of PRM in the Broadcasting Code with the wording of the corresponding provision in the Programme Code.

The relevant wording in the Programme Code read *“Commercial products or services must not be promoted within programmes...However, the availability of licensee produced material or services (factsheets, helplines and websites) that can demonstrate a clear relationship to the content of programme, can be promoted if editorially justified. The licensee must retain the editorial responsibility for these products or services.”*

Channel 4 said that the definition of PRM in the Programme Code was much more flexible since PRM was merely required to *“demonstrate a clear relationship to the content of programmes”*.

Channel 4 claimed this had enabled it to build its approach to programme support and PRM on genres, rather than always around particular programmes or series. As the Programme Code referred to *“factsheets, helplines and websites”*, Channel 4 considered that the promotion of the 4homes magazine (which had not existed when the old rules were in force and so not been promoted under them) was simply an extension of the reference to “websites” to print media. In its view, the magazine would have been permitted as PRM under the old rules and it argued that it was wrong to prohibit the promotion of this material as PRM under the new rules in the Broadcasting Code.

It said that the magazine was intended to provide support to the diverse range of Channel 4 programmes focused around the concept of home, be that food, interiors, property or gardens. The schedule included:

Grand Designs	Streets Ahead
Property Ladder	City Gardener
Selling Houses	A Place In the Sun
Location, Location, Location	The Perfect Home
Relocation Relocation	Ramsay’s Kitchen Nightmares
Demolition	The F Word
Honey, I Ruined the House	

Channel 4 said that the collective audience for Channel 4 home interest and lifestyle programmes was substantial and that the 4homes magazine existed to help those audiences interact with the programme brands, read material written by the presenters and know what was coming up when in terms of output.

Channel 4 also referred to the 4homes website within Channel4.com, which it said provided programme support material (as sourced from producers of the programmes), and also had a “magazine” element, which gave viewers more interaction with and information on the output itself. The latter was replicated in the 4homes magazine which was *“effectively an extension of the website into the printed form.”*

Channel 4 described the magazine as largely centred around contributions from Channel 4 presenters of home interest and lifestyle programmes, with regular contributions from Kevin McCloud (*Grand Designs*); Naomi Cleaver (*Honey I Ruined The House*); Andrew Winter (*Selling Houses*); Matt James (*City Gardener*); and Gordon Ramsay (*The F Word/Ramsay’s Kitchen Nightmares*).

However, it conceded that it had often been restricted in the depth of editorial it could offer. Intellectual property rights in Channel 4's programme titles remained with the independent producers, and it could not make use of a title in the context of PRM without the specific consent of the producer.

## Decision

Broadcasters must bear in mind that the ability to promote a product or service as PRM in or around programmes is permitted purely by way of exception to the fundamental broadcasting principle that advertising and programme content must be kept separate.

In order to fall within this exception, the product or service must satisfy the meaning of PRM set out in Section Ten of Ofcom's Broadcasting Code. This meaning is derived from the wording of the Television Without Frontiers ("TWF") Directive<sup>1</sup>.

Article 18 of the TWF Directive sets out limits on the proportion of transmission time that may be devoted to advertising, and Article 18.3 states:

*"For the purposes of this Article, advertising does not include:  
- announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes;..."*

The recitals to the Amending Directive<sup>2</sup> state:

*"(34) Whereas daily transmission time allotted to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from these, or to public service announcements and charity appeals broadcast free of charge, is not to be included in the maximum amounts of daily or hourly transmission time that may be allotted to advertising and teleshopping;*

*(35) Where, in order to avoid distortions of competition, this derogation is limited to announcements concerning products that fulfil the dual condition of being both ancillary to and directly derived from the programmes concerned; whereas the term ancillary refers to products intended specifically to allow the viewing public to benefit fully from or to interact with these programmes;..."*

As Recital 35 recognises, a broadcaster's ability to make announcements about "ancillary" products directly derived from its programmes, which do not count towards its daily advertising minutage, is extremely valuable and may disadvantage other parties. Such announcements may therefore only be made where certain criteria – specified in Recital 35 and reflected in the wording of the definition of PRM in the Code – are satisfied.

Similarity, in terms of genre or theme, between a programme and product or service is not in itself sufficient to establish that the product or service is "directly derived" from the programme.

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<sup>1</sup> Directive 89/552/EEC as amended by Directive 97/36/EC

<sup>2</sup> Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities

Having considered carefully the material being promoted and the Code requirements, we do not believe that the 4homes magazine satisfies the definition of PRM in the Code. In the editions of the magazine that we obtained, very little of the content could be described as “*directly derived from a specific programme*”. The magazine seems very similar to other homes and interiors magazines on the market, largely comprising generic content about interiors, property and lifestyle. There are very few references to Channel 4 programmes in any of the features. Moreover, any such references tend to be in passing rather than substantive; by way of illustration, for example, none of the articles or features include the name of a Channel 4 programme in its title and there is only limited editorial discussion of actual programme content.

We noted that Channel 4 felt that the 4homes magazine was an extension of the 4homes content on its website. However, in contrast to the magazine, the 4homes website (which is part of Channel 4’s website) contains in-depth features about the 4homes stable of programmes, including episode synopses, interviews with programme presenters, and information on how to take part in a show.

Moreover, a broadcaster’s website may be considered to be a “broadcasting-related service” under Ofcom’s Cross-promotion Code<sup>3</sup>. Therefore, even if a website contains mainly genre-based material and therefore does not satisfy the definition of PRM, a broadcaster may still be able to cross-promote it in promotional airtime. In contrast, a magazine is not a broadcasting-related service and therefore cannot be cross-promoted.

Ofcom does not consider that it is possible to justify the promotion of material on the basis of a Programme Code which is no longer in force. Broadcasters must ensure that any programme-related material that they promote or are seeking to promote complies with Ofcom’s Broadcasting Code, which was issued on 25 May 2006 after public consultation and has been in force since 25 July 2005. The Programme Code was produced by Ofcom’s predecessor, the ITC, in a different environment, and was more restrictive than the Broadcasting Code regarding the promotion as PRM of “*commercial products or services*”. The 4homes magazine itself was not launched until 2006, and we are not aware of an instance where Channel 4 promoted a genre-based magazine as PRM while the Programme Code in force.

We are sympathetic to Channel 4’s point that there are rights issues which have constrained its use of programme titles in the 4homes magazine. However, Rule 10.3 is concerned only with the promotion of products and services in or around programmes. It does not prevent a broadcaster from developing magazines and other products, whether programme-related or not, and promoting them, either in paid-for advertising time or off-air, for example via its website.

### **Breach of Rule 10.3**

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<sup>3</sup> See <http://www.ofcom.org.uk/tv/ifi/codes/crosspromotioncode/>

## Broadcasting Code Guidance Update

To help clarify the requirements of the Code regarding programme-related material, we have now added the following paragraphs to our existing guidance on Section 10: Commercial references in programmes and other matters (the revised guidance on Section 10 is available in full on our website):

### ***Meaning of 'programme-related material'***

The meaning of 'programme-related material' in the Broadcasting Code has been derived from the wording of the Television Without Frontiers ('TWF') Directive<sup>4</sup>.

Article 18 of the TWF Directive sets out limits on the proportion of transmission time that may be devoted to advertising, and Article 18.3 states:

*"For the purposes of this Article, advertising does not include:  
- announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes;..."*

The recitals to the Amending Directive<sup>5</sup> state:

*"(34) Whereas daily transmission time allotted to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from these, or to public service announcements and charity appeals broadcast free of charge, is not to be included in the maximum amounts of daily or hourly transmission time that may be allotted to advertising and teleshopping;*

*(35) Where, in order to avoid distortions of competition, this derogation is limited to announcements concerning products that fulfil the dual condition of being both ancillary to and directly derived from the programmes concerned; whereas the term ancillary refers to products intended specifically to allow the viewing public to benefit fully from or to interact with these programmes;..."*

In considering whether or not a product or service is 'programme-related' under the Broadcasting Code, it is important to bear in mind the principles set out in Section Ten; these principles apply equally to radio. Broadcasters must maintain the independence of editorial control over programme content, ensure that programmes are not distorted for commercial purposes and ensure that the advertising and programme elements of a service are kept separate.

It is upon these principles that Rule 10.3, which prohibits the promotion of products and services within programmes, is based. Broadcasters should bear in mind that the promotion of 'programme-related material' is permitted purely by way of exception to that prohibition and therefore should in no way compromise the principle of separation between advertising and programmes. The focus of a programme must remain its editorial content, as opposed to any promotional messages for programme-related material. The programme must not be primarily a vehicle for promotion of the product or service. Rule 10.4 (no undue prominence) also applies.

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<sup>4</sup> Directive 89/552/EEC as amended by Directive 97/36/EC

<sup>5</sup> Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities



Broadcasters should note that for material to qualify as programme-related material, it must not only be directly derived from a specific programme but also intended to allow listeners or viewers to benefit fully from, or interact with, that programme. Both elements of the meaning of 'programme-related material' must therefore be satisfied.

Further guidance by way of clarification is provided below:

*"Directly derived from a specific programme"*

The product or service must be 'directly derived' from a specific programme and therefore it is very unlikely that we would consider a product/service which existed before that programme to be programme-related material.

Broadcasters should also note that similarity, in terms of genre or theme(s), between a programme and product/service (for example, where both are about football, cookery or gardening) is not in itself sufficient to establish that the product/service is directly derived from the programme.

A product or service directly derived from more than one specific programme may be considered to be programme-related material in relation to those programmes but the scope for this is likely to be limited. However, this will depend on the facts of an individual case. In each case, in order for the material to be considered programme-related material and promoted accordingly, the broadcaster would need to be able to demonstrate to Ofcom's satisfaction that the material in question was directly derived **to a significant extent** from each of those programmes.

*"Benefit fully from or interact with"*

Moreover, the material must be intended to allow listeners or viewers to benefit fully from, or to interact with, that specific programme. This will often be material that is editorially based, for example, a book, podcast, CD or DVD. Where the material is not editorially based, the broadcaster is likely to need stronger editorial justification that the material is intended to allow listeners or viewers to benefit fully from, or interact with, the programme.

**Appropriateness of promotion for PRM**

In promoting a product or service as 'programme-related material', broadcasters must have regard to the rules in Section One, Protecting the Under-eighteens, and Section Two, Harm and Offence.

Particular care should be taken where broadcast advertising of the product or service is prohibited or restricted.

A promotion for programme-related material in or around a children's programme should normally be in terms of general information only, for example about the price or availability of the product; it would not normally be appropriate for such a promotion to invite a direct response.

***Rule 10.6 Programme-related material***

Rule 10.6 provides a limited exception to Rule 10.3.

To avoid undue prominence, references to programme-related material should be brief. Such references should be confined to the name of the item, a basic description, its cost and/or availability. As a general rule, names of retailers should not be given.

Programme-related material may only be promoted in or around the relevant programme.

***Rule 10.7 Responsibility for programme-related material***

Under Rule 10.7, it is the broadcaster's responsibility to ensure that any product or service promoted as programme-related material does in fact satisfy the definition of programme-related material. This does not mean that broadcasters may only promote programme-related material which they themselves own. The material may come from third parties, for example material created, manufactured, and/or distributed by persons other than the broadcaster. However, the broadcaster is the person with responsibility for ensuring that it may be promoted as programme-related material.

## **Cops Uncut 2**

*Bravo, 13 June 2006, 14:30, 16 June 2006, 14:30 and 19:30, 20 June 2006, 14:30*

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### **Introduction**

*Cops Uncut 2* is an observational series that documents the work of the police and portrays the kinds of anti-social behaviour they encounter on a day-to-day basis.

#### **13 June 2006**

A viewer complained that the word “fucking” was clearly subtitled, although it was edited in the commentary.

#### **16 and 20 June 2006**

A viewer complained that both episodes contained the word “fuck” in subtitles and, indistinctly, in the commentary.

### **Response**

Flextech Television, the licensee responsible for Bravo, explained that these incidents were the result of human error. In the case of the first incident, this was noticed on transmission and the programme re-edited for later transmission. On receipt of the second complaint a full review was undertaken of the whole series, to ensure that all other episodes were fully compliant. Any offending language was removed from both the audio and subtitles from all pre-watershed episodes. A statement was then prepared for the beginning of all pre-watershed versions to apologise to viewers for any offence caused by these unintentional errors.

Flextech pointed out that Bravo’s audience consisted mostly of 16-34 year old men and the demographic for this series was no different – child viewing was negligible. Nevertheless the licensee acknowledged that this did not excuse the swearing going to air.

The broadcaster apologised for any offence these broadcasts had caused, and said that it was not its intention to upset or offend the audience. These incidents were the result of human error on the part of one freelancer whose contract had been terminated. The entire series had now been re-viewed by Flextech’s permanent compliance team and all corrections had been made. Programmes were now viewed and edited by one person and checked by a second editor. The broadcaster said that a change in the company responsible for its playout transmission facility had brought about a change in the compliance process, which should result in these types of mistakes being minimised.

### **Decision**

Rule 1.14 of Ofcom’s Broadcasting Code requires:

“The most offensive language must not be broadcast before the watershed or when children are particularly likely to be listening.”

During the 13 June 2006 programme, the word “fucking” was subtitled on one occasion, although the audio was bleeped.

On the 16 June 2006, there was one incident of the word “fucker” that was subtitled, although the accompanying audio was very indistinct. The same episode was repeated at 19:30. On the 20 June 2006 the word “fucking” was subtitled and the audio indistinct.

Although this series does not generally attract a significant child audience, it is of interest to children. The swearing was unsuitable for inclusion in this pre-watershed series.

This is the third time that the licensee has had a failure in its compliance procedures for this particular series. Ofcom reported in Bulletin 30 that there had been a breach of Section 1.5 (Bad Language) of the (ex- ITC) Code when Bravo transmitted offensive language (“*fuck*”) in an edition of the series broadcast twice on 4 January 2005. On that occasion, Bravo said that the series had two versions, a post watershed version and a ‘PG’ daytime version. Unfortunately the wrong version had been transmitted. In Bulletin 46, Ofcom reported a further breach of Section 1.5 (Bad Language) of the (ex- ITC) Code when Bravo broadcast an edition of the series on 30 April 2005 that contained the word “fucking”. On that occasion, Flextech said that its outside facility carrying out the editing failed to make the necessary edits. The broadcaster said that it was investing in both training and new digital technology to help its own compliance editors view the material themselves. On that occasion, we reminded the broadcaster that it remains the responsibility of the licensee to preview the programme prior to transmission to ensure that the programme is compliant.

We welcome the apology given to viewers and the steps that have been taken by Flextech to ensure that this series is compliant. However, we have concerns that this is the third code breach for the same issue in the same series.

#### **Breach of Rule 1.14**

## Resolved

### The Mint

ITV Play, 12 May 2006, 20:05 and 13 May 2006, 18:45

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#### Introduction

In the *Extra Mint Teapot Jackpot*, a jackpot round played by competition winners, contestants had to select numbered teapots, from 1 to 7. Each teapot lid revealed a letter – A,E,I,M,N,T or T. As each teapot was chosen, the revealed letter was placed consecutively on to a rack. Another teapot was picked until the letters, taken consecutively, could no longer form part of a word eg “T” “I” “M” could go on to form another word e.g “TIME”. However if the next letter picked was “T” – making “TIMT”, the competitor would lose the opportunity to continue, as there is no such word as “TIMT” or a word that starts with that combination of letters.

£50 was awarded for each letter that potentially formed part of a word (if any) that had been revealed, with a prize of £5,000 on offer to any contestant that managed to pick the letters in the order that spelt “MINT TEA.”

A viewer claimed that on two occasions, this jackpot had not been conducted properly. One contestant had not been allowed to continue after picking A, M and I, yet “amine” was a word, while another contestant had been stopped after picking M,I and E, yet “mien” was a word.

#### Response

ITV said that the range of possible solutions was researched for the producers by an independent question setter who also worked on productions like *Mastermind* and *Who Wants To Be A Millionaire*. Her source was Chambers Dictionary. This was normally mentioned by presenters while the competition was underway, viewers usually being told that the words capable of being spelt had to be among the words on *Extra Mint*'s list of solutions, as compiled from that dictionary.

“Amine”, which appears in Chambers 21<sup>st</sup> Century Dictionary, had been omitted from the list of solutions, while “mien” was on the list but had been missed by the production team. Unfortunately, both jackpot games had been wrongly halted. The broadcaster confirmed that the producers had undertaken to contact the contestants and pay them the extra money they could have won if they had been allowed to continue.

The broadcaster apologised for these human errors. It confirmed that *Extra Mint* had ended its current run and that the individual producers responsible were no longer working on *The Mint*. It added that the production team had been strengthened, “with the introduction of a very experienced Executive Producer.” ITV was therefore confident that similar errors would not recur.

#### Decision

Rule 2.11 of the Broadcasting Code requires that:

“Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known.”

Errors of this kind can affect viewers' confidence in the fairness of broadcast competition programming. We therefore welcome ITV's apology and the action it has taken in way of reparation and to ensure no recurrence. However, we would be concerned if similar problems arise again.

### **Resolved**

The original decision on this programme was appealed by the broadcaster, leading to a review. This finding is the result of that review.

## Fairness and Privacy Cases

### Not Upheld

#### Complaint by Mr William Coulson

*The Mike Parr Breakfast Show, BBC Radio Newcastle, 6 February 2006*

**Summary:** Ofcom has not upheld this complaint of unfair treatment. On 6 February 2006, BBC Radio Newcastle broadcast an edition of *The Mike Parr Breakfast Show*. Listeners were invited to call the programme and give their views on whether or not women should be allowed into a working men's club and the more general topic of single sex clubs or organisations. Mr William Coulson was the first of a number of callers to give his opinion on this topic and on European anti-discrimination legislation. During the discussion the programme's presenter asked Mr Coulson "why don't you like women?"

Mr Coulson complained to Ofcom that he was treated unfairly in the programme as broadcast in that the presenter suggested that he didn't like women and that he was given no opportunity to respond to the accusation.

Ofcom examined the programme and, taking into account the reaction by the studio guests and another caller to Mr Parr's suggestion and Mr Coulson's ability to put forward his views in an articulate way and robustly counter the suggestion, Ofcom considered that the comments were unlikely to have materially affected the audience's view of Mr Coulson, his opinions and knowledge of the subject in a way that was unfair to Mr Coulson. Further, Ofcom was satisfied that Mr Parr had given Mr Coulson an adequate and timely opportunity to respond to the suggestion. Ofcom, therefore, found no unfairness to Mr Coulson.

#### Introduction

On 6 February 2006, BBC Radio Newcastle broadcast *The Mike Parr Breakfast Show*, a radio magazine programme featuring news and issues of the day. Listeners were invited to call the programme and give their views on a number of topics introduced by Mr Mike Parr, the programme's presenter. In this particular edition of the programme, Mr Parr was joined by two studio guests: Mr Douglas McClannon (a design academic) and Ms Pauline Short (a marketing consultant).

One of the topics introduced for discussion by Mr Parr was whether or not women should be allowed into a working men's club and the more general topic of single sex clubs or organisations and whether the other gender should be allowed access.

Mr William Coulson was the first of a number of callers to give his opinion on this topic and on European anti-discrimination legislation. During the discussion, Mr Parr asked Mr Coulson "why don't you like women?" A robust discussion ensued between Mr Coulson and Mr Parr until Mr Parr terminated Mr Coulson's call by thanking him for calling and commenting that he had had "a fair crack of the whip".

After Mr Coulson's call was terminated, Mr Parr asked his studio guests whether they felt Mr Coulson "had some kind of problem with women there from the way he was talking?" Mr Parr also stated that Mr Coulson would not answer this question. Ms Short speculated that Mr Coulson felt very angry about "something" and Mr Parr said that he wished he knew why Mr Coulson held that particular view. Both Ms Short and

Mr McClannon agreed with one of the points that Mr Coulson made, that equal opportunities should be balanced in its application.

After this brief discussion between Mr Parr and his two studio guests, a second caller (Michael) to the programme said that he was disappointed with Mr Parr because it was unfair of him and his studio guests to refer to the previous caller (Mr Coulson) as having a problem. Michael went on to say that a man was entitled to his opinions and that having those opinions did not mean that he had a problem. After this call, Mr Parr commented that he was upsetting a few people and he later invited listeners to call the programme and tell him "if you think I am speaking unfairly...come on and tell me."

Mr Coulson complained to Ofcom that he was treated unfairly in the programme as broadcast.

## **The Complaint**

### **Mr Coulson's case**

In summary, Mr Coulson complained that:

- a) He was personally attacked by Mr Parr with a "cheap jibe" that suggested that his views on the issue being discussed were informed by the fact that he didn't like women. Mr Coulson felt that the attack was abusive and was made to "invalidate" his case and his knowledge.
- b) He was cut off air and given no opportunity to respond to Mr Parr's "sneering" reference to him as having a problem.

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

In summary, the BBC said that, the phone-in part of the programme was known as a lively and robust forum where opinions on many subjects were aired, challenged and debated. The BBC said that Mr Coulson was a regular caller and contributor to the programme and the programme team were familiar with his views on "men's rights" as well as his interest in, and work for, a prostate cancer charity.

In response to Mr Coulson's specific heads of complaint, the BBC said that:

- a) Mr Coulson was invited onto the programme to argue that men should be entitled to their own space in a working men's club without having women present which, the BBC said, he did very cogently. However, Mr Coulson deviated away from the discussion about single sex clubs to introduce issues of prostate cancer support groups, women-only library sessions and how the policy of excluding women from conscription in some EU countries led to women gaining an unfair advantage over men in their university careers.

The BBC said that it was Mr Coulson who had introduced the notion of discrimination, unfair advantage and privilege for women. In these circumstances, it did not seem unreasonable for Mr Parr to ask him "why don't you like women?" This, the BBC said, was a fair question in the context of a though-provoking discussion of a highly contentious and emotive issue. Mr Parr's discussion with Ms Short and Mr McClannon over whether Mr Coulson appeared to have a problem with women immediately after Mr Coulson's call was entirely



justified journalistically. His view that women were given unfair privileges over men demanded further debate. When the second caller, Michael, came onto the programme, he expressed sympathy for Mr Coulson saying “the man is entitled to his opinion” and adding that his views did not mean that he had “a problem” with women. However, Michael kept to the topic under discussion and did not claim that women enjoyed unfair advantages.

The BBC regretted that Mr Coulson felt that Mr Parr’s comments were a personal attack on him but disputed that the studio banter was the “attack” he perceived it to be. Mr Coulson was a contributor to a live phone in programme during which he and the audience would have naturally expected his views to be tested and questioned. As a regular listener, Mr Coulson would have known and expected this.

- b) Mr Coulson had ample opportunity to explain his position. It was Mr Parr’s intention in framing the question in a provocative form that Mr Coulson would take the opportunity to explain that he was not misogynistic. However, Mr Coulson chose not to answer the question but, instead, outlined why he thought the question was irrelevant and took the conversation into areas which were not the subject of debate. It was at this point of the discussion that Mr Parr decided it was time to move the programme on.

## **Decision**

Ofcom’s statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment in programmes included in such services. Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom recognises that (subject to the provisions of the Ofcom Broadcasting Code) broadcasters can quite properly comment and take particular viewpoints on the subjects of broadcast programmes. However, it is essential, not only to the parties directly concerned but also to listeners and viewers, that such comments should be accurate in all material respects so as not to cause unfairness. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent targeted only at cases in which action is needed.

This case was considered by Ofcom’s Executive Fairness Group.

- a) Ofcom first considered Mr Coulson’s complaint that he was personally “attacked” by Mr Parr with a “cheap jibe” that suggested that his views on the issue being discussed were informed by the fact that he didn’t like women. The “attack” was abusive and was made to “invalidate” his case and his knowledge.

Ofcom sought to determine whether Mr Parr’s comments were likely to have materially affected the audience’s view of Mr Coulson, his opinions and knowledge of the subject in a way that was unfair to Mr Coulson. In doing so Ofcom examined the comments made by Mr Parr and Mr Coulson during their exchange. Ofcom also examined the comments made by Mr Parr, the studio guests and other callers once Mr Coulson’s call had been concluded.

When considering this complaint Ofcom was aware of the broadcaster's right (subject to the provisions of Ofcom's Broadcasting Code) to comment and take particular viewpoints on the subjects of broadcast programmes.

Ofcom noted that during the discussion Mr Parr asked Mr Coulson "why don't you like women?" A robust discussion ensued between Mr Coulson and Mr Parr in which Mr Coulson clearly articulated his views on gender discrimination. After Mr Coulson's call was terminated, the discussion continued in the studio when Mr Parr asked his studio guests whether or not they felt that by the way Mr Coulson had spoken that he had "some kind of problem with women." Ms Short stated that she thought that Mr Coulson felt "very angry about something" and that "perhaps he just had a bad experience." Mr McClannon made no comment on whether Mr Coulson had a problem with women or not. Both studio guests, Ofcom noted, agreed that Mr Coulson had raised an important point about equal opportunities and that its application should not be one-sided.

The next caller to the programme ("Michael") said that Mr Parr had been unfair to Mr Coulson in questioning whether he had a problem with women. Michael articulated that Mr Coulson was entitled to his opinions and that his point of view had been "generic" and was not "singular to a particular thing". He said that by holding the opinions that Mr Coulson held, it did not mean that "he had a problem."

Ofcom considered that the format of the phone-in part of the programme was well-established on BBC Radio Newcastle and that listeners would have been familiar with the presenter's style and the "lively and robust" forum it offered. In the circumstances, and taking into account the reaction by the studio guests and Michael, the second caller, to Mr Parr's question and Mr Coulson's ability to put forward his views in an articulate way and robustly counter Mr Parr's question as to why he did not like women (as described above), Ofcom considered that listeners would not have taken Mr Coulson's opinions as expressed in the call to mean that he necessarily had a problem with women. Mr Parr's comments were therefore unlikely to have materially affected the audience's view of Mr Coulson, his opinions and knowledge of the subject in a way that was unfair to Mr Coulson. Ofcom, therefore, found no unfairness in this respect.

- b) Ofcom considered Mr Coulson's complaint that he was cut off air and given no opportunity to respond to Mr Parr's "sneering" reference to him "having a problem."

Ofcom requires that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given and appropriate and timely opportunity to respond.

In considering this complaint Ofcom first considered whether the programme made any such allegations about Mr Coulson. Ofcom then considered whether in the interests of fairness the programme makers were required to give him an opportunity to respond to the question as to why, allegedly, he did not like women.

Ofcom was satisfied that questioning why Mr Coulson did not like woman was capable of adversely affecting his reputation and as such could be described as a significant allegation.

However, having examined the recording of the programme and reading the transcript of it, Ofcom noted that Mr Parr put the question to Mr Coulson during the course of their on-air discussion. Mr Coulson responded to the question twice in the programme. In his first response, Mr Coulson replied that Mr Parr would not have asked a woman why she did not like men if she called the programme to talk about her support for “refuges or women victims of domestic violence.” Mr Coulson later asked Mr Parr “why should I have to be considered a misogynist?”

In these circumstances, Ofcom was satisfied that Mr Parr had given Mr Coulson an adequate and timely opportunity to respond to his question “why don’t you like women?” How Coulson chose to answer the question if, indeed, he did choose to answer it was a matter for him and him alone. Mr Parr had asked Mr Coulson the question relatively early on in the discussion and he was given the chance to respond to it if he wished. Ofcom, therefore, found no unfairness to Mr Coulson in this respect.

Accordingly, the complaint of unfair treatment was not upheld.

## **Complaint by Mr Charles Ejogo on his own behalf and on behalf of his company Umbrolly Limited**

*Dragons' Den, BBC2, 21 December 2005*

**Summary:** Ofcom has not upheld Mr Charles Ejogo's complaint of unfair treatment made on his own behalf and on behalf of his company Umbrolly Limited.

Mr Ejogo took part in the first series of Dragons' Den, broadcast in 2004. Mr Ejogo secured financial investment from two of the programme's investors ("Dragons") after successfully presenting his idea for an umbrella vending machine. One year later, Mr Ejogo participated in this special edition of Dragons' Den, which reviewed the progress of a selection of entrepreneurs who appeared in the first programme series.

In summary Mr Ejogo complained that he and his company were treated unfairly in that the programme: misled viewers about the progress of his business; falsely portrayed him as being unpredictable, unreliable and a poor time keeper; and, gave the false impression that his company no longer retained the contract to place umbrella vending machines on the Underground Network.

Ofcom found as follows:

- a,c,d) Ofcom found the programme fairly summarised the progress Mr Ejogo and his company had made a year on from the first series of Dragons' Den. In addition, Ofcom considered that the programme gave a fair indication of how Mr Ejogo planned to develop his business. In all the circumstances, Ofcom found the programme makers used their editorial discretion in an appropriate way and did not omit or disregard material facts given to them by Mr Ejogo.
- b) Ofcom found the presenter's comment that Mr Ejogo "is always late" did not result in unfairness to the complainant. In Ofcom's view the opinion of the presenter was fairly balanced in the programme as broadcast by footage showing Mr Ejogo arriving 'on-time'. Given the context of the comment Ofcom found viewers were unlikely to have interpreted the opinion of the presenter as a significant allegation of incompetence, and as such, Mr Ejogo was not entitled to a formal response.

In Ofcom's opinion, the statement that Mr Ejogo was "never predictable" was not intended as a criticism, but rather was a favourable assessment of his character. Ofcom considered that viewers were likely to have understood from the statement that Mr Ejogo's unpredictable nature explained how he was capable of overcoming obstacles that many others would have been defeated by. Further, that an unpredictable nature is one of a number of character traits that separate successful entrepreneurs from the lay person. In the circumstances Ofcom found no unfairness to Mr Ejogo or his business in this respect.

- e) Viewers were likely to have understood that Mr Ejogo's business continued to have a contract to place umbrella vending machines on the Underground Network as Mr Ejogo was included in the programme speaking of the existing Underground contract. Ofcom found no unfairness to Mr Ejogo or his company in this respect.

## **Introduction**

This documentary programme reviewed the progress of a selection of entrepreneurs who appeared in the first series of *Dragons' Den*. A year on from the first series, the programme reviewed the progress of a selection of entrepreneurs who appeared in the first series and examined "What is it that makes an entrepreneur succeed and what can go wrong?"

Mr Ejogo and his business, Umbrolly Limited which supplied umbrella vending machines, were one of seven entrepreneurs and businesses reviewed in the programme. The programme explained that two of the programme's investors ("Dragons") had decided to not go ahead with their investment in Mr Ejogo's business after it was realised that Mr Ejogo's contract with London Underground Limited (that allowed Umbrolly Ltd to place umbrella vending machines onto the Underground network) did not include the right to advertise on the side of the vending machines. The programme stated that "*although it's proving difficult to get [the vending machines] into the Underground, Charles is working hard to get other sites on board*".

During the programme it was explained that following the withdrawal of the Dragons' investment, Mr Ejogo had to adapt his plans for his umbrella vending machines. The programme stated that most of Mr Ejogo's business now involved selling umbrellas directly to post offices and newsagents.

At one point during the programme, the presenter was shown waiting for Mr Ejogo. The presenter commented that "*Now I'm waiting to meet Charles. I do have to tell you Charles is always late but he's due in a couple of minutes - we'll see if he makes it on time*". The programme showed Mr Ejogo arriving on time and the commentary stated "*But one thing about Charles is he's never predictable – he arrived bang on-time*".

At the end of the programme, Mr Ejogo was shown installing his first umbrella vending machine in Manchester.

Mr Charles Ejogo on his own behalf and on behalf of his company Umbrolly Limited ("Umbrolly") complained of unfair treatment in the programme as broadcast.

## **The Complaint**

### **Mr Ejogo's case**

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

- a) The programme portrayed him and his business in a way that was inaccurate, misleading and which was both personally and professionally damaging;
- b) The programme attempted to portray him as unpredictable, unreliable, and a poor time keeper. This unfairly implied his business was conducted in a similar way. Mr Ejogo said that during filming he was not once late for a meeting or scheduled shoot;
- c) The programme failed to mention that he had secured alternative investment to expand his business; employed staff; and moved into an office where he operated from despite the fact that the BBC filmed his office, staff and key meetings with

partners. Reviews of other businesses in the programme included such information and gave “the impression of coherent, structured businesses”. Mr Ejogo complained the programme unfairly showed him working alone, without premises or staff. In addition Mr Ejogo complained that the accompanying music for his segments added to the “cowboy-type image”;

- d) The programme did not give information about: how his business was growing; what the target markets were; successes to date; or, strategies for future growth. This was in contrast with the reviews of the other businesses featured in the programme. Viewers were, therefore, given an inaccurate and incomplete impression of where Umbrolly was “headed as a business” and “the extent of [Mr Ejogo’s] personal success as an entrepreneur for the business”;
- e) The programme gave the impression that Umbrolly no longer had the contract to place their vending machines on the London Underground. This was untrue. Mr Ejogo had made this point clear during a filmed interview, but it was not included in the programme. Instead, the commentary on the issue gave the opposite, false impression. Mr Ejogo said that his company had become known for providing this product and the programme’s claim that the company was no longer able to perform this function undermined and misrepresented the business.

### **The BBC’s case**

In summary, the BBC responded to the complaint as follows:

#### a) Inaccuracies – damaging effect on Mr Ejogo and his business

In response to the complaint that the programme had had a damaging effect on Mr Ejogo’s business, the BBC cited Mr Ejogo’s email to them following the broadcast of the programme in which Mr Ejogo claimed the programme had:

*“...produced some good results...two companies contacting me this morning after seeing the programme, one wanting to explore buying units for entry into Tokyo and the other a US hotel chain that wants to discuss potentially siting units in their UK and US hotels”*

However the BBC said that the test which Ofcom must apply to the first head of complaint was not whether the programme had had a positive or negative effect on Mr Ejogo’s business but whether it portrayed him and his business activities fairly.

#### b) Portrayal of Mr Ejogo as unpredictable, unreliable and a poor time keeper

The BBC rejected Mr Ejogo’s claim that he was never late. The broadcaster said that Mr Ejogo was frequently late for appointments and sometimes missed them altogether. Out of a total of seven days filming with Mr Ejogo, the BBC said that he was late for at least four of them, and on more than one occasion the filming dates suggested or agreed by Mr Ejogo passed by without further word from him. Notwithstanding, the BBC said that the programme’s description of Mr Ejogo as an erratic time keeper was not presented as an adverse reflection on him personally or on him as a businessman.

The BBC said the inclusion of a comment by the presenter that Mr Ejogo was “never predictable” was not the same as calling someone unreliable and that it was clear from the rest of the programme that it was not meant in a disparaging

sense. The programme made it clear that Mr Ejogo's ability to meet setbacks by moving in an unexpected direction was presented as something of a virtue in business terms.

c) Unlike other participants, Mr Ejogo's achievements were not included

The BBC maintained that in all the entrepreneur updates the approach was essentially the same. The programme reported how far each had progressed in their business endeavours, how their enterprises looked in relation to their initial business presentations to the Dragons, what challenges they faced, and what they had learned along the way.

In relation to Mr Ejogo's complaint that the programme did not mention the alternative investments he had secured, the BBC referred to an email from him, which stated that the programme could not reveal details of the investments. The BBC said that in light of these sensitivities, the programme makers decided not to broach the question of investment.

The BBC said the programme did not mention Mr Ejogo's employment of new staff but maintained this was in keeping with an approach where the primary focus was on the entrepreneurs themselves. In any event, the programme makers had only been introduced to two members of Mr Ejogo's staff, one who refused to be filmed and the other who Mr Ejogo had fired.

The BBC did not believe the selection of music for Mr Ejogo's contribution conveyed a "cowboy-type image". The BBC said that had that been their intention, a much better selection of music could have been made. They were not aware of any cowboy references to the music used and believed the music selection was apt in a gently humorous way.

d) The programme did not give relevant details about Mr Ejogo's business

The BBC believed that the programme painted an accurate picture of Mr Ejogo's business and one which touched on many of the aspects that Mr Ejogo complained had been overlooked. The BBC said that the programme used the below list of qualitative measurements to assess the business of each entrepreneur:

- *Growing business:* The programme makers included footage of Mr Ejogo at a trade show selling direct to newsagents and small store owners and installing his first vending machine (an event which occurred only several days before transmission, but which the programme makers made special effort to include).
- *Target markets:* the programme included a quote from Mr Ejogo describing a scenario when the public would most likely purchase his product.

*"People seem to come in and congregate out of the rain inside the [shopping] centre. They're the people that will buy the product and also as you're actually leaving the centre the idea is that you'll come and buy our product because it's a couple of pounds as opposed to having to maybe come upstairs and popping into one of the shops here. It's convenience, it's on your way out, you'll buy it. Rather than having to huddle under the entrance for 10-15 minutes while the rain stops."*

- *Successes to date:* Mr Ejogo's material successes were minor, however the programme captured the moment when the first vending machine was installed, and referred to Mr Ejogo's considerable sales through retail outlets.
- *Strategies for future growth:* It was made clear in the programme that though retail outlets were the most successful component of the business, Mr Ejogo's ambitions for future growth were focussed on vending machines and a franchise network.

e) Mr Ejogo's contract with London Underground Limited

The BBC denied that the programme gave the impression that Mr Ejogo no longer had a contract with London Underground Limited. Although the programme explained that the contract did not include the right to advertise on the side of the vending machines, the BBC said there was no suggestion that the contract to place the vending machines no longer existed. In addition, the BBC said that the inclusion in the programme of Mr Ejogo's comment that "*the contract that we have in place allows us to put the units in and sell the umbrellas*" made it explicit that the contract did still exist. The BBC added that a later section of commentary would have made it clear to viewers that Mr Ejogo's efforts to install machines in the Underground were ongoing:

*"Charles is not idly dreaming about his Umbrolly machines. Although it's proving difficult to get them into the Underground, Charles is working hard to get other sites on board"*

**Mr Ejogo's comments in response to the BBC's statement**

In summary, Mr Ejogo responded that:

a) Inaccuracies – damaging effect on Mr Ejogo and his business

Mr Ejogo said that the programme did not present him or his business fairly as the programme stated that he was "*always late*", and confused the viewer about his contract with London Underground Limited and the direction of the business overall and business strategies overall. Mr Ejogo also believed that the presenter's comment that "*It's hard to tell whether Charles is quick-thinking and adaptable, or whether he's clinging on to his umbrella vending idea, well after he should have dropped it*" was unfair as it was designed to cast doubts in the viewer's mind.

b) Portrayal of Mr Ejogo as unpredictable, unreliable and a poor time keeper

Mr Ejogo rejected the BBC's claim that he had been frequently late for appointments and sometimes missed them all together. Mr Ejogo listed for Ofcom the details of each appointment he had with the BBC. On seven occasions he was either on-time or had been at the meeting place before the BBC. On one occasion it was impossible, because of unforeseeable traffic delays, to give an exact time of arrival as he was driving a van from London to Manchester. On another occasion, he arrived 10 minutes late but confirmed this with the programme maker by phone prior to his arrival. Mr Ejogo gave further details regarding a meeting in Basingstoke which he said he had not agreed to attend and described how he had had to re-arrange meetings and organise matters to meet the BBC's filming schedule.



c) Unlike other participants, Mr Ejogo's achievements were not included

Mr Ejogo contended that he had not been treated in the same way as the other entrepreneurs:

- *Progress so far:* The programme failed to show that Mr Ejogo had taken on offices and staff - a major development as previously he had worked from home without staff. In addition, Mr Ejogo also said the programme failed to show or mention the company's new smaller vending machine. This new development would have shown viewers how he had reacted to the market by developing and refining his product, and also how the new product design had opened new markets for the business.
- *Enterprises compared to original proposal to the Dragons:* Mr Ejogo said that because the programme makers chose to focus on the retail side of his business operations, viewers would have inferred that the vending machine side was posing problems and therefore had become less relevant than the retail side of the business. This was not true.
- *Challenges:* Mr Ejogo said that the challenges faced by him were clearly that he had lost the Dragons' investment and that he had not yet been able to place vending machines on the Underground network. Mr Ejogo rejected the BBC's reasons for not referring to his new sources of funding as his email to the BBC clearly outlined what they could refer to in the programme. By not including any reference to the new sources of funding, Mr Ejogo said that the programme gave the impression that no alternative funding had been secured. Mr Ejogo also believed that the programme unfairly focussed on his decision to place vending machines into shopping centres. Mr Ejogo said that by focussing on this aspect of his business the programme limited the perceived scope of the business.
- *Lessons learned:* Mr Ejogo said that he failed to see how the programme could have set out what he had learned along the way, as the programme did not show how he had reacted to various challenges (e.g. new staff and the development of a smaller vending machine).

As regards the programme makers' choice of music, Mr Ejogo maintained that the selection of music portrayed a 'cowboy-type image'.

d) The programme did not give relevant details about Mr Ejogo's business

Mr Ejogo said that he provided the programme makers with comprehensive details about his business and the programme maker's decision to not include any of this information resulted in an unfair portrayal of his business.

As regards the qualitative measurements used by the programme, Mr Ejogo responded that:

- *Growing business:* the footage of him at the trade fair and installing a vending machine gave the impression that they were the only achievements the business had made. The programme failed to mention other relevant achievements such as the signing of new contracts and the development of a new smaller vending machine unit.

- *Target markets:* Mr Ejogo said that the inclusion of his comment about why he was interested in locating vending machines in shopping centres was not equivalent to giving relevant details about what the business' growth strategies were or the company's other target markets. He said that he had specifically told the programme makers which groups the company had started working with, but this information had not been included.
- *Successes to date:* Mr Ejogo acknowledged that the statements in the programme that he had decided to sell stock through a retail channel, and that this was the most successful part of the business, were true. However Mr Ejogo said these comments did not paint the full picture of the company. Specifically, the programme failed to explain that the company had secured new investment; designed and prototyped a new vending unit; signed new contracts; and, were working with businesses in new growth areas. Most importantly, the programme failed to explain that the company's umbrellas were stocked in over 400 retail outlets, a figure which compared to the other featured businesses was significant.
- *Strategies for future growth:* In summary, Mr Ejogo said that the BBC had been given great detail about how the business was progressing with strategies across retail franchising and vending, and that information about the development of the new smaller units should have been included as it was an important element of the business' growth strategy.

e) Mr Ejogo's contract with London Underground Limited

Mr Ejogo said the statement in the programme that "*although it's proving difficult to get them into the Underground, Charles is working hard to get other sites on board*" gave the clear impression that his company was having problems getting units onto the Underground network, which was not the case. The inference a viewer would have taken from that statement was that the units would not be on the Underground network anytime soon, if at all. This was contrary to information given to the programme makers that they would be placed on the network in the third quarter of this year.

**The BBC's second statement**

In summary the BBC responded as follows:

a) Inaccuracies – damaging effect on Mr Ejogo and his business

The BBC said that the inclusion of the comment by the presenter about whether Mr Ejogo was "*quick thinking and adaptable, or whether he's clinging onto his umbrella vending idea well after he should have dropped it*" was an entirely fair observation, in light of the fact that Mr Ejogo's business had changed greatly from his original proposal that he pitched to the Dragons.

b) Portrayal of Mr Ejogo as unpredictable, unreliable and a poor time keeper

The BBC said that the presenter's remark that Mr Ejogo "*is always late*" was presented in the deliberately humorous form of categorical assertion which was immediately contradicted by events. The BBC did not believe that viewers would have taken it as criticism. Also, the comment was not so much a point about Mr Ejogo's time keeping as about his unpredictability. This unpredictability was not presented in the programme as a negative quality but as part of a pattern of

resilience and adaptability in the face of setbacks, which was portrayed as a business strength. The BBC noted that the programme's last word on Mr Ejogo was:

*"I don't think he's a guy that's easily going to give up. And I think that he'll go on to the next opportunity and I think he's the type of guy that will bring success at some point".*

The BBC did not dispute that there were occasions when Mr Ejogo made arrangements with the programme makers and kept to them punctually, however it maintained that the programme makers' dealings with Mr Ejogo were characterised by difficulty in getting him to make firm arrangements and to stick to them once made.

c) Unlike other participants, Mr Ejogo's achievements were not included

The BBC said that the general approach adopted by the programme makers to report particular aspects of each entrepreneur's progress did not equate to a commitment to report each and every detail of the entrepreneur's developments since the original series. Nor was it an undertaking to include each and every claim made by the entrepreneurs (let alone reflect them uncritically). The BBC said that clearly judgements had to be made about which developments were the more significant. The fact that Mr Ejogo now operated a business which was markedly different from the one that he pitched to the Dragons was more to the point than the fact that Mr Ejogo operated from an office with a staff of two.

The BBC said they were baffled by Mr Ejogo's assertion that the programme failed to show or mention the new smaller vending machine, as the programme included the following quote by Mr Ejogo:

*"The larger machine that we originally pitched for was a lot bigger. The footprint was a lot bigger. We were also restricted in some of the places that we could actually install that machine. And we went back to the drawing board and we developed a much smaller machine so it's accessible for many more sites".*

d) The programme did not give relevant details about Mr Ejogo's business

The BBC maintained the programme's portrayal of Mr Ejogo's business was entirely fair. The programme explained that: the original proposition of installing vending machines in the Underground network had not yet been realized; Mr Ejogo was successfully selling umbrellas to retailers; Mr Ejogo saw the future of his business principally in terms of vending machines; a vending machine that suited a wider range of sites had been produced; and, that the first machine (one of the earlier bigger designs) had been installed shortly before the broadcast and had according to Mr Ejogo dispensed over 300 umbrellas in its the first week and a half.

In relation to Mr Ejogo's other complaints about the programme's failure to include specific details such as revenues to date and numbers of customers and contracts, the BBC said that Mr Ejogo's information had been inconsistent, and, in the example of how many vending machines were actually in operation, unreliable. The BBC noted that Mr Ejogo's variously referred to the number of retailers stocking his umbrellas as "over 400", "about 500 customers", "5-600 retailers" and "over 500 retailers". The BBC provided Ofcom with a transcript and recording of Mr Ejogo's unedited interview as evidence.

e) Mr Ejogo's contract with London Underground Limited

In response to Mr Ejogo's claim that the programme gave the impression his company was having problems getting units onto the Underground network, the BBC said that, self-evidentially, this impression was fair. The BBC noted that Mr Ejogo described a number of times throughout his interview the difficulties in getting the vending machines onto the Underground network, including:

Interviewer: *"Why is there not a [vending ] machine in [the Underground network] tomorrow or yesterday even?"*

Mr Ejogo: *"Because as you probably know it's not as easy as that. There's planning, there are safety considerations. I mean in all honesty the London Underground was probably the first contract that we ever signed and it's probably been the hardest one for us to get units out on to the network, simply because their safety standards are the highest; units have to adhere to certain regulations etc, and so it's been very difficult to kind of move past that."*

**Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment in programmes and unwarrantable infringement of privacy in and in the making of programmes included in such services. Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness, if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

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

In reaching its decision, Ofcom had regard for a copy of the programme, the programme transcript and both parties' written submissions.

a) Mr Ejogo complained that the programme portrayed him and his business in an inaccurate and misleading way. Mr Ejogo said the programme was misleading and inaccurate because it stated that he was "always late", and confused the viewer about his contract with London Underground Limited and the direction of his business overall. Mr Ejogo said this portrayal was both personally and professionally damaging.

Ofcom noted that Mr Ejogo's complaints listed under this head of complaint were also complained of separately under subsequent heads of complaint. As such, Ofcom's findings in relation to Head (a) can be found under the following headings:

Decision Head (b): Mr Ejogo was "always late";

Decision Head (d): The programme confused viewers about the direction of Mr Ejogo's business overall; and

Decision Head (e): The programme confused viewers about the existence of the London Underground Limited contract.

Ofcom was not in a position to consider whether Mr Ejogo's claim that the above alleged unfair treatment, was both personally and professionally damaging, as the secondary consequences of any alleged unfair treatment falls outside of Ofcom's remit.

- b) Mr Ejogo complained that the programme attempted to portray him as unpredictable, unreliable, and a poor time-keeper. Mr Ejogo said that this unfairly implied that his business is conducted in a similar way.

Ofcom noted that the relevant programme sequence showed the programme's presenter waiting for Mr Ejogo at a café. The presenter explained:

*"Now I'm waiting for Charles. I do have to tell you Charles is always late but he's due in a couple of minutes we'll see if he makes it on-time".*

The programme showed Mr Ejogo arriving at the café and the accompanying commentary stated:

*"But one thing about Charles is he's never predictable – he arrived bang on-time."*

In Ofcom's view, it is generally accepted for programmes of this nature, to include the views of both the presenter and the resident experts assigned to comment on the work of the programme's contributors. However, when including such opinions, programme makers and broadcasters must ensure that unfairness does not result.

If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

In considering this head of Mr Ejogo's complaint, Ofcom was first required to determine whether the personal opinion of the presenter that Mr Ejogo "is always late" and "never predictable" could be interpreted as significant allegations of incompetence. If finding so, Ofcom was then required to determine whether or not Mr Ejogo was provided with an appropriate opportunity to respond.

#### "Always late"

Ofcom noted that both Mr Ejogo and the BBC presented information about Mr Ejogo and his timekeeping. It is important to note, however, that Ofcom is not a fact finding tribunal. In reaching a decision about this complaint, it was not necessary for Ofcom to determine whether Mr Ejogo was in fact sometimes, always or never late for appointments but rather, whether the comment as broadcast was unfair.

Ofcom noted that the comment "*I do have to tell you Charles is always late*" was included in the programme as the personal opinion of the presenter. Ofcom also noted that the comment itself was immediately contradicted by actual events which showed the complainant turning up on-time.

Given the presentation of the comment in the context of Mr Ejogo arriving on-time Ofcom found that viewers were unlikely to have interpreted the opinion of the presenter as a significant allegation of incompetence. As the comment did not constitute a significant allegation of incompetence Ofcom found Mr Ejogo was not entitled to a formal response.

Ofcom therefore found the presenter's comment that Mr Ejogo "*is always late*" was fairly balanced within the programme and did not result in unfairness to the complainant. Ofcom has not upheld this part of Mr Ejogo's complaint.

### Never predictable

In reaching a decision about the fairness of the statement that Mr Ejogo was "*never predictable*", Ofcom considered that the inclusion of such a description could be interpreted in either a positive or negative way, depending on the context in which it appeared. Ofcom noted that in the programme as broadcast, the way in which the description was introduced was positive: Mr Ejogo was described as being "never predictable" after he acted in a way that was contrary to the predicted behaviour by arriving on-time. Ofcom further noted that this ability to act in an unexpected way (in particular, in a way different from how the majority of people would behave) was reinforced as a positive trait for a business person:

Presenter (during interview with Mr Ejogo):

*"I'm interested in whether entrepreneurs generally, not just you but whether almost they have to be deluded in order to make it **because people like me would just be focussing on all the knock backs and problems and hassles but you just seem to take them as they come**". [emphasis added]*

In Ofcom's opinion, the statement that Mr Ejogo was "*never predictable*" was not intended as a criticism, but rather was a favourable assessment of Mr Ejogo's character. Ofcom considered that viewers were likely to have understood from the statement that Mr Ejogo's unpredictable nature explained how he was capable of overcoming obstacles that many others would have been defeated by. And that being unpredictable is one of a number of character traits that separate successful entrepreneurs from the lay person.

c and d)

Ofcom noted that as Mr Ejogo's complaint progressed, a number of the elements complained of under Heads (c) and (d) began to overlap. Ofcom considered that the crux of Heads (c) and (d) could appropriately be summarised in the following way:

- 1) Failure to include relevant information:
  - New investment, staff, premises and contracts
  - Design and development of a new vending machine
- 2) Scope of business and potential markets
  - Shopping centre focus
  - Retail versus vending machine focus
- 3) Cowboy-type image
- 4) Creation of doubt in the viewer's mind

## 1) Failure to include relevant information

Mr Ejogo complained the programme failed to inform viewers that since his last visit to the *Dragons' Den* he had secured new alternative investment; hired staff and arranged new premises; secured new contracts including over 400 new retail outlets; and, designed a new smaller vending machine.

Ofcom acknowledges that an hour long programme places time constraints upon the programme maker. Ofcom is aware that during the editing stage of the production process, a significant proportion of the programme footage may be removed. It should be noted that a programme will not result in unfairness simply because all footage filmed during the making of the programme or all of the views expressed by a contributor are not presented in full. However, programme makers and broadcasters have a responsibility to ensure that during the editing of a factual programme, material facts are not disregarded or omitted in a way that will result in unfairness to either a business or an individual. In relation to this complaint, Ofcom was required to determine whether the omission of the above mentioned information resulted in unfairness to Mr Ejogo or his business.

### New investment, staff, premises and contracts

Ofcom first established whether in order for the programme to be fair to Mr Ejogo, it was incumbent on the programme makers to state that Mr Ejogo had secured alternative investment, hired staff and arranged new premise and secured new contracts (i.e. were these material facts that if not referred to would result in unfairness to Mr Ejogo).

Ofcom considered that the above actions taken by Mr Ejogo were only important in so far as they were a number of many actions carried out by him to ensure that his business developed. In Ofcom's view, it was not so much the fact that Mr Ejogo carried out each and every one of these actions, but that he had managed to develop his business (despite the setback of losing the Dragons' investment) that was of material importance. In the circumstances, it is Ofcom's opinion that, provided the programme makers made clear to viewers that Mr Ejogo's business had developed without the Dragons' investment, it was at the programme makers' discretion to select and chose which of Mr Ejogo's actions they would include to convey his progress.

Ofcom noted that at the beginning of the programme it was explained that the Dragons had chosen to withdraw their investment in Mr Ejogo's business after they realised that his contract with London Underground Limited did not include advertising rights. Following this explanation, the programme described that despite this loss of investment, Mr Ejogo's business was still operating:

Commentary: *"Charles Ejogo had to adapt his plans for umbrella vending machines, once his investment deal broke down. Most of Charles' trade now involves selling umbrellas directly to post offices and newsagents..."*

Mr Ejogo: *"Obviously when the investment fell through there was a slight delay with getting those machines out and so obviously getting the stock out and so I think maybe that's the mark of a good business that we were quick enough to adapt and rather than sit on stock that we were going to be left with we decided to sell stock through*

*via a retail channel and at the moment that's probably the most successful part of the business"*

In addition to highlighting to viewers that Mr Ejogo had adjusted his business to adapt to the loss to investment, it is Ofcom's opinion that the programme, in general, portrayed Mr Ejogo's business as one that was growing and successful:

Commentary: *"[Mr Ejogo] has just received a delivery of 50,000 umbrellas"*

Commentary *"In its first week and a half...the machine dispensed over 300 umbrellas"*

Mr Ejogo: *"...the various stages and strands of the business are exceeding the targets that we've got..."*

In Ofcom's view, the programme adequately demonstrated that Mr Ejogo's business was developing despite the setback of losing the Dragons' investment. In the circumstances, Ofcom found that the programme makers did not disregard or omit material facts and found no unfairness to Mr Ejogo or his business in this respect.

#### *Design of new vending machine*

Mr Ejogo complained that the programme failed to mention the development of his new smaller vending machine. In particular, Mr Ejogo said that footage of the new vending machine being designed was not included in the programme.

Ofcom noted that the following quote by Mr Ejogo was included in the programme:

*"We are going into sites with the vending machine that's not a problem we will be going into sites. I mean we had a couple of problems. The larger machine that we originally pitched for was a little bigger. The footprint was a lot bigger. We were also restricted in some of the places that we could actually install that machine. **And we went back to the drawing board and we developed a much smaller machine so it's accessible for many more sites.**"* [Emphasis added]

In Ofcom's view, this quote provided relevant information about the development of a new vending machine that was necessary to understand how Mr Ejogo's original idea of an umbrella vending machine had progressed. Ofcom acknowledged that footage of the actual design and development of the new machine was not included in the programme. However, in Ofcom's opinion, this editorial decision did not result in unfairness to Mr Ejogo, as the material information that Mr Ejogo had responded to a market need for a new smaller machine had already been provided through the above quote.

Ofcom found the programme included material facts about Mr Ejogo's development of a new smaller vending machine. In addition, Ofcom found that it was not essential for the programme to include footage of the new vending machines development in order to be fair to Mr Ejogo or his business. In the circumstances Ofcom found no unfairness to Mr Ejogo or his business in this respect.



## **2) Scope of business and potential markets**

Mr Ejogo complained that the programme limited the perceived scope of his business and the company's potential markets. Mr Ejogo said this was done through the programme's focus on Mr Ejogo's decision to place vending machines in shopping centres and on the retail side of his business (instead of the vending machine aspect).

In reaching a decision about this part of Mr Ejogo's complaint, Ofcom weighed up the programme makers' right to use their editorial discretion when editing a programme and the need for programme makers to present material facts in a fair way.

### Shopping centre focus

Ofcom noted that in the programme as broadcast the topic of Mr Ejogo's decision to place vending machines in shopping centres was introduced in the following way:

*"Although it's proving difficult to get [the vending machines] into the Underground, Charles is working hard to get other sites on board. Today he's at a shopping centre in central London."*

In Ofcom's opinion, viewers were likely to have understood from this introduction that Mr Ejogo was looking at a number of markets for his vending machines in an effort to expand his business, one of these being the shopping centre market. While Ofcom appreciated that Mr Ejogo may have had a number of business strategies, given the time constraints of the programme, Ofcom considered that it was reasonable for the programme makers to select just one of these new markets for inclusion in the programme. In Ofcom's view, the programme makers' selection of the shopping centre market as an example of Mr Ejogo's general strategy for growth was particularly relevant as it was not only readily identifiable for the viewer but because it was the strategy which supported the company's first vending machine – a major milestone in Mr Ejogo's business and of great interest to viewers of the first series of *Dragons' Den*.

Given the significance of this milestone, Ofcom takes the view that the programme makers' decision to select the shopping centre market as an example of the type of markets that Mr Ejogo was targeting to place his vending machines was reasonable.

Ofcom concluded that the programme had appropriately outlined that Mr Ejogo planned to target a number of sites for placement of his umbrella vending machines and had reasonably selected Mr Ejogo's pursuit of the shopping centre market as an example of this strategy.

### Retail versus vending machine focus

Mr Ejogo complained that the programme unfairly focussed on the retail side of his business instead of the vending machine side.

Having considered all the information submitted to it by Mr Ejogo and the BBC, Ofcom found no grounds for the complaint that the programme either unfairly focussed on the retail side of the Mr Ejogo's business, or the implication that the vending machine side of the business did not receive a fair amount of attention.

In reaching this decision, Ofcom noted at the time of filming, the retail side of the business generated the company's core revenue and accounted for the majority of the company's trade. Given this, it is Ofcom's view that the programme was therefore required to make this clear as to do otherwise would not have portrayed Umbrolly in an accurate way.

In relation to the vending machine side of the business, Ofcom noted that in the programme as broadcast the topic was raised numerous times, including: the contract with London Underground Limited; the development of the new smaller machine; the development of the shopping centre market; and finally, the installation of the first vending machine in Manchester. In the circumstances, Ofcom found that the relative amount of time given in the programme to the retail and vending machine aspects of Mr Ejogo's business was not unfair.

### **3) Cowboy-type impression**

Mr Ejogo complained that the music played during his contribution portrayed a "cowboy-type" image of him.

Ofcom appreciates that a well selected soundtrack can both directly and indirectly communicate to an audience. It is possible for a lyric or tune, to evoke an emotional response and help the viewer interpret programme footage. Ofcom sought to determine whether the lyrics or music played during Mr Ejogo's story acted to portray Mr Ejogo in an unfair way.

The following songs were played during Mr Ejogo's contribution:

<b>Artist</b>	<b>Song</b>
Moby	Run On
Coldplay	A Whisper
Supergrass	Coffee in the Pot
Blur	The Universal
Blur	To the end

After listening to the above song list, Ofcom was unable to associate any of the songs with a well known "cowboy", "western" or in particular any *negatively* associated "cowboy-type" image. Added to this, the complainant did not provide Ofcom any supporting evidence that the music played during his contribution was associated with that of a "cowboy" theme.

Based on Ofcom's assessment of the soundtrack, and in the absence of any convincing evidence from Mr Ejogo, Ofcom found that the music played during Mr Ejogo's contribution did not portray a "cowboy-type" image and found no unfairness to the complainant in this respect.

### **4) Creation of doubt in the viewer's mind**

Mr Ejogo complained that the inclusion in the programme of the comment that "*it's hard to tell whether Charles is quick-thinking and adaptable, or whether he's clinging on to his umbrella vending idea, well after he should have dropped it*" cast doubt in the viewer's mind about him and his business:

In Ofcom's opinion, the inclusion of the above quote did not amount to criticism of Mr Ejogo or his business that was unfair or required a response by Mr Ejogo.

Rather, the programme posed a valid question about Mr Ejogo's decision to retain his original idea of the umbrella vending machine, despite having no vending machines in any sites a year after the first series of *Dragons' Den*.

Ofcom further considered that any doubt that may have reasonably been raised in the viewer's mind, would have been countered by watching the installation of Mr Ejogo's first vending machine – demonstrating that there was a potential market for Mr Ejogo's machines and that his decision to persevere with his original idea, had not been proved incorrect. Moreover Ofcom noted that the programme included Mr Ejogo's claim of a high turnover from the machine in the initial week and a half of operation:

*"In [the vending machine's] first week and a half, [Mr Ejogo] says it dispensed over 300 umbrellas."*

Ofcom concluded that the programme's observations about Mr Ejogo's decision to pursue his original idea for his umbrella vending machine were valid and did not result in unfairness to Mr Ejogo or his business.

- e) Mr Ejogo complained that the programme gave the false impression that his company no longer had the contract with London Underground Limited to place vending machines on the Underground network.

Before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

The topic of the contract with London Underground Limited was referred to in the first section of Mr Ejogo's story and was central in explaining why the Dragons had withdrawn their investment from Mr Ejogo's original business idea. The programme explained the Dragons had withdrawn their investment after discovering that the London Underground Limited contract did not include the right to place advertisements on the side of the vending machines. The focus of the sequence was to question whether Mr Ejogo had made clear to the Dragons what was included in his original business proposal.

In relation to the ongoing existence of the contract, Ofcom noted that at no point during the sequence was it stated that Umbrolly had lost its contract to supply umbrella vending machines on the Underground network. In addition, Ofcom noted that in the programme as broadcast, Mr Ejogo spoke of the existing contract:

Mr Ejogo: *The contract that we have in place allows us to put the units in and sell the umbrellas. It doesn't say that, it doesn't give us the right to advertise. That's something that we'd need to work with other partners that essentially own and control those rights.*

Given this information provided by Mr Ejogo, and the absence of any statement that the contract no longer existed, Ofcom was satisfied that viewers were likely to have understood that Mr Ejogo's business continued to have a contract to place umbrella vending machines on the Underground network. In the circumstances, Ofcom found no unfairness to Mr Ejogo or Umbrolly in this respect.

Accordingly, Ofcom has not upheld Mr Ejogo's complaint of unfair treatment.

## **Complaint by Mansfield District Council**

*Best and Worst Places to Live in the UK, Channel 4, 9 August 2005*

**Summary:** Ofcom has not upheld this complaint of unfair treatment. The programme looked at the ten worst and the ten best places to live in the UK. Mansfield was identified as the sixth worst place to live and reference was made to increasing crime and falling standards of education. Mansfield District Council (“the Council”) complained that it had been misled as to the nature and purpose of the programme, and that it would have refused permission for the programme-makers to film in its CCTV control room if it had been aware of the programme’s nature.

Ofcom was not persuaded that the Council was treated unfairly in the programme. Although it was not satisfied that the Council was provided with sufficient clear information about the actual nature and purpose of the programme when agreeing to the filming inside the CCTV control room, Ofcom considered that the use of the footage, which did not impact on the ranking of Mansfield among the worst places to live, would have been unlikely to have materially affected viewers’ understanding of Mansfield in a way that was unfair to the Council.

### **Introduction**

On 9 August 2005, Channel 4 broadcast *Best and Worst Places to Live in the UK*, a programme featuring the presenters, and in the style, of the property show *Location, Location, Location*. The programme set out to identify the ten best and ten worst places to live in the UK by using the criteria of crime, education, employment, environment and lifestyle. The programme compared 134 Local Authorities and sought to identify the type of property (and its social environment) £180,000 could buy.

Mansfield was identified as the sixth of the ten worst places to live and reference was made in the programme to the increase of crime in the area and the falling standards in education. Mansfield was described by the programme’s presenters as “a shadow of its former self” and an “urban jungle”. Footage of Mansfield District Council’s CCTV control room was included in the programme and was described as one of the most sophisticated in the country and contributed to four arrests each day. The programme went on to state that the “180,000 grand UK average house price goes a long way [in Mansfield]”. The introductory commentary to the programme claimed that it was “going to upset a huge number of people this week” and that its “statistics are bullet-proof”.

Mansfield District Council (“the Council”) complained to Ofcom that it was treated unfairly in the programme as broadcast.

### **Complaint**

#### **Mansfield District Council’s case**

In summary, the Council complained that the programme makers, in order to secure its permission to film inside the CCTV control room, provided it with misleading information regarding the nature and intention of the programme. Mr Robert Shirley, the Council’s Public Relations Officer, said that he was contacted on 27 May 2005 by the programme makers who claimed that they were working on a programme called “Property Postcodes” which would be predominantly about comparing property prices in towns across the UK. The programme makers told Mr Shirley that Mansfield would

be compared to an area in Surrey and that the programme would show the high quality of house that could be bought in Mansfield with the more modest property that could be bought for the same price in Surrey.

Mr Shirley was asked whether the programme makers could film in the Council's CCTV control room to illustrate the efforts made by the Council in reducing crime in the area. The programme makers agreed not to identify any of the CCTV control room staff and, during the filming, Mr Shirley signed a release form which, he said, was entitled "POSTCODES – (Working Title)". The filming took place on 27 May 2005, the same day the programme makers first contacted the Council.

Having seen the footage in the programme as broadcast, Mr Shirley said that he, as the Council's representative, was deliberately misled by the programme makers into granting them permission to film in the CCTV Control Room. Had the Council been told the true nature of the programme they would have declined the programme makers' request to film.

### **Channel 4's case**

In summary, Channel 4 responded that the Council had not been misled. From the conversations that led to the permission being granted by the Council, the programme makers were confident that it was aware that the nature of the programme was about good and bad places to live in the UK. Channel 4 said that at no time during or prior to filming did the Council indicate that it was not fully aware of the nature of the project.

Channel 4 said that the programme makers explained to the Council that the reason they were particularly interested in discussing crime and the CCTV cameras "was because Mansfield had scored particularly poorly in the analysis of crime statistics [amongst other things]" and that filming in the CCTV control room would be a good way of showing that the Council was taking action to tackle street crime. In relation to the condition of staff anonymity to film in the control room, Channel 4 said that the CCTV control room staff were featured in silhouette with no discernible features and that this technique offered sufficient anonymity to them. The type of participation the Council had agreed was honoured by the programme makers and it did not seem to take issue with the way the CCTV control room staff appeared in the programme. Channel 4 said that the release form highlighted the fact that "Postcodes" was a working title and that it is common practice during production to give the programme a title reflecting a generalised version of the programme content. Channel 4 noted that the Council signed the release form after giving permission to the programme makers to film the CCTV control room. This indicated its decision to grant permission was not based on the programme's working title. Mr Shirley had spoken to the programme makers prior to the broadcast of the programme and although the Council had seen trailers for the programme, no issues were raised about the title or the filming of the CCTV control room. Channel 4 also said that although the trailers did not indicate which list – best or worst – Mansfield would be included, it was clear from Mr Shirley's comments to the programme that it knew Mansfield would be on the worst list. Mr Shirley had asked the programme makers whether or not his workload was about to double, an assumption which must have been based on the information given to him by the programme makers during filming.

Channel 4 said that the programme makers told the Council that the programme would be about good or bad places to live and that there would be a comparison about what sort of house £180,000 would buy. Mansfield was judged to be good value for money on properties and this aspect was featured in the programme. The

programme makers were fair in their dealings with the Council and had adhered to Ofcom's Broadcasting Code.

### **Mansfield District Council's response**

In summary, the Council responded that it had clear recollections of, and witnesses to, the conversations with the programme makers prior to filming. The programme as broadcast did not resemble the description offered by the programme makers that: the programme would be fronted by the presenters of *Location, Location, Location*; that it would compare property prices in different parts of the country and that Mansfield fared well; that it wanted to include material about what it was like to live in different parts of the country; and, that the programme wanted to focus on the Council's efforts to reduce crime by filming its CCTV control room.

Channel 4's claim that it had told the Council about the comparisons that were to be made between different places to live in the UK and that Mansfield did not fare well in the area of crime was incorrect. The Council claimed that the only comparative element mentioned by the programme regarded property prices and that no suggestion was made that Mansfield could be a bad place to live.

The Council stated that it did not raise the issue of the nature of the programme during filming because it believed it was aware of the type of programme being made. The realisation of the discrepancy between what it was told and the actual programme became apparent only after its transmission.

The Council said that Mansfield was not scoring poorly in any crime analysis nor was any such analysis mentioned. The programme makers had said that they had wanted to film the CCTV control room in order to show the efforts employed to fight crime.

The Council said that it was in its initial telephone conversation with the programme makers that it was told that the programme would be called "Property Postcodes" with no mention of a "working title" at that stage. The title *Best and Worst Places to Live* would have raised questions for the Council about the nature of the programme.

### **Channel 4's second statement**

In summary, Channel 4 responded that its response was an accurate reflection of the events leading up to the Council granting access to film in the CCTV control room. The recollections of the witnesses to the Council's conversations with the programme makers prior to filming were irrelevant and inaccurate because the witnesses were not directly or indirectly involved in the negotiations to film and the Council's decision to give access. Also, it was inherent in what the Council was told by the programme makers that there was a best and worst element to the programme because the Council recognised that feature of the programme from the press coverage and that Mr Shirley was expressly told that this feature would be part of the programme. Also, the reason for the filming was to demonstrate the Council's efforts in tackling crime, it would therefore have been aware that the area's poor crime record would feature in the programme. Given that the Council understood that reason for filming the unit, its consent was fully informed.

The programme makers not only told the Council that the programme would compare property prices, but also told it that it was comparing good and bad places in the UK and that Mansfield scored low on crime.

The Council did not appear to doubt, or seek confirmation about, whether or not Mansfield would feature as one of the bottom ten local authorities during its telephone conversation with the programme makers prior to broadcast. The footage of the CCTV control room did not affect Mansfield's position in the bottom ten, but added to the Council's positive portrayal. Channel 4 said that the programme as a whole was fair to the Council and that as the nature of the programme was properly explained to the Council, the working title was not material to its understanding of the reasons for the filming of the Unit.

For the Council to have made the link between the ranking element of the programme and the filming of its CCTV control room, it must have been aware of the nature of the programme. This suggested that the Council was told about the comparative elements of the programme by the programme makers. Channel 4 concluded that the Council had been provided with full and timely information. The Council, therefore, gave informed consent and its contribution was used fairly.

## **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment and unwarranted infringements of privacy in programmes included in such services. Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom recognises that (subject to the provisions of the Ofcom Broadcasting Code) broadcasters can quite properly comment and take particular viewpoints on the subjects of broadcast programmes. However, it is essential not only to the parties directly concerned but also to listeners and viewers, that such comments should be accurate in all material respects so as not to cause unfairness. 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.

This case was considered by Ofcom's Executive Fairness Group.

Ofcom considered the Council's complaint that it was deliberately misled by the programme makers as to the subject matter and purpose of the programme. In considering this element of the complaint Ofcom considered not just whether there was any evidence that the Council was misled but also whether this resulted in any specific unfairness to the Council in the programme as broadcast. It should be noted that Ofcom has no remit to consider complaints of unfair treatment about the making of the programme. Ofcom can only consider the programme makers' actions during the making of a programme insofar as they might result in potential unfairness in the programme as broadcast.

Ofcom noted the Council's claim that had it been aware of the true nature of the programme it would not have granted permission for the programme makers to film in its CCTV control room.

It was clear from the written submissions before Ofcom that the Council believed that it had been deliberately misled about the nature of the programme. It was equally

clear from the written submissions that the programme makers did not believe that they had misled the Council.

In these circumstances, Ofcom examined all the relevant material available to it in order to determine whether or not, on the basis of that material, the programme makers had dealt with the Council in a manner which was consistent with their obligation to avoid unfairness to them.

From the outset broadcasters should ensure that programme makers understand the need to be straightforward and fair in their dealings with potential participants and contributors. Contributors should be given a clear explanation of why they were contacted by the programme makers; told what the programme is about and the nature of the contribution they are required to make; and where possible, they should be informed about the nature of other likely contributions. The presumption is that taking these measures is likely to result in the consent that is given being 'informed consent' and it is only fair to withhold this information where it is justified in the public interest or under other provisions of the Code.

Ofcom examined the accounts given by the Council and Channel 4 about the pre-transmission contacts between the Council (that is, Mr Shirley) and the programme makers (including the release form signed by Mr Shirley) which would have been likely to have provided the Council with an indication of the likely nature and content of the programme. Ofcom considered the following:

Ofcom acknowledged that the programme makers told the Council that the programme was about good and bad places to live in the UK; that they were particularly interested in discussing crime; and that they wanted to film the CCTV control room because Mansfield had scored particularly poorly in the analysis of crime statistics and wanted to show the efforts was making in tackling the problem of crime in the area. The programme makers also told Mr Shirley that there would be a comparison of what type of house £180,000 would buy in various parts of the UK. Ofcom considered that this information did not in itself necessarily equate with the presentation of Mansfield as the one of the worst places to live in the UK.

Ofcom noted that the only information included in the release form which related to the programme's nature was the programme's working title "Postcodes". Ofcom was not persuaded that this in itself was sufficient to provide the Council with a clear understanding of the programme's nature and content. In Ofcom's view, it was reasonable for the Council to have understood from this that the programme would be predominately about comparing property prices in towns and cities across the UK.

Ofcom accepted that changes from a working title to a final programme title are conventional practice. However, programme makers must be aware of the need to ensure that participants are made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness. In this case Ofcom considered that the working title and the final title at the time of broadcast were significantly different in their meaning. Ofcom considered that that it would have been preferable if the programme makers had informed the Council of the final title before transmission as this was likely to have provided it with a clearer understanding of the nature and purpose of the programme.



In all the circumstances, Ofcom was not satisfied that the programme makers had provided the Council with sufficient clear information about the actual nature and purpose of the programme when securing permission to film inside the CCTV control room.

Ofcom next considered the content of the programme itself in order to determine whether the programme makers' failure to provide sufficiently clear information about the actual nature and purpose of the programme was likely to have resulted in unfairness to the Council in the programme as broadcast. Ofcom was not persuaded that the Council was treated unfairly in the programme as broadcast. In reaching this decision Ofcom took account of the following:

The Council had not complained to Ofcom about the programme's presentation of Mansfield as the sixth worst place to live. In that sense the Council was not suggesting that the programme's presentation of Mansfield was materially misleading or unfair.

The inclusion of the footage did not impact on the ranking of Mansfield among the worst places to live and would not therefore have materially affected viewers understanding of Mansfield in a way that was unfair to the Council.

The footage of the CCTV control room was used in the programme to illustrate the steps taken by the Council to tackle street crime and was represented as positive action by the Council. The commentary that accompanied the footage indicated that the CCTV cameras contributed to "four arrests a day".

In all the circumstances, Ofcom considered that the programme's presentation of Mansfield in the programme as broadcast was unlikely to have materially affected viewers' understanding of Mansfield in a way that was unfair to the Council.

Accordingly, the complaint of unjust and unfair treatment was not upheld.

## **Complaint by Mr Martin Thomas**

*West Eye View: Scare in the Community, ITV1 (West), 15 October 2004*

**Summary:** Mr Martin Thomas complained that he, and his company NBSA Projects Ltd ("NBSA"), were treated unfairly in an edition of the ITV West current affairs programme *West Eye View* which featured Mr Thomas and NBSA. Mr Thomas also complained that his privacy was unwarrantably infringed in the making and broadcast of the programme.

Mr Thomas complained that the programme (which investigated care homes run by Mr Thomas in the Lockleaze area of Bristol) portrayed both him and NBSA unfairly; included the unfounded allegations of service users and neighbours; and included interviews with a local councillor and the local MP; which were unfair both to him and NBSA. Mr Thomas also complained that his property was filmed and broadcast without his consent, resulting in an unwarranted infringement of his privacy. ITV responded that the programme's portrayal of Mr Thomas was fair and accurate; all allegations were well-founded; all the interviews fair and well-evidenced by other material; and that Mr Thomas had been offered a right of reply by the programme makers which he had chosen not to exercise. ITV further responded that the recording, and broadcast, of footage at Mr Thomas's property was justified by the highest public interest in the story and did not unwarrantably infringe Mr Thomas's privacy.

Ofcom found that the programme's overall portrayal of Mr Thomas and NBSA was fair and well supported by documentation and other material. Ofcom found unfairness in relation to only one aspect of Mr Thomas's complaint, the claim that he had failed to obtain planning permission for building works. Ofcom noted that Mr Thomas had failed either to exercise a right of reply offered by the programme makers, or to explain to the programme makers why he considered he could not exercise it, on aspects of the programme about which he complained. Moreover, the contributions to the programme from service users, neighbours, the local councillor and MP were not found to be unfair as they were both relevant to the issues under consideration and well supported by other material. Finally, Ofcom found that the footage recorded at Mr Thomas's property, and broadcast in the programme, did not infringe Mr Thomas's privacy, unwarrantably or otherwise.

### **Introduction**

This edition of *West Eye View*, entitled *Scare in the Community*, investigated "care in the community lodgings" providing accommodation and support for vulnerable adults, run by Mr Martin Thomas, and his company NBSA Projects Ltd ("NBSA"), in the Lockleaze area of Bristol. The programme updated *Barely Serious*, a previous ITV West investigation into the same subject, broadcast in October 2003.

The programme alleged that Mr Thomas's lodgings were badly run, leaving the service users unsupported and local residents frustrated. The programme investigated the amounts that Mr Thomas was charging Bristol City Council for the provision of support and accommodation for service users, by comparison with what the programme claimed was the poor standard of accommodation and support provided. The programme included secret filming of an NBSA tenant recovering from alcoholism, and another on strong medication, going to a pub with their support worker. The programme also included video footage recorded by one tenant's mother of her son's NBSA accommodation, which the programme stated "appalled" her. The programme featured interviews with the local MP, local councillor, service users, local residents and Mr

Thomas's former partner. Mr Thomas's premises were filmed and an attempt was made to conduct a 'doorstep' interview with his father, footage from which was included in the programme. Mr Thomas's personal background was examined and the programme concluded by stating that Bristol City Council had served notice to end Mr Thomas's contract with them.

Mr Thomas, who appeared in footage broadcast in the programme and was discussed throughout, complained that both he and his company, NBSA, were treated unfairly in the programme. Mr Thomas also complained that his privacy was unwarrantably infringed in both the making and broadcast of the programme.

## **The Complaint**

### **Mr Thomas's case**

In summary, Mr Thomas complained that he was treated unfairly in that:

- a) The programme was sensationalist and did not present a fair representation of either Mr Thomas or NBSA. The programme made both Mr Thomas and NBSA appear uncaring and financially exploitative:
  - i) The programme's commentary included the allegation that NBSA was not properly run which was incorrect and therefore unfair to Mr Thomas and NBSA.
  - ii) The commentary stated that local residents used graffiti to try to warn Mr Thomas off further expansion of his business. However this was unfair to Mr Thomas as the programme did not explain the full extent of the threats against him: £20,000 damage to one NBSA property; personal threats to kill Martin Thomas and injure his family; and, the slashing of car tyres.
  - iii) The programme included secret filming of a pub outing (by service users and an NBSA support worker). This was unfair to Mr Thomas and NBSA as the filming was purposefully, and unfairly, set up and furthermore a service user ('Barry') was paid for going to the pub.
  - iv) The programme's commentary stated that NBSA invoiced for rents well above the local average. This was unfair to Mr Thomas and NBSA since in fact NBSA complied with rents set by the Rent Service. The programme's commentary further stated that NBSA invoiced for eighteen hours of weekly communal cleaning per house which was untrue; and the commentary stated that NBSA invoices were paid by Bristol City Council with only minor amendments, when in fact there were major amendments.
- v) The Keyring agency was contrasted with NBSA and shown as one with monitoring systems in place. This was unfair to Mr Thomas and NBSA. In fact NBSA also has a full set of such procedures in place.
- vi) The mother of a service user, Kevin Rossiter, commented adversely on the state of his NBSA accommodation. This was unfair to Mr Thomas and NBSA since in fact work was being carried out and the service user had refused to move into temporary accommodation. She commented on the lack of TV and central heating when TV's are not supplied in NBSA accommodation and central heating is. She also commented on men coming to collect rent when it is in fact paid by Housing Benefit and standing order and she failed to mention her son's arrears.

- vii) The programme's commentary alleged that Martin Thomas accused colleagues of corruption, as an employee of Bristol City Council in 1998. This was unfair to Mr Thomas as he could not answer this point as it might prejudice future legal action.
  - viii) The programme's commentary alleged that Martin Thomas was ordered to return investment money to a former girlfriend. This was unfair to Mr Thomas since in fact he had made lengthy attempts to return this money. The programme also unfairly associated him with a burglary when in fact another person was convicted. The programme also unfairly alleged an injunction was taken out against him when he had been unaware of this injunction as he was abroad.
  - ix) The programme intimated that inexperienced staff were used by NBSA when this was not the case and was therefore unfair to Mr Thomas and NBSA.
  - x) The programme alleged that there was no planning permission for building work at the rear of the NBSA office. This was unfair to Mr Thomas and NBSA since in fact NBSA was not building anything.
  - xi) The programme alleged that NBSA refused to contribute to the programme. This was unfair to Mr Thomas and NBSA since NBSA could not contribute as a mediation process, with Bristol City Council, was underway.
  - xii) The programme alleged that Martin Thomas had been overpaid. This was unfair to Mr Thomas since in fact a mediation process, between NBSA and Bristol City Council, was under way.
  - xiii) The programme alleged that NBSA's contract came to an end in November 2004. This was unfair to Mr Thomas and NBSA since NBSA was not informed of this.
- b) The programme alleged fraudulent business practices on the part of Mr Thomas, namely that he "pocketed benefits" and that he made fraudulent claims for Job Seeker's Allowance while setting up a business. This was unfair to Mr Thomas since he has never claimed Job Seeker's allowance.
- c) The programme included unfounded allegations from vulnerable service users who should only have been interviewed in the presence of an appropriate adult. In particular the programme included claims by a tenant 'Barry' that: another tenant threatened neighbours with knives; staff were frightened to attend; buildings were set on fire; clothes were washed in toilets; and, there was furniture in the garden. This was unfair to Mr Thomas and NBSA since no such complaints or reports have been made.
- d) The programme included the unfounded allegations of neighbours:
- i) The programme reported residents saying that tenants used threats and abuse, leaving residents in fear. This was unfair to Mr Thomas and NBSA since neither NBSA nor the police have received any such complaints.
  - ii) An interviewee stated that people were "smashed", lying in bushes, enticing children, shouting abuse, being sick out of windows, with hundreds of beer cans in the garden and bedroom. This was unfair to Mr Thomas and NBSA since no complaints had been received except regarding vomit out of a window, and it was impossible see any cans in the bedroom.

- iii) The programme included footage of a local resident alleging that a 200 signature petition against people with mental ill health in their community had been presented. This was unfair to Mr Thomas and NBSA since this had never been received by NBSA.
- iv) The programme included an interview with a local resident alleging that there was no one there in the evening to help people. This was unfair to Mr Thomas and NBSA since there was a 24 hour NBSA call-out facility.
- e) The programme included interviews with Cllr Sean Emmett and Mr Dan Norris MP which were unfair to Mr Thomas and NBSA. In particular Cllr Emmett was not briefed when he stated that the NBSA contract had run on and on with delay after delay.

In summary, Mr Thomas complained that his privacy was unwarrantably infringed in both the making and the broadcast of the programme in that:

- f) The production team came onto his land, asking questions, for some twenty minutes.

#### **ITV's case**

In summary ITV responded to the fairness complaint as follows:

- a) The programme was not sensationalist and, after extensive investigations and a court case, it reported the extent of payments being made to Mr Thomas and the widespread concern about the level of care being provided. Where ITV did not have direct evidence that allegations were true, those allegations were corroborated by service users, local individuals, those in public office and by the evidence of secret filming. Independently of the programme's reporting, Bristol City Council ceased placing residents with Mr Thomas. The film was an investigation into an important matter of significant public interest and Mr Thomas's refusal to contribute did not make it unfair or one-sided:
  - i) ITV's response regarding the running of NBSA was dealt with above at head a).
  - ii) ITV was not aware of the attacks referred to by Mr Thomas, the only incident of which they were aware was the vandalism of an empty house bought by Mr Thomas for conversion to a care home.
  - iii) ITV West first investigated residents' concerns, about Mr Thomas and NBSA, in October 2003 in the programme *Barely Serious*. Using the technique of secret filming, ITV demonstrated that the concerns were justified. Two residents, one an alcoholic, the other suffering from mental illness and taking strong prescription medication, were filmed being taken to a public house by their support worker where they drank six pints of beer each. The familiar way in which the group was greeted indicated this was not an isolated occurrence. Mr Thomas's allegation regarding payment was contemptible and totally denied. The journalistic procedures employed here were not the subject of legitimate criticism and were more than justified by the public interest.
  - iv) In addition to charging the council for tenants' rent, separate charges were made by Mr Thomas in respect of cutlery, crockery, laundry, cleaning and furniture. Cllr Emmett commented on the programme "you would have thought that was part of the general establishment cost". In respect of cleaning, the programme's

reference to 12 hours a week in bedrooms and 18 hours a week in communal rooms was quoted from Mr Thomas's own invoices.

- v) ITV's response regarding monitoring systems was dealt with above at head a).
- vi) The state of the rooms spoke for itself: no hot water or central heating; oven adjacent to the bed; and, food preparation and washing up close to the toilet. The service user, Kevin, had only recently been moved by Mr Thomas into this property, 68 Fulton Road, which was not at that time registered as a care home and presumably not inspected. Mr Thomas took legal action against the service user's mother, Ms Stokes, and failed to mention, in his complaint, that his claim for the recovery of the arrears was rejected by Bristol County Court and that Mr Thomas was ordered to pay towards her costs.
- vii) Mr Thomas was sacked from his job with Bristol City Council in 1998, after he made unsubstantiated claims against senior officers of the authority alleging corruption. He lost a subsequent appeal against dismissal and there was no realistic likelihood of 'further action' as stated in his complaint.
- viii) Mr Thomas denied knowledge of the injunction issued against him during the break-up of his relationship with Dawn Parry (then Ramsey-Geake) which forbade him to use or threaten violence against the applicant. Mr Thomas did not suggest the allegations behind it were unfounded, nor did he deny its existence.
- ix) ITV's response regarding the experience of staff was dealt with above at head a).
- x) Mr Thomas had a long history of flouting the planning laws. Formerly a building control officer in the council's planning department, Mr Thomas, and his father, erected a building without planning permission and refused to demolish it. On 13 October 2004 the council rejected his planning application; on 27 October 2004 (two days after he submitted his complaint to Ofcom) he submitted a further application. When ITV filmed the premises for the programme there was clear evidence of preparatory building work being carried out despite the lack of planning permission. A driveway has been built at the back of 68 Filton Road and the planning department says that while planning permission would be needed it was not sought.
- xi) Martin Thomas was asked to contribute to the earlier *Barely Serious* film but failed to respond to numerous requests by phone, in writing and in person. He made no complaint when the film was broadcast. Neither he nor anyone else from NBSA was prepared to contribute interviews, despite requests on the telephone and in writing. At no point did he cite the mediation process as a reason for his refusal to contribute, had he done so this response would have been reflected in the programme. The programme makers could find no one in Lockleaze to come to his defence.
- xii) While preparing *Barely Serious* ITV sought access to Bristol City Council accounts to learn how much money Mr Thomas received to such poor levels of care. After application to the High Court ITV won the right to examine the records, which prompted preparation of a further film. ITV's principal discovery was the sheer size of Mr Thomas's income in return for such poor care. In December 2003 the council decided to cancel Mr Thomas's contract because he was providing inadequate care. A process of mediation between the two parties, during which time Mr Thomas continued to receive substantial payments, was

still unresolved by the time of broadcast in October 2004. It was not finally concluded until February 2005. The authority was pursuing the balance of SP (Supporting People) grant aid assessed as mis-spent or unspent, if necessary through the courts.

- xiii) Bristol City Council was taking action to recover 'a substantial sum of money' overpaid to NBSA. Since the programme the Council had also stopped placing vulnerable people with the NBSA. According to the Council "since February 2005 he has no longer been receiving Supporting People payments or having any people placed with him by us, most people placed with him have been moved out".
- b) The programme did not allege fraudulent business practices on the part of Mr Thomas. It alleged that he was overpaid by the Local Authority for questionable levels of care. Independent observers were baffled as to exactly what services Mr Thomas was providing in return for massive payments from the public purse. This allegation was certainly supported by the council's decision to seek the return of a substantial sum overpaid to Mr Thomas.

The programme did not allege that he was fraudulently claiming Job Seeker's allowance: a sworn affidavit showed he was in receipt of Jobseeker's allowance. The programme pointed out that he was claiming the allowance after being sacked from the Local Authority and while he was persuading the same Local Authority to become involved in his new business venture. At the same time he was proprietor of 83 Romney Ave and 41 Bonnington Walk which he was running as residential care homes.

- c) The adult service users interviewed had issues which meant they required help but this does not mean that they should have been interviewed in the presence of an appropriate adult like a juvenile under arrest. Both service users were lucid and fully aware of what they were doing. Both those interviewed approached the reporter; ITV did not actively seek their contributions. One service user ('Barry') was so angry at the appalling standard of care he was receiving, yet so fearful of the possible reaction of Mr Thomas, that he contributed his interview anonymously. The other (Kevin Rossiter) was interviewed with the full support of his mother Jane Stokes who also contributed an interview and allowed ITV to broadcast video footage shot within her son's room.
- i) ITV's response regarding 'Barry's' claims was dealt with at head c) above.
- d) All those neighbours to whom the programme makers spoke made similar allegations about Mr Thomas's care homes, and this strength of local opinion against his activities was reflected in the petition of more than 200 signatures presented to the Council. The complaints mirrored those made in the earlier programme as well as in articles in the local press.
- i) ITV was aware that the police have received complaints about the behaviour of some of Mr Thomas's residents. Neighbourhood police informed ITV that they have received numerous complaints, as have the media and the council via interviews and a petition.
- ii) The interviewee, Penny Nutt's, description of a resident vomiting out of a bedroom window was confirmed by Mr Thomas. She was able to see the hundreds of cans through the window from outside.

- iii) In the summer of 2003 there was widespread concern over Mr Thomas buying up properties to house vulnerable people, paid for by the local authority. Neighbours expressed concern that Mr Thomas was not providing levels of care appropriate to the needs of his residents and commensurate with the fees he was receiving. A petition was presented to a full meeting of Bristol City Council in September 2003, not to Mr Thomas, and directly petitioned that "the person responsible for the care of these vulnerable people, Mr Thomas, was unfit for such a task." The petition received wide publicity in the local print and broadcast media.
- iv) ITV made no separate response regarding the call-out facility.
- e) Cllr Sean Emmett and Mr Dan Norris MP were both fully in possession of the facts and eminently qualified and entitled in their public roles and otherwise to express their honest opinions in relation to those facts. Cllr Emmett had represented the Lockleaze ward since June 2003 and his ward included Mr Thomas's supported housing. He had also been a member since 2003 of the council's commission which monitored the expenditure of public money on supported housing. Mr Norris was an MP and former member of Bristol City Council. No complaint was made about Cllr Emmett's allegations in the previous *Barely Serious* programme. Both men were undoubtedly critical of Mr Thomas and NBSA but this did not make their observations unfounded or unfair. Both were fully briefed. Mr Thomas made four separate complaints about Cllr Emmett to the Standards Board of England, including one about his contribution to *West Eye View*. All have been rejected.

Cllr Emmett's statement that the 'contract has run on and on' was fair comment. As ward councillor he was well aware of Mr Thomas and his activities. In December 2003 the council decided to cancel Mr Thomas's contract because he was providing inadequate care.

In summary ITV responded to the privacy complaint as follows:

- f) The allegation that the production team came on Mr Thomas's land, asking questions for some 20 minutes was absolutely rejected. Mr Thomas was only approached in person after ITV failed to receive a response to any of the three letters delivered by courier to his various addresses. The production team visited one of Mr Thomas's addresses and from a public area asked questions for a fraction of that time of George Thomas, father and long-standing business associate of Martin Thomas. This was justified by the highest local public interest in the subject matter and Mr Thomas's refusal to answer their communications. The crew was present in the vicinity of NBSA offices for less than half that time; the crew may have stepped off the pavement onto Mr Thomas's property but it would only have been for a few seconds. It was also pertinent that although the complaint alleging breach of privacy has been made by Martin Thomas, he, apparently, was not present at the time of filming.

#### **Mr Thomas's second statement**

In summary Mr Thomas commented on ITV's statement on the fairness complaint as follows:

- a) The programme title *Scare in the Community* said it all and was dreadfully unfair:
  - i) NBSA had provided an essential service to the homeless and people leaving prison, housing people with mental ill health and learning difficulties. The



Thomas family had provided such services over many years. No evidence was shown of poor levels of care, letters to Mr Thomas told of the good service provided.

- ii) ITV would not have been told about attacks on Mr Thomas as he did not wish to talk to them.
- iii) NBSA had a policy of not taking people into pubs, but the informant 'Barry' insisted that he take NBSA into the pub and would not do anything else that day. The programme makers did not follow NBSA staff into the pub, as stated in the programme; rather they had a previous arrangement and were waiting for NBSA to come into the pub, evidenced by the cameras already set up. ITV stated that the three sat in the pub for almost two hours and the two men drank 6 pints each, ITV concealed the fact that one of the men who had drunk 6 pints was 'Barry' who was in on the set-up.

There was no public interest justification for this filming. ITV was speculating without evidence that this was not an isolated occurrence. NBSA was a support agency providing tenancy related support, not a care home providing supervision or care; people were free to do whatever they want including visiting a pub. After the programme the service user, who was approached by ITV, apologised for what was done and felt guilty about it. NBSA supported investigative journalism which was fair and substantiated. When it suited ITV the people being interviewed were aware and able and free to give an interview as adult members of society.

- iv) Regarding charges for cutlery etc ITV claimed they were quoting from an NBSA invoice. This was incorrect; it was a five-year-old proposal which was never actioned. Cllr Emmett was asked to comment on this as an invoice; this was blatantly untrue and irresponsible of ITV. The Housing Benefit Rent Review showed how the rent was made up in detail.
- v) The comparison with registered care homes was unfair. NBSA did not provide 'care', it could not restrict people. Registered care and supported living were utterly different.
- vi) NBSA did take Kevin Rossiter's mother to court and failed because even though she signed the tenancy agreement Kevin was the tenant and still owed £4,500 in rent; hence the award towards costs. The damage to the room was done by Kevin Rossiter and indeed "speaks for itself"; Kevin had a chaotic life-style and wanted to live in squalor. This was his choice. There was hot water in Kevin's room but no gas central heating as the heating was electric. ITV stated that food preparation was close to the toilet but the bed-sit complied with EHO standards. 68 Filton Street was not a registered care home as none of NBSA houses were, as NBSA did not run care homes. ITV introduced a fiction in order to try to discredit NBSA. The accommodation was independently inspected by the EHO. Mrs Stokes's complaint did not prompt the completion of the work; it was completed within a time set by the EHO.
- vii) Mr Thomas's claims about corruption were substantiated. The only disciplinary action was part of his dismissal not before it.
- viii) ITV made no defence for the intimation that he was responsible for the burglary at Ms Ramsey-Geake's house, because there was no defence.

Mr Thomas agreed that the injunction was issued but it was ex-parte and he was therefore unaware of it. When the matter went to court both parties agreed to a joint undertaking with no accusation of guilt on either side. This joint undertaking was sensationalised as an injunction against Mr Thomas.

- ix) ITV made no further comment regarding the experience of staff.
  - x) Aside from the garage there was no history of flouting planning laws. The Thomas family only had to change the appearance of the roof of the garage not demolish it. ITV was right that the family had made a number of planning applications for work at the back of the office, but no work was carried out, only the repair of boundary walls. Regarding the driveway drains were repaired. If planning permission was needed the family would have been written to or threatened with action but have not been.
  - xi) ITV's reporting became more outrageous and detrimental with the second programme, hence the decision to complain. ITV only interviewed people who did not want "that sort of person living next door to them" but letters from service users, their parents and professional services showed the level of support for NBSA in Lockleaze. Whilst NBSA and Mr Thomas agreed they did not give an interview, the programme did not show all the trips and outings provided for service users, indeed one service user killed himself after NBSA support was withdrawn. Martin Thomas and NBSA did not give an interview as they did not want to be involved with such a biased programme, but have given interviews before to programmes which have reported the facts impartially.
  - xii) The programme was not prompted by the release of the financial records, it was being made anyway. There was no principal discovery, it was just a contract, its size was relative to the work done and related to money paid to NBSA by Bristol City Council, not to profit. All amounts were accounted for. The Council did withdraw funding but they also withdrew funding from numerous other projects due to cuts over five years, the programme did not place this in context but instead sensationalised by just referring to NBSA funding withdrawal. The Council was not to recover money from NBSA, the Council stated that 'if' money was unaccounted for it would be recovered but none was unaccounted for.
  - xiii) Nowhere did the Council state that NBSA provided poor service, it gave no reason for withdrawing the funding, indeed it offered to continue the contract. The Council did not stop placing vulnerable people with NBSA, they were only stopping the money and NBSA could continue to provide support. Most people have moved (with a natural turn over of tenants) but others have taken their place. NBSA's relationship with Tenancy Support was good and NBSA did not evict people.
- b) ITV stated that they did not claim Mr Thomas was fraudulent yet they said "We received allegations that he was pocketing their benefits without providing proper care" which was fraud. All the money was accounted for.

Mr Thomas claimed for Job Seeker's allowance but this was denied so he did not receive JSA.

- c) ITV referred to the service users as mentally ill and vulnerable at the pub but lucid and fully aware when they are interviewed. Mr Thomas made no further comment regarding claims by 'Barry'.

- d) ITV still had no evidence to back up allegations by neighbours. ITV stated there were many negative comments but that did not amount to a complaint.
- i) The police did not receive any complaints, as evidenced by a letter from a local inspector stating there was no investigation underway. Regarding complaints to the media and Council, there have been comments about “not wanting these sorts of people living near us” but not complaints.
  - ii) The man seen vomiting out of the window was unwell and vomited through medication. It would be impossible to see the cans and bottles from the ground. ITV now stated that Penny Nutt could “probably” see these from the window opposite but she lived in excess of 200 metres away and there was no evidence that she saw this.
  - iii) The petition was from people who didn’t want these types of people next door to them. There was no evidence that Mr Thomas was “unfit”. An independent consultant stated that “there are no reasons why the provider is unsuitable to work with vulnerable people”.
  - iv) Mr Thomas made no separate comment regarding the call-out facility.
- e) Cllr Emmett and Dan Norris MP gave vague but accurate comments; they did not mention NBSA or Mr Thomas by name. ITV edited these in to the middle of a programme about NBSA and Martin Thomas to make them look bad. Mr Thomas made no further comments regarding Cllr Emmett’s comments on the contract.

In summary Mr Thomas commented on ITV’s statement on the privacy complaint as follows:

- f) ITV came onto the freehold property of 64 Filton Road to hound an interview from his father, George Thomas, and this was irresponsible, unjust and unfair. The footage clearly showed all the camera crew on Mr Thomas’s land, the van was parked on the middle of the land and the interviewing reporter was walking round trying to talk to Mr Thomas senior. The unedited footage would show exactly the time spent on the land. Mr Thomas was present at the time of filming and there were witnesses.

### **ITV’s second statement**

In summary ITV responded to Mr Thomas’s comments on the fairness responses as follows:

- a) If Mr Thomas and his organisation appeared to be uncaring and financially exploitative that was a judgement on the fairly presented views of the contributors to the programme. Mr Thomas chose not to exercise his right of reply. ITV could not report trips on which he claimed to have taken tenants without his assistance. The programme was not sensationalist, for example it did not include Dan Norris MP’s views that Mr Thomas was “manipulative and crafty” and had “huge arrogance”. The title was a play on the phrase ‘care in the community’; it was not a reflection of people living in Mr Thomas’s homes but on their not receiving adequate care. Mr Thomas frequently tried to suggest that criticisms of him were in fact attacks on those in his homes; this was not the case here.
- i) NBSA was established on Christmas Eve 2002, the Thomas family did not appear to have established a care home before February 1996. The letters of support Mr Thomas mentioned were in fact pro-formas, many from staff who

were at risk of losing jobs when funding was withdrawn. The rest appeared to be pro-formas from service users, a number from the same individuals and designed to appeal to the council to continue funding the NBSA,

- iii) ITV asked what evidence there was of attacks.
- iii) It was never justified for a support worker to take an alcoholic and someone on prescription medication to the pub where they drank six pints. Whatever the stated policy about staff not taking people into pubs it was breached routinely according to ITV's source and one occasion was captured on film. The producer of *Barely Serious* met residents about their concerns about service users being left to their own devices in the houses and causing havoc as a result. One tenant 'Barry' told her of his concerns and criticisms over overcrowding, an inappropriate mix of residents and how he had fallen back on alcoholism after daily pub visits with NBSA support workers.

After permission from the Director of Programmes the producer arranged covert filming, of which 'Barry' was completely unaware. The two researchers waited for several hours and were about to leave when 'Barry' and a fellow resident entered the pub. There was no "previous arrangement" or "set up" and Mr Thomas has not repeated his contemptible allegation that one of his tenants received payment for going to the pub. "Barry" gave evidence that this was not an isolated event; this was supported by the fact that filming took place on a day randomly selected and the publican greeted the three as regulars. This was a complete abrogation of responsibility by NBSA which took large amounts of public money to provide support to vulnerable people.

ITV's commitment to maintain its source's anonymity meant that it could not provide copies of the untransmitted covertly recorded material but the secret filming was in the public interest, and ITV's methods rigorous, responsible and justified.

- iv) The document which Mr Thomas referred to as 'a five-year-old proposal' described itself, like those in the names of a number of NBSA clients, as a claim. They were all dated August and September 2001.
- v) It was not unfair to include another organisation, namely the Keyring Project, which was succeeding in providing assistance to vulnerable people. It was used for fairness, completeness and to ensure no impression was given that might raise concern about care within the community generally. Filming with the Keyring Project demonstrated the advances vulnerable people could make if given appropriate levels of care and support.
- vi) Kevin Rossiter's accommodation was not appropriate, the filmed evidence was incontrovertible. Kevin Rossiter was not responsible for the bed-sit being too small, and the bed being placed far too close to the cooker for safety. A recent catalogue of enforcement actions by Bristol City Council's environmental health office (EHO) officers confirmed that Mr Thomas was providing poor care in houses which were potentially unsafe. When EHO officers did inspect Kevin Rossiter's address they took enforcement action over inadequate fire precautions. Mrs Stokes's video camera evidence was clear. ITV provided further clarification regarding EHO action below at head xi).
- vii) The council accused Mr Thomas of a 'refusal to co-operate...or provide evidence to substantiate your serious allegations' and he was later sacked for gross

misconduct. Mr Thomas did not deny that he was sacked for gross misconduct, which is what the programme reported. It is unclear what relevant point Mr Thomas makes regarding disciplinary action; after the planning dispute between Mr Thomas and his then employer Bristol City Council he was subject to the Council's disciplinary process before his dismissal for making unsubstantiated accusations about colleagues.

- viii) Regarding the burglary complaint, ITV did not state in the film that Mr Thomas burgled Ms Parry's house. However documents reported stolen by her were later retrieved from him. Mr Thomas confused separate burglaries:
- On 26 and 27 March 1997 Ms Parry said Mr Thomas entered her house (74 Seymour Road) and took documents without permission, Mr Thomas denied this;
  - On 22 May someone claiming to be her husband attempted to cancel Ms Parry's insurance policy;
  - On July 1997 Ms Parry confirmed that a man called Taylor was convicted of stealing valuables, this was the burglary referred to by Mr Thomas in his submission;
  - On 30 October 1997 Ms Parry's personal documents and engagement ring from Mr Thomas were stolen, this was the burglary referred to in the programme;
  - On 31 October 1997 Mr Thomas's parents' home, where he was now resident, was searched by police. Paperwork belonging to Ms Parry found. Ms Parry subsequently made a complaint against the police for failing to retrieve these documents;
  - On 31 October 1997 Ms Parry sought an injunction;
  - On 4 November 1997 the injunction was personally served on Mr Thomas;
  - On 17 May 2000 Mr Thomas attempted to force the sale of 74 Seymour Road but lost the case and was ordered to return documents to Ms Parry.

Regarding the injunction, Mr Thomas did not claim that the ex-parte injunction was issued on the basis of unfounded allegations of violence etc by his ex partner.

- ix) ITV made no further comment regarding the experience of staff.
- x) Mr Thomas claimed to know of no long history of flouting planning laws but Bristol City Council's planning department recollected the following:
- In August 1995 George Thomas was investigated over unauthorised demolition and Martin Thomas was his company secretary;
  - In October 1995 after enforcement action over an illegally erected garage, Mr Thomas was fined £1,000 for refusal to demolish. This was rather more than a dispute over a roof design;
  - In 1997 Mr Thomas was investigated over the unauthorised conversion of a house into a care home;
  - In 2000 Mr Thomas was investigated over unauthorised conversion of a shop into a café;
  - In 2001 Mr Thomas outraged neighbours by building a garage and then turning in into living quarters;
  - In 2005 three formal notices were served on NBSA regarding the fitness of houses in multiple occupancy;

- On 29 July 2005 NBSA, Martin and George Thomas were prosecuted by EHO officers for failing to provide information on a property in multiple occupancy, and all were fined.

Regarding EHO enforcement action ITV further clarified that it resulted in convictions and fines against NBSA, Martin Thomas and his father George Thomas at Bristol Magistrates' Court on 29 July 2005. In November 2005, all three convictions were laid aside and the council was now considering further action.

Regarding planning permission ITV further clarified that the 'doorstep' interview with George Thomas was filmed at the rear of 68 Filton Road, NBSA offices which were also being used as unofficial accommodation for SP tenants. The footage clearly showed bricks, sand and a cement mixer preparatory to building work. The area has been used, following the programme, as a driveway/car park and although planning permission would be required this was not applied for, nor was the necessary licence acquired in order to drop the kerb. In 2004 Mr Thomas applied for planning permission to extend the premises at 68 Filton Road and was refused. A subsequent appeal in 2005 was dismissed.

- xi) If ITV's reporting was detrimental to Mr Thomas's interest he should have complained in 2003 but he exercised his prerogative not to do so.
- xii) The Council refused to provide financial records to which ITV was entitled. ITV, successfully, took the action they did which provided them with the principal evidence for the *West Eye View* investigation. Investigating the amounts of income he was receiving from Bristol City Council was very much in the public interest. The local authority believed he was overpaid as did the local councillor and MP.

The local authority said they would recover monies overpaid. The Council detailed its decision to stop funding and recover moneys mis-spent or unspent, and explained to ITV it was 'still taking legal advice and considering our options about recovering monies'. The Council terminated its Supporting People contract with NBSA after mediation ended on 15 February 2005. This pre-dated current concerns within the Council about the level of spending on social services. ITV was not aware that the authority was considering pursuing other providers for monies 'mis-spent'.

Bristol City Council was still providing SP funding but not to Mr Thomas. ITV was aware that NBSA had been seeking to secure business from other councils, probation services and secure hospitals throughout the UK. Bristol City Council advised neighbouring authorities and the Probation Service nationally that it had terminated its Supporting People contract with the NBSA. It was possible that some of NBSA's private tenants qualified for housing benefit and that the Council made these payments, on behalf of the government, directly to the landlord (NBSA) in lieu of rent. These benefit payments may well have been NBSA's main source of income and may be what Mr Thomas was referring to regarding continuing to receive funding from Bristol City Council. However it would not be correct to describe these payments as 'city council funding' and certainly Mr Thomas and NBSA no longer receive Supporting People payments from the local council.

Regarding the termination of the Council's contract ITV further clarified the following. Following the *Barely Serious* film Bristol City Council decided on 5

December 2003 to terminate its Supporting People contract with NBSA, deciding that the £66,546 paid each month to NBSA should be used instead to secure alternative housing related support for Mr Thomas's tenants; and that the balance of grant paid to NBSA but 'mis-spent' or unspent' should be recovered. The Council confirmed that NBSA had been informed of this decision, and that this decision was implemented. The decision was based on dissatisfaction with NBSA and, by extension, Mr Thomas, for example for using the company's headquarters, 68 Filton Road, to house tenants.

xiii) ITV noted that Mr Thomas made no comment regarding the Council's confirmation of the termination of its contract with NBSA.

- b) The programme did not allege fraud on the part of Mr Thomas or the NBSA; rather it alleged that he received very large amounts of money for questionable levels of care. The local authority, as well as others, believed Mr Thomas was overpaid; having overcharged for his services, and would seek to recover overpayments. The meaning of the commentary line regarding Mr Thomas "pocketing" welfare payments was plain in this context.

The programme did not allege that Mr Thomas was fraudulently claiming Job Seeker's Allowance. It stated that he was claiming JSA which was administered by the same local authority which had sacked him, and to which he was applying with a new business venture. Mr Thomas first told Ofcom he never claimed JSA but in a sworn affidavit he stated "I...am in receipt of Jobseekers Allowance in the sum of £30 per week". He then said he claimed JSA (contrary to what he first stated to Ofcom) but that he never received it (contrary to his affidavit).

- c) Interviews with service users were carried out in a responsible manner; where possible they were verified for example by covertly obtained pub footage. Service users had their views reflected, as is the right of adult members of a free democracy. The interviews with local politicians showed ITV West was not the first to receive their complaints. 'Barry' our informant was indeed lucid when he discussed his concerns with the *Barely Serious* producer, and he was articulate in his interview. Having downed six pints at the pub he and his fellow resident, who was on strong medication for mental illness, were rather more vulnerable. ITV made no further response regarding claims by 'Barry'.
- d) Allegations by neighbours were not unfounded and have been repeated again and again. So concerned were neighbours that they compiled a petition and the Council cancelled its contract with NBSA. Interviews with local politicians showed such complaints were being made since Mr Thomas first went into business, and that they were also made to police.
- i) The comments in the police inspector's letter, referred to by Mr Thomas, were heavily qualified and did not rule out previous investigations, or ones in other areas. The retired police officer who compiled the 2003 petition, was well aware of complaints being made to the police, as was Cllr Emmett who, in untransmitted material, spoke of "concerns relayed to me by the police themselves about the number of...disturbances" also that "they were being used by Mr Thomas as a sort of... emergency service...he didn't have a presence late-night".
- iii) Mr Thomas accepted that at least some of what contributors said was correct. Mr Thomas' comments confirmed one of Mrs Nutt's allegations and it has already been established that the NBSA allowed alcoholics in recovery, and

mentally-ill people on strong medication, to consume large amounts of alcohol at the pub.

- iii) The petitioners were not campaigning against vulnerable people living in their community; the petition's co-ordinator stated "We believe...Martin Thomas is unfit for such a task". The petition was not a statement per se about the people Mr Thomas was housing but about the level of care they were receiving and his ability to provide appropriate care. This is what was said in the petition and meeting and what was reported in the programme. Mr Thomas's unfitness has been dealt with fully; his conviction following enforcement action was simply the latest evidence. He cannot refute the fact that Bristol City Council removed his Supporting People funding.
- iv) ITV's response regarding the call-out facility was included in head d) i) above.
- e) The full interviews with Cllr Emmett and Dan Norris MP showed that they knew precisely who they were talking about. Both have been very familiar with a variety of concerns about Mr Thomas and the NBSA for many years.
- i) No further response was made regarding Cllr Emmett's comments on the contract.

In summary ITV responded to Mr Thomas's comments on the privacy responses as follows:

- f) Mr Thomas acknowledged he was at his offices on the day the producer of *West Eye View* called to interview him. He chose not to appear but as his father and business partner George Thomas was present at the rear of the premises she sought to interview him on a matter of important public interest. As the untransmitted material demonstrated, the production team was with George Thomas for some eight minutes. George Thomas was not hounded, remained remarkably sanguine and appeared to be on the verge of responding. Much of this filming took place on public pavement, the rest around 1m from public pavement. Mr Thomas was not present at the time of filming, it seemed he was inside the house and chose not to take part in the programme. There was a question as to whether Martin Thomas had locus to complain about unwarrantable infringement of privacy of his father and ITV West reserved its rights in this respect.

### **Mr Thomas's third statement**

In summary Mr Thomas made the following comments on specific elements of ITV's second response:

- a) Mr Thomas challenged the inclusion of material provided by ITV on grounds of confidentiality and asked for the originals to be provided to him. He further commented that he was willing to talk to the media if they reported issues fairly.
- vi) Regarding EHO action at 68 Filton Road (Kevin Rossiter's address), Mr Thomas commented that there had been no notice to carry out works.
- viii) Regarding the burglary Mr Thomas commented that the programme made it look as if, after a burglary of Ms Parry's house, Mr Thomas had an injunction taken out against him. He responded to ITV's chronology as follows:
  - In April 1997 the relationship between Mr Thomas and Ms Parry (then Dawn Ramsey Geake and Mr Thomas's partner) broke down and Mr Thomas therefore moved out of the house.



- Mr Thomas did try to stop the insurance as he was paying the instalments and stopped.
  - There was no evidence linking him to a burglary and there was no prosecution.
  - The injunction, which he did not know about as it was ex-parte, was served on him. It was nothing to do with any burglary but a consequence of his attempt to remove the garage roof in order to comply with a planning order.
  - In a civil case which Mr Thomas lost, Ms Parry was awarded the house, Mr Thomas was awarded the business and they went their separate ways.
- x) Regarding EHO prosecutions: convictions were overturned because Mr Thomas was unaware that a notice requiring disclosure of the ownership of 68 Filton Road had been served.

Regarding planning permission Mr Thomas commented that the building materials were being used to re-build a boundary wall. The drop kerb was there and had been in place since just after WWII. The application and appeal were not disputed but nothing was then built. ITV's statement talked of "preparatory work" in contradiction to the aired programme which alleged that work was ongoing.

- xii) Regarding the SP contract termination Mr Thomas commented that the notice was served in December 2003 but successfully appealed and the contract continued until November 2004, with payments continuing. The remaining staff were made redundant on 22 December 2004.
- e) Regarding the interview with Dan Norris MP Mr Thomas commented that the transcripts of untransmitted material showed Mr Norris to state that he was unsure what happened and that his knowledge of the case is through a friend who was deceived i.e. someone with an axe to grind.

### **ITV's third statement**

In summary ITV responded to Mr Thomas's comments on specific elements of their second statement that:

- a) The material challenged by Mr Thomas was part of hundreds of documents provided to ITV West by Bristol City Council following High Court action in 2003. In the eyes of the law it was therefore publicly available to any interested person. Mr Thomas's comments on willingness to talk to other media did not address the fact that he refused the opportunity to put his side of the story in the programme.
- vi) Regarding EHO enforcement action on 68 Filton Road (Kevin Rossiter's address), Bristol City Council confirmed notices served in relation to incomplete fire precaution work, disrepair and electrical and gas safety checks.
- viii) Regarding the burglary, ITV had nothing further to add except to note that although Mr Thomas said the police did not raise the matter with him they in fact obtained a warrant to search his address. The purpose of the injunction was to protect Ms Parry and nothing to do with a roof.

- x) Regarding EHO enforcement action, Mr Thomas claimed that he received no correspondence in relation to this prosecution, court dates and court decisions, the court decision (of July 2005) was subsequently put aside for this technical reason.

Regarding planning permission at 68 Filton Road, Ofcom was referred to the history of Mr Thomas and his father outlined in ITV's second submission at head a) xiv).

- xii) Regarding the SP contract termination, Mr Thomas accepted the chronology of events which was reflected in the programme's commentary.
- e) Regarding the interview with Dan Norris MP, Mr Thomas complained that it was inappropriate to include the interview as Mr Norris had no direct knowledge of the conflict between Bristol City Council and NBSA. However Mr Norris had direct knowledge of Mr Thomas, having received a letter regarding planning consent. This was supposedly from a friend, but was actually from Mr Thomas, which was unacceptable deceit. Mr Norris may have been briefed by another regarding Mr Thomas and NBSA, but clearly his source was a trusted one. As a member of the Council he also had dealings with Mr Thomas. He was a local MP. He was perfectly happy with the representation of his views in the programme.

#### **Mr Thomas's fourth statement**

In summary, Mr Thomas commented on ITV's third statement regarding the interview with Dan Norris MP that:

- e) ITV stated, in their third submission, that Mr Dan Norris MP received a letter regarding planning consent, supposedly from a friend, but actually from Mr Thomas. However Mr Thomas had evidence that Mr Norris did not tell the truth about this letter. The letter was from Mr Thomas's former partner Dawn Ramsey Geake and a memo and note from Mr Norris showed that he was not concerned about the letter's authenticity when he received it in 1996. This was contradicted by a further letter from Mr Norris, of 29 October 1997, in which he expressed concern about the authorship of Ms Ramsey Geake's letter. This contradiction was evidence that he did not tell the truth.

#### **ITV's fourth statement**

In summary, ITV responded to Mr Thomas's comments regarding the interview with Dan Norris MP that:

- e) Mr Thomas made a very serious accusation, of lying, against a holder of high public office. The letter, purportedly from Dawn Ramsey Geake, did not read like a letter from a friend. This supported Mr Norris's suspicions about Mr Thomas having pressurised her into signing it, which were explained in his letter of 29 October 1997. Mr Norris may have developed these suspicions after talking to Ms Ramsey Geake, whose interview for the programme stated that she was "petrified" of Mr Thomas. Mr Thomas's allegations were scurrilous and he provided no evidence of any complaint or finding against Mr Norris regarding this matter.

#### **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public

and all other persons from unfair treatment in programmes, and from unwarranted infringement of privacy in the making and broadcast of programmes, included in such services.

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

Mr Thomas's complaint was considered by Ofcom's Fairness Committee, Ofcom's most senior decision making body with respect to Fairness and Privacy complaints. The Fairness Committee considered the complaint and the broadcaster's response, together with supporting material and subsequent submissions from both parties. The Committee viewed the programme as broadcast, the earlier ITV West programme on the same subject and the untransmitted material provided.

In the circumstances of this case the Fairness Committee found the following:

- a) The Fairness Committee first considered Mr Thomas's complaint that the programme was sensationalist and did not provide a fair representation of either Mr Thomas or NBSA, and that the programme unfairly made both Mr Thomas and NBSA appear uncaring and financially exploitative. The ex-BSC Fairness Code ("the Fairness Code") was the applicable Code when this programme was broadcast. The Committee had particular regard to the responsibilities of broadcasters to avoid unfairness to individuals or organisations featured in programmes through the use of inaccurate information or distortion, for example by the unfair selection or juxtaposition of material (the Fairness Code Paragraph 2). The Committee had further regard to the broadcasters' responsibilities in taking special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organisations, and in taking all reasonable care to satisfy themselves that all material facts have been considered before transmission and so far as possible fairly presented (the Fairness Code Paragraph 7). Taking these requirements into account, the Committee first addressed separately each of Mr Thomas's individual complaints under this head concerning the programme's treatment of him and NBSA.
- i) The Fairness Committee considered Mr Thomas's complaint that the programme unfairly and incorrectly alleged that the NBSA was not properly run and that this resulted in unfairness to Mr Thomas and the NBSA. The Committee noted the commentary line complained of:

"Residents...say his (Mr Thomas's) chain of care in the community lodgings is badly run."

The Committee took account of the supporting material provided by Mr Thomas, including NBSA statements of procedure and letters from clients regarding good service provided. The Committee also considered the material provided by ITV including material documenting the termination of Mr Thomas's contract with Bristol City Council and interviews with local residents, service users and politicians.

It is not within the Committee's remit to determine the accuracy of any particular allegation, rather the Committee is charged with determining whether it is fair and reasonable for a programme to include material capable of adversely

affecting the reputation of individuals, companies or other organisations, given all the circumstances (see Decision head a) above). On the basis of all the material before it, the Committee noted that the programme's reference to the running of NBSA, and the attributing of this comment to "residents" was supported by the petition presented to the Council, as discussed below at head d) iii). The Committee found that the evidence provided by ITV was persuasive in that it was consistent with evidence drawn from a wide range of sources, and in all circumstances the Committee found that it was not unfair to Mr Thomas or NBSA for the programme makers to have reflected this in the programme. The commentary line complained of did not therefore result in unfairness to Mr Thomas or NBSA.

- ii) The Committee considered Mr Thomas's complaint that the narration stated that residents used graffiti to try to warn Martin Thomas off further expansion, without explaining the extent of the threats against him, namely £20,000 damage to one house; personal threats to kill Martin Thomas and injure his family; and, the slashing of car tyres.

The Committee noted the full commentary line complained of:

"Some residents tried to warn him (Mr Thomas) off further expansion last year by daubing graffiti on his latest purchase."

The Committee also considered ITV's response that it was not informed of any such attacks as Mr Thomas did not communicate with ITV despite invitations to do so prior to transmission.

The Committee noted, as discussed at head a) xi) below, that Mr Thomas chose not to contribute to the programme, or otherwise provide the programme makers with information regarding attacks, before the programme was broadcast. The Committee also noted that the content of the commentary line, regarding the daubing of graffiti, was not in itself disputed by Mr Thomas whose complaint related to further information not being included in the programme.

The Committee was mindful of the fact that the programme makers provided written evidence that before the broadcast of the programme they had offered Mr Thomas a right of reply to allegations to be included in the programme. While the issue of graffiti was not mentioned specifically in the broadcaster's letter to Mr Thomas, the Committee noted that Mr Thomas's views on the broad subject matter of the programme were requested.

The Committee considered that no finding of unfairness could be made against the programme makers in circumstances where they had included information which was not disputed by Mr Thomas; and, where the programme makers had not included information that Mr Thomas had failed to provide to them before the broadcast, when offered a right of reply to the broad allegations to be contained within the programme. The Committee therefore found that this reference did not result in unfairness to Mr Thomas in the programme as broadcast.

- iii) The Committee considered Mr Thomas's complaint that secret filming of a pub outing was purposefully set up and a service user ('Barry') was paid for going to the pub, resulting in unfairness to Mr Thomas and NBSA. The Committee considered the full section of the programme, covertly filmed in a pub and noted the accompanying commentary:

“To test the allegation that people in recovery from alcoholism, or on strong medication, were being taken drinking by their support worker, we followed a group to the Gainsborough, a pub on the estate. First a tenant arrives, he is clearly well known in the pub. He is followed a couple of minutes later by a support worker, then by another tenant, who’s known to be on heavy medication. The three sat in the pub for almost two hours. The two men drank six pints each. One of them was shaking, sweating and staring into space but saying nothing.”

The Committee had regard to the broadcaster’s responsibility only to consider using secret recording where it is necessary to the credibility and authenticity of the story. Further, that where recording does take place secretly in public places, the words or images recorded should serve an overriding public interest to justify: the decision to gather the material; the subsequent recording of material; and, the broadcast of the material.

The Committee considered ITV’s response that there was prior evidence from a service user ‘Barry’ about pub visits which necessitated further investigation; that permission was sought and gained from ITV’s Director of Programmes to film covertly; and, that there was no prior arrangement with any of those filmed nor any payment made.

The Committee considered that the seriousness of the concerns raised, namely that a recovering alcoholic was accompanied to the pub by a member of NBSA staff charged with his support, fully justified the decision covertly to record at the pub and the recording itself. Furthermore, the Committee considered that the evidence gained, namely the alcohol consumed by the two service users, fully justified the broadcast of the covert recording.

In the Committee’s view it had not been provided with evidence which caused it to doubt the broadcaster’s account of events concerning the role of ‘Barry’, nor the broadcaster’s denial that ‘Barry’ was either paid or aware that filming was taking place.

While the Committee considered that the commentary line “we followed a group to the Gainsborough” conflicted with broadcast footage of the programme makers already in the pub when the clients and staff member arrived, the Committee found that this wording did not portray Mr Thomas or NBSA in an unfavourable light and did not therefore result in any unfairness to them.

Overall, therefore, the Committee found that the covert filming, the words and images recorded, and the use of them in the programme, were all supported by the justification of overriding public interest in the subject matter and did not result in unfairness to Mr Thomas or NBSA.

- iv) The Fairness Committee considered Mr Thomas’s complaint that the programme stated that NBSA invoiced for rents well above the local average when all rents are set by the Rent Service; also that NBSA invoiced for eighteen hours of weekly communal cleaning per house which is untrue; and, that with minor amendments the invoices were paid when in fact there were major amendments. Mr Thomas complained that the ‘invoice’ ITV quoted from was in fact a ‘proposal’ and never actioned.

The Committee noted the passages of commentary complained of:

“Mr Thomas had invoiced the Council for rent well over the average for the area. He'd added significant sums for utilities and laundry. He'd also charged extra for furniture, cutlery and crockery.”

“Incredible claims were made for other services. The most remarkable was cleaning with eighteen hours in communal rooms and twelve hours in bedrooms said to be done every week.”

“However after only minor changes the Council agreed to pay up.”

The Committee noted ITV's response which pointed to items usually included in invoices for rent, but for which Mr Thomas made extra charges. Further, ITV's statement regarding cleaning charges were quoted from Mr Thomas's own invoices.

It is not within the Committee's remit to determine the accuracy of any particular allegation, for example whether the material quoted from was invoices or proposals, rather the Committee is charged with determining whether it is fair and reasonable for a programme to include material capable of adversely affecting the reputation of individuals, companies or other organisations, given all the circumstances (see Decision head a) above).

The Committee noted that the level of claims was remarked upon both by Councillor Emmett who commented “the house would be cleaned from top to bottom and then they'd start again given the number of hours cleaning that's supposed to take place”, and in Council correspondence detailed in the programme including the comment “If a decision is made that his support costs are £900 per week per tenant can I have his job.”

On the basis of the evidence before it the Committee concluded that the inclusion of the commentary complained about was supported by the observations of Councillor Emmett and extracts from Council correspondence. It therefore appeared to the Committee reasonable for the programme makers to have included this material in the programme. On the basis of the evidence available, in particular the fact that what the programme stated about charges was supported by other material, the Committee did not find that the programme's references to rent or cleaning charges had resulted in unfairness to Mr Thomas or NBSA.

The Committee further found that the commentary reference to “minor changes” being made to invoices by the Council did not portray Mr Thomas or NBSA in an unfavourable light and did not therefore result in unfairness to them.

- v) The Committee then considered Mr Thomas's complaint that the Keyring Project was shown as one with monitoring systems in place, when the NBSA also has a full set of such procedures in place. Mr Thomas further complained that any comparison with a registered care home was unfair since his company provided supported living which is different.

The Committee noted that the programme had included a section which examined care provided in the community, and highlighted an organisation called the Keyring Project stating:

“These community living workers are trained by the [Keyring] project and their performance carefully monitored.”

The Committee noted ITV's response that the programme included another organisation, namely the Keyring Project, which was succeeding in providing assistance to people, in order to ensure that no impression was given that might raise concern about care in the community generally.

The Committee found that the section concerning the Keyring Project made fair and relevant points about that organisation. The Committee noted that Mr Thomas provided copies of NBSA's procedures to Ofcom but found that the programme provided evidence that these were not working properly: Decision head a) iii) discusses the allegation of a recovering alcoholic being accompanied to the pub by an NBSA support worker and Decision head d) iv) discusses out of hours staffing issues. The Committee considered it reasonable for the programme makers to have included material relating to the Keyring Project in a section concerning the wider context of care in the community. On the basis of the evidence available, in particular evidence concerning the inadequate working of NBSA procedures, the Committee did not find that any unfairness resulted to Mr Thomas or NBSA from the featuring of the Keyring Project in the programme as broadcast.

- vi) The Fairness Committee considered Mr Thomas's complaints that: a service user's mother commented on the state of the accommodation when in fact work was being carried out and the service user had refused to move into temporary accommodation; the service user's mother commented on the lack of a television and central heating when televisions are not supplied and central heating is; that she also commented on men coming to collect rent when it is paid by Housing Benefit and standing order; and, she failed to mention the service user's arrears.

The Fairness Committee considered the whole of the section of the programme featuring the comments of Kevin Rossiter and his mother concerning the accommodation provided by NBSA, accompanied by material videoed by Kevin's mother.

“Commentary: One parent was so appalled by the state of her son's accommodation she collected video evidence.

Interview Kevin's mother: There was just a single bed, fridge, microwave, no chair, no table, he had to sit on the bed and do everything there and had to feed an electric slot meter himself for electricity. There were wires hanging out from the light fittings. There was no heating. The windows were smashed in and they left it like that so when we had really bad weather in January, Kevin was left with no heating. They eventually went round with a convector heater with no feet on it so consequently the boy had it up against the bed.

Commentary: There's a sink in the bedroom but it's not plumbed in. The only useable kitchen sink is in the bathroom.

Interview Kevin's mother: The bathroom consisted of a toilet, a shower cubicle in the middle which was four inches apart from the toilet if that, and along side that about six inches away ran the kitchen sink. If Kevin used the toilet he would then wash his hands within the sink. I mean that

is unclean for a start. And if he had dishes in there he couldn't go and brush his teeth.

Commentary: His mum was also concerned by the proximity of his bedclothes to the oven.

Interview Kevin's mother: I wasn't happy with where they were trying to situate the cooker, because it was two foot from the bed, which as far as I'm aware is illegal. Especially with someone who has mental health problems. You've got a bed, soft furnishings and you've got a cooker.

Commentary: Mr Thomas was charging more than £400 per month for Kevin to live here, on top of a further £100 meant for support. Even this seemingly wasn't enough. Kevin was asked to make a further contribution from his own pocket.

Interview Kevin: I get my money every week but like he sent two people round, Martin Thomas the man who looks after the place, he sent a man round, two men around and they asked if they could take twenty five, fifty quid off me, but they wanted cash.

Interview Kevin's mother: He's been given housing benefit forms for applications with a cross just to sign and nothing else. But as I'm his appointee, Kevin always makes me aware of this and I've always told him not to sign anything unless I'm aware you know of exactly what he is signing."

The Committee noted ITV's response that the state of the room, amenities and safety issues spoke for themselves, that the property was at the time unregistered and probably not inspected, and that Mr Thomas took legal action against Kevin Rossiter's mother to recover arrears but that, following the broadcast of the programme, this was rejected by Bristol County Court. ITV also provided evidence that, after the broadcast of the programme, the EHO took enforcement action over the property and served notices in relation to incomplete fire precaution work, disrepair, and electrical and gas safety checks.

The Committee noted that ITV's evidence concerning arrears recovery and EHO enforcement action over the property related to events after the broadcast of the programme and were not therefore relevant when considering what was fair at the time the programme was made. However, the Committee found that the comments made by Kevin Rossiter's mother in the programme, that the accommodation was not fit for purpose, were first-hand testimony, supported by her video recordings and therefore fairly presented in accordance with broadcasters' obligations under the Fairness Code.

The Committee therefore concluded that this section did not result in any unfairness to Mr Thomas or NBSA in the programme as broadcast.

vii) The Committee considered Mr Thomas's complaint of unfairness concerning the script line:

"In 1998, Mr Thomas was sacked by the council for gross misconduct after falsely accusing colleagues of corruption."



The Committee noted Mr Thomas's complaint that the programme alleged that he accused colleagues of corruption when he could not answer this point as it might prejudice any future action, and his further statement that his claims about corruption were substantiated together with extracts from the investigation into his claims.

The Committee also considered ITV's response that following his dismissal he lost an appeal and no further action was realistic, together with material detailing the terms of Mr Thomas's suspension pending completion of the investigation.

The Committee noted that Mr Thomas did not dispute the programme's reporting that he was sacked by the Council for gross misconduct and that although he subsequently stated that his claims were substantiated he had not provided evidence to support this. The Committee therefore concluded that the material was fairly presented, in accordance with broadcaster's obligations under the Fairness Code, and there was therefore no unfairness to Mr Thomas in the commentary line as broadcast.

- viii) The Committee next considered Mr Thomas's complaint that: the programme alleged that he was ordered to return investment money to a former girlfriend when lengthy attempts had been made to return this money; another person was convicted of the burglary associated with him; and, the programme alleged an injunction was taken out against Martin Thomas when he was unaware of this injunction as he was abroad. Mr Thomas subsequently commented that the injunction was issued, in his absence, and that both he and his former partner made joint undertakings.

The Committee noted the full section of the programme concerning the break up of Mr Thomas's relationship with his then partner Dawn Ramsey-Geake:

"Commentary: Mr Thomas was...ordered to return money she (Dawn Ramsey-Geake) had invested in the care home. But still wouldn't leave her alone.

Interview Dawn Ramsey-Geake: He would sit outside my house in a van, you know their builders van, and eat sandwiches and stare up at the window all the time. It was a constant barrage.

Commentary: After her house was broken into and many of her personal documents stolen Dawn applied for an injunction order. Mr Thomas was ordered not to intimidate or harass her or encourage others to do so.

Interview Dawn Ramsey-Geake: Basically I was petrified. There are no two ways about it."

The Committee also considered ITV's response in which ITV stated there were two burglaries, one involving the conviction of another man; and a second, following which Mr Thomas's home was searched by police and paperwork belonging to Ms Ramsey-Geake was found. ITV provided evidence relating to both burglaries and to the police search. ITV also provided a copy of the injunction and evidence that it had been served on Mr Thomas.

In the Committee's view Mr Thomas did not challenge the substance of the commentary line which stated that "he was ordered to return money" and,

whether or not he had made attempts to return the money, found that this statement did not result in any unfairness to him.

The Committee noted that ITV had provided evidence in relation to two burglaries, one of which had resulted in Mr Thomas's home being searched. The Committee considered that the commentary line: "After her house was broken into and many of her personal documents stolen, Dawn applied for an injunction order [against Mr Thomas]" did not *attribute* the burglary to Mr Thomas. However it linked the burglary to him in the context of Ms Ramsey-Geake's action which followed the burglary, i.e. her application for an injunction against Mr Thomas. The Committee considered that this linking of the burglary and Ms Ramsey-Geake's actions, was supported by the documentary evidence, provided by ITV, of the police search at Mr Thomas's then home. In the Committee's view it was therefore not unfair to include the commentary line in relation to the burglary and injunction order and this did not therefore result in any unfairness to Mr Thomas.

Finally, the Committee noted that, with regard to the section of commentary discussing the injunction order, Mr Thomas's original complaint was that he was unaware of the injunction since he was abroad. In a subsequent submission, Mr Thomas provided evidence of another injunction order in which Dawn Ramsey-Geake undertook not to harass Mr Thomas. The Committee further noted that in its written offer of a right to reply to Mr Thomas the programme makers specifically asked for Mr Thomas's comments concerning the injunction order taken out by Dawn Ramsey-Geake.

In these circumstances where the injunction order against Mr Thomas was accurately referred to, and its contents were not disputed by Mr Thomas, the Committee did not consider unfairness had been caused to him by the fact that the programme had not also referred either to a different injunction nor to his assertion that he was abroad when it was served. In any event, these matters had not been made known to the programme makers by Mr Thomas before the programme was broadcast. In the Committee's view the section of the programme regarding the injunction order did not therefore result in any unfairness to him in the programme as broadcast.

- ix) The Committee then turned to Mr Thomas's complaint that the programme intimated that inexperienced staff were used by NBSA when this is not the case.

The Committee considered the section of the programme which referred to the experience of NBSA staff:

"Commentary: The documents we eventually obtained from Bristol City Council clearly show that some of the residents in Martin Thomas's homes required experienced carers. He acknowledged this in a letter to the council. [Quote from letter:] 'We will shortly be taking on a person who has a history of violence to staff...if we sent in inexperienced staff, chances are they would be injured or worse.'"

The Committee noted ITV's response that the programme provided direct evidence of all the allegations made. In this case the programme featured the letter in which Martin Thomas himself referred to the need for experienced staff. The Committee concluded that there was no inference that the staff were inexperienced, only that experienced staff were essential as evidenced by Mr

Thomas's own letter. The Committee therefore found there was no unfairness to Mr Thomas or NBSA in this respect.

- x) The Committee next considered Mr Thomas's complaint that the programme alleged that there was no planning permission for building at rear of office when NBSA is not building anything. Mr Thomas further stated that the only work had been the repair of boundary walls.

The Committee noted the commentary line regarding planning permission:

"We decided to pay his [Mr Thomas's] office a visit...He wasn't available but his father was busy building an extension to the property for which we have learned he has no planning permission from the Council".

The Committee considered ITV's response. This provided evidence of Mr Thomas building without planning permission in the past, and stated that shortly before and after the programme the Council rejected planning permission for building work at the property filmed. Further, that ITV filmed evidence of preparatory building work despite lack of permission and stated that, following the programme, a driveway had been built at the property without permission.

The Committee examined both the broadcast and untransmitted material filmed at the property. The Committee concluded that at the time of broadcast there was no evidence for the programme's assertion that an extension was being built at the property without planning permission. Although ITV provided evidence that planning permission at the property had been turned down, work at the site at the time of broadcast could be considered consistent with Mr Thomas's claim that the work, at the NBSA office, was in connection with the repair of boundary walls and would not have required planning permission. The Committee therefore found that this commentary line overstated the links between the work filmed and possible planning permission required and was unfair to Mr Thomas and NBSA. However this point is returned to in the concluding comments of head a), below, regarding the over-all representation of Mr Thomas and NBSA in the programme as broadcast.

- xi) The Committee then turned to Mr Thomas's complaint that the programme alleged that NBSA refused to contribute to the programme when this was because mediation was underway.

The Committee noted that the programme showed footage of the reporter questioning Mr Thomas's father:

"Reporter: I want to ask a few questions about the care homes. He [Martin Thomas] is not quite spending £15,000 a week on them is he? Supporting people or supporting his own bank account?"

Commentary: But Mr Thomas senior was saying nothing."

The Committee noted that ITV provided evidence of an attempt to invite Mr Thomas to contribute in detailed letters of 20 September 2004 and stated requests had also been made by telephone.

The Committee noted that Mr Thomas did not dispute that he had chosen not to provide any contribution to the programme and had therefore failed to exercise his right of reply. The Committee further considered that if he had felt

constrained by the process of mediation, he could have communicated this to the programme makers, so they could have taken this into account when making the programme. He had chosen not to do so. The Committee therefore concluded that, in all the circumstances, no unfairness to Mr Thomas or NBSA resulted in this regard.

- xii) The Fairness Committee turned to Mr Thomas's complaint concerning the commentary line:

"The Council's internal auditors are believed to have concluded that he [Martin Thomas] has been overpaid.

The Committee noted Mr Thomas's complaint that the programme alleged that he had been overpaid when mediation of that issue was under way. Mr Thomas further commented that the Council withdrew funding due to wider cuts, and only stated that it would recover money if it was unaccounted for, but none was unaccounted.

The Committee noted ITV's response that the Council's decision to cancel Mr Thomas's contract pre-dated wider cuts, and was based on dissatisfaction with NBSA. The Committee noted Cllr Emmett's observation regarding this:

"The Council took the decision in December 2003 to cancel the contract because it was not satisfied that Mr Thomas or his organisation was providing care that it had been contracted to provide."

ITV provided a copy of the Council's decision to terminate the contract, which stated that: "The balance of SP [Supporting People] grant paid to NBSA but assessed as mis-spent or unspent be recovered, if necessary through the courts." ITV stated that this decision was followed by a process of mediation which was concluded after the broadcast of the programme.

The Committee concluded that the evidence provided by ITV of the Council's consideration of the recovery of money, supported the commentary line as broadcast. The Committee therefore found that the material was fairly presented, in accordance with broadcasters' obligations under the Fairness Code, and no unfairness to Mr Thomas resulted in this regard.

- xiii) The Committee next considered Mr Thomas's complaint that the programme alleged that NBSA's contract came to an end in November 2004 when NBSA was not informed of this.

The Committee noted the programme's commentary line which stated that:

"We can reveal that Bristol City Council has served notice to end Martin Thomas's contract by the end of November [2004]."

The Committee considered ITV's response in which ITV provided a copy of the Council's decision, referred to above at Decision head a) xii), entitled "Termination of Supporting People contract for North Bristol Support and Advancement (NBSA)" dated November/December 2003. ITV further provided email correspondence from Bristol City Council confirming that on 9 December 2003 Mr Thomas had been advised of the Council's intention to cancel the Supporting People contract and that this was followed by a period of mediation. The Committee also noted that in a subsequent submission Mr Thomas

confirmed that the contract continued until November 2004 and the remaining staff were made redundant in December 2004.

On the evidence before it the Committee therefore found no unfairness to Mr Thomas or NBSA in this regard.

The Committee then considered whether, as discussed above in the opening comments at Decision head a), and taking into account the findings at heads i) to xiii) above, the programme's overall portrayal of Mr Thomas and his company, NBSA, was fair or unfair. The Committee concluded that taking into account all the individual findings above, and notwithstanding the finding at head x), the overall portrayal of Mr Thomas and his company, NBSA, was fair.

- b) The Fairness Committee turned to Mr Thomas's next main head of complaint that the programme unfairly alleged fraudulent business practices on his part, namely that he "pocketed benefits" and made fraudulent claims for Job Seeker's Allowance while setting up a business, when he has never claimed Job Seeker's Allowance.

The Committee had particular regard to the broadcasters' responsibilities, as discussed above at Decision head a), to take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organisations, and to take all reasonable care to satisfy themselves that all material facts have been considered before transmission and so far as possible fairly presented.

The Committee considered each of the commentary lines complained of. The reference to pocketing of benefits was in the opening commentary:

"This time last year ITV West investigated a Bristol man who runs a chain of care homes for people with learning difficulties and mental illness. We'd received allegations that he was pocketing their benefits without providing proper care."

The reference to Job Seeker's Allowance followed further in the programme:

"At that time, while he was claiming job seeker's allowance, Mr Thomas discovered he could persuade his ex-employers to finance a new business."

The Committee noted ITV's response that the expression "pocketing benefits" did not allege fraudulent business practices but referred to Mr Thomas being overpaid by the local authority for questionable levels of care, and that the meaning was clear from the context of the programme. ITV also provided evidence that Mr Thomas was in receipt of Jobseeker's Allowance in the form of a sworn affidavit dated 1 October 1998 which stated that "I...am in receipt of Jobseekers Allowance in the sum of £30 a week". ITV further argued that the programme did not state that this was fraudulent but pointed out that it was claimed after being sacked from the local authority and while he was trying to persuade the same authority to finance a new business.

The Committee found that while the phrase "pocketing their benefits" was colourful language, as a description of Mr Thomas's activities it was justified within the context of the programme makers' investigations and findings as discussed elsewhere, in particular at Decision head a) xii) above. The Committee further found that the affidavit evidence provided by ITV fully supported the programme's contention that

Mr Thomas “was claiming Job Seeker’s allowance”. The Committee therefore concluded that there was no unfairness to Mr Thomas in relation to these commentary lines in the programme as broadcast.

- c) The Fairness Committee next turned to Mr Thomas’s complaint that the programme included unfounded allegations from vulnerable service users who should only have been interviewed in the presence of an appropriate adult. In particular Mr Thomas complained that the programme included a claim by a tenant ‘Barry’ that: another tenant threatened neighbours with knives; staff were frightened to attend; buildings were set on fire; clothes were washed in toilets; and, there was furniture in the garden, when no such complaints or reports were made.

The Committee again had particular regard to the broadcasters’ responsibilities, as discussed above at Decision head a), to take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organisations, and to take all reasonable care to satisfy themselves that all material facts have been considered before transmission and so far as possible fairly presented.

In relation to Mr Thomas’s complaint regarding allegations from service users, the Committee noted ITV’s response that while the adult service users interviewed required support to enable them to live in the community, both were lucid and fully aware of what they were doing and approached the programme makers with their concerns.

The Committee concluded that there were no legal or other obligations requiring that the service users, Kevin Rossiter and ‘Barry’, be interviewed with special support. Both were adults living an independent life in supported accommodation. The panel noted that their contributions were further substantiated, Kevin Rossiter’s by the interview and video footage provided by his mother; ‘Barry’s by the covertly recorded material and untransmitted interview with Councillor Emmett which spoke of police relating to him concerns about disturbances at NBSA properties. The Committee therefore found that no unfairness to Mr Thomas or NBSA resulted from the interviews broadcast with the service users.

- d) The Fairness Committee next considered Mr Thomas’s complaint that the programme included the unfounded allegations of neighbours:

The Committee again had regard to the broadcasters’ responsibilities, as discussed above at Decision head a), to take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organisations, and to take all reasonable care to satisfy themselves that all material facts have been considered before transmission and so far as possible fairly presented. With this in mind the Committee addressed separately each of Mr Thomas’s individual complaints, set out below, concerning the programme’s inclusion of the allegations of neighbours.

- i) The Committee considered Mr Thomas’s complaint regarding the commentary line:

“Although not all of his clients are troublesome, some use threats and abuse, leaving neighbours frightened for their children’s safety.”

The Committee noted Mr Thomas’s complaint that this was unfair since neither the NBSA nor the police have received any such complaints. The Committee

also considered ITV's response that information from the police, media and Council substantiated this comment and that Councillor Emmett's untransmitted interview spoke of police concerns brought to him about disturbances at NBSA properties.

The Committee concluded that the script line was supported by persuasive evidence provided by ITV and its inclusion in the programme did not therefore result in unfairness either to Mr Thomas or NBSA in the programme as broadcast.

- ii) The Committee considered Mr Thomas's further complaint regarding an interviewee's statement that:

"I've seen men living in that house, outside the front of the house, smashed out of their heads, laying in the bushes. And they entice the younger children over. And they are sick out of window. There are hundreds of cans stacked up at the windows. It's disgusting."

The Committee noted Mr Thomas's complaint that this was unfair as no complaints had been received, except regarding vomit out of a window which was by a man on heavy medication. The Committee also considered ITV's comments that Mr Thomas confirmed the interviewee's description of a resident vomiting, and the interviewee reported observations she made from outside.

The Committee concluded that there was no reason to doubt the interviewee's description, part of which was confirmed by Mr Thomas himself and also corroborated by the concerns expressed in the petition addressed at Decision head d) iii) below. The Fairness Committee therefore concluded that the inclusion of the interviewee's statement this did not result in unfairness to Mr Thomas or NBSA in the programme as broadcast.

- iii) The Committee considered Mr Thomas's complaint that the programme included footage of a local resident alleging that a 200 signature petition against people with mental ill health in their community had been presented but this was unfair as it had never been received by NBSA.

The Committee examined the footage in question, together with the commentary:

"Commentary: Residents...put their faith in the democratic process, presenting a petition to the City Council.

Actuality: If I can first...there are over two hundred residents. We believe Martin Thomas is unfit for such a task."

The Committee noted ITV's response that after widespread concern about Mr Thomas a petition was presented to the city council in September 2003 and received wide publicity.

The Committee was satisfied that the commentary did not discuss whether the petition had been received by NBSA and, in accordance with obligations on broadcasters under the Fairness Code, fairly presented the material in relation to the presentation of the petition to the Council. The Committee therefore found no unfairness resulted to Mr Thomas or NBSA in this regard.

- iv) The Committee turned to Mr Thomas's complaint concerning an interview with a local resident regarding out of hours staffing which stated that:

"If somebody has got some sort of real problem, nobody's going to be there late at night, or anything like that, to help them."

The Committee noted Mr Thomas's complaint that this was unfair as there was a 24 hour NBSA call out facility. The Committee also considered ITV's comments regarding Councillor Emmett's untransmitted interview which reported police concerns, relayed to him, that Mr Thomas did not have a presence late-night.

The Committee concluded that the interview only stated that there was no presence in the property late at night; that this was not contested by Mr Thomas; and was fairly presented in accordance with broadcasters' obligations under the Fairness Code. The Committee therefore found that no unfairness resulted to Mr Thomas or NBSA in this regard.

- e) The Committee next addressed Mr Thomas's complaint that the programme included interviews with Cllr Sean Emmett and Mr Dan Norris MP which were unfairly prejudicial against Mr Thomas and NBSA.

In particular Mr Thomas complained that Cllr Emmett was not briefed when he stated:

"He [Mr Thomas] appealed [against the Council's decision to terminate its contract with NBSA] and while that appeal was being dealt with, the contract was effectively re-instated, was certainly allowed to run on and on. I've been promised a number of times that it will be dealt with either by legal action or by mediation. Each and every turn the matter's delayed further."

Mr Thomas further complained that Mr Norris MP explained in an untransmitted section of his interview that:

"My knowledge of this whole case is through a friend who has been deceived by this man"

and that Mr Norris was therefore briefed by someone with an axe to grind. Mr Thomas further stated that Mr Norris had not told the truth in correspondence about this alleged deception.

The Committee also considered ITV's response that both Cllr Emmett and Dan Norris MP were eminently qualified to speak by virtue of their holding public office in the area. Councillor Emmett's comments, about the contract running on and on, were fair comment on the situation which was one known to him as a member of the Council's commission which monitored the expenditure of public money on supported housing. ITV further stated that Mr Norris may have been briefed by another but his source was clearly trusted and there was no evidence that Mr Norris told any untruth in relation to his friend's deception.

The Fairness Committee viewed the full, un-transmitted, interviews recorded with Cllr Emmett and Dan Norris MP. The Committee had regard to the broadcasters' responsibilities, as discussed above at Decision head a), to take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organisations, and to take all reasonable care to satisfy



themselves that all material facts have been considered before transmission and so far as possible fairly presented.

The Committee concluded that the inclusion of interviews with both Mr Emmett and Mr Norris were justified by their positions as local councillor and MP respectively. In the Committee's view the inclusion of the general comments, made by both men, on the system operated by the Council, and on Mr Thomas's activities, were justified by their local knowledge of the situation. Cllr Emmett commented more specifically on NBSA invoices and the termination of the NBSA contract, and the Committee considered that the inclusion of those comments was justified by the fact that he was a person with an official role in the monitoring of local expenditure of public money. The Committee was also satisfied that there was no evidence that Mr Norris had failed to maintain the objectivity required of him as a holder of public office.

In these circumstances the Committee therefore concluded that it was reasonable for the programme to include the interviews with both Cllr Emmett and Dan Norris MP and their inclusion in the programme resulted in no unfairness to Mr Thomas or NBSA.

- f) Finally, the Fairness Committee considered Mr Thomas's complaint that his privacy was unwarrantably infringed in both the making and the broadcast of the programme in that the production team came onto his land, asking questions, for some twenty minutes. The Committee noted ITV's response that Mr Thomas's property was only approached by the production team when he failed to respond to the letters couriered to his three addresses. The team asked questions for a very short time of his father and business associate which was justified by the highest public interest in the subject matter.

The Committee first addressed the issue of whether Mr Thomas's privacy was infringed in the recording of material at his property. In its consideration the Committee had regard to the responsibility of programme makers in their use of cameras on both public and private property, when the subject is on private property, where such use must be appropriate to the importance or nature of the story and such recording should not intrude unnecessarily on private behaviour.

The Committee considered both the transmitted and untransmitted footage recorded at Mr Thomas's property. The Committee found that the material was filmed from on, or very close to, the public highway and that Mr Thomas himself was not filmed. The Committee considered that no material was recorded of an inherently private behaviour and accordingly the recording could not be said to have intruded unnecessarily on Mr Thomas's private behaviour. The Committee also noted that no complaint had been received from Mr Thomas senior who was filmed. The Committee therefore concluded that there was no infringement of Mr Thomas's privacy in the recording of material at his property.

The Committee further concluded for the reasons outlined above that there was no infringement of Mr Thomas's privacy in the broadcast of the material filmed at his property.

The Committee was not required to consider whether any infringement of privacy was warranted since the Committee concluded that there was no infringement of Mr Thomas's privacy in either the recording or broadcast of material filmed at his property. However the Committee noted that the decision to film at Mr Thomas's property was supported by a strong public interest justification, given the nature and importance of the story under investigation.

The complaints of unfair treatment and unwarranted infringement of privacy were not upheld.

## Other Programmes Not in Breach/Out of Remit

11 October 2006 – 24 October 2006

Programme	Trans Date	Channel	Category	
100 Funniest Moments	08/10/2006	Channel 4	Offensive Language	3
700 Club	12/10/2006	God Channel	Crime (incite/encourage)	1
A Touch of Frost	19/09/2006	ITV1	Generally Accepted Standards	1
al Hiwaar al Sareeh	n/a	Al Mustaqillah TV	Crime (incite/encourage)	1
All Star Talent Show	06/10/2006	Five	Generally Accepted Standards	1
All Star Talent Show	13/10/2006	Five	Generally Accepted Standards	1
Ancient Rome: Rise & Fall of an Empire	21/09/2006	BBC1	Violence	1
Ant and Dec's Saturday Night Takeaway	23/09/2006	ITV1	Generally Accepted Standards	1
Babestar TV	30/09/2006	Look4Love TV	Sex/Nudity	1
BBC Breakfast	07/10/2006	BBC1	Commercial References	1
BBC General	var	BBC	Inaccuracy/Misleading	1
BBC News	06/10/2006	BBC1	Other	1
BBC News	var	BBC	Generally Accepted Standards	1
BBC Radio 1 News	26/05/2006	BBC Radio 1	Offensive Language	1
BBC Radio 4 News	18/09/2006	BBC Radio 4	Crime (incite/encourage)	1
Birth Night Live	08/10/2006	Five	Generally Accepted Standards	2
Bremner, Bird & Fortune	22/09/2006	Channel 4	Offensive Language	1
Bremner, Bird and Fortune	23/09/2006	Channel 4	Offensive Language	1
Bremner, Bird and Fortune	30/09/2006	Channel 4	Due Impartiality/Bias	1
Carry On Easter Weekend	17/04/2006	UK Gold	Sex/Nudity	2
Casualty	24/09/2006	Channel 4	Suicide/Self Harm	1
Casualty	14/10/2006	BBC1	Sex/Nudity	4
Channel 4 News	12/10/2006	Channel 4	Violence	4
Channel U	18/10/2006	Channel U	Other	1
Coronation Street	25/09/2006	ITV1	Offensive Language	7
Coronation Street	11/10/2006	ITV1	Generally Accepted Standards	1
Coronation Street	15/10/2006	ITV1	Generally Accepted Standards	1
Coronation Street	var	ITV	Substance Abuse	1
Coronation Street	var	ITV1	Generally Accepted Standards	1
Danny and Nicky in the Morning	13/09/2006	Southern FM	Dangerous Behaviour	1
Death Of A President	09/10/2006	More4	Generally Accepted Standards	1
EastEnders	var	BBC1	Generally Accepted Standards	1
Electricals Hour	19/10/2006	price-drop tv	Advertising	1
Emmerdale	10/10/2006	ITV1	Generally Accepted Standards	2
Emmerdale Family Album	08/10/2006	ITV1	Offensive Language	1
Entourage	01/10/2006	ITV1	Sex/Nudity	1
Extras	28/09/2006	BBC2	Generally Accepted Standards	2
Extras	01/10/2006	BBC2	Generally Accepted Standards	1
F1: Brazilian Grand Prix Live	22/10/2006	ITV1	Due Impartiality/Bias	2
Fear Factor	05/09/2006	Challenge	Generally Accepted Standards	1
Fifth Gear	09/10/2006	Five	Crime (incite/encourage)	3
Fox News Live	n/a	Fox News	Due Impartiality/Bias	1
Friday Night With Jonathan Ross	13/10/2006	BBC1	Religious Offence	1
Girls Aloud: Off The Record	08/10/2006	Channel 4	Offensive Language	1
Guns Are Cool	25/09/2006	Channel 4	Offensive Language	1

Holby City	17/10/2006	BBC1	Generally Accepted Standards	1
Home Shopping	09/10/2006	FTN	Advertising	1
Ian Danter's Sunday Carve Up	04/06/2006	100.7_HEART_FM	Generally Accepted Standards	1
It's Me Or The Dog	17/10/2006	C4	Generally Accepted Standards	31
ITV at the Movies	22/09/2006	ITV2	Generally Accepted Standards	1
ITV News	20/10/2006	ITV1	Generally Accepted Standards	1
Jane Eyre	08/10/2006	BBC1	Sex/Nudity	2
Jon Gaunt	10/10/2006	Talksport	Generally Accepted Standards	2
Kerrang	22/09/2006	Kerrang!	Offensive Language	1
KFC Breakfast Show	n/a	Radio City 96.7 FM	Sex/Nudity	1
Ladette To Lady	19/10/2006	ITV1	Animal Welfare	1
LBC trail	02/10/2006	LBC	Generally Accepted Standards	1
LK Today	09/10/2006	ITV1	Generally Accepted Standards	1
Loose Women	12/10/2006	ITV1	Generally Accepted Standards	1
Losing It	13/09/2006	ITV1	Inaccuracy/Misleading	1
Low Winter Sun	14/09/2006	Channel 4	Offensive Language	1
Meridian News	09/10/2006	ITV1	Regionality	1
Metro FM	30/09/2006	Metro FM	Generally Accepted Standards	1
Michael Schumacher: Driven to Win	23/10/2006	ITV1	Scheduling	1
Midsomer Murders	05/10/2006	ITV1	Offensive Language	1
Midsomer Murders	13/10/2006	ITV1	Offensive Language	1
Monte Carlo Roulette	22/08/2006	You Play TV	Competitions	1
Muslim Radio	10/10/2006	Muslim Radio	Religious Offence	1
Newsnight	20/09/2006	BBC2	Crime (incite/encourage)	1
Newsnight	26/09/2006	BBC2	Generally Accepted Standards	1
Nuremberg: Nazis On Trial	25/09/2006	BBC2	Generally Accepted Standards	1
Popworld	07/10/2006	Channel 4	Sex/Nudity	1
Power FM	21/07/2006	103.2_POWER_FM	Competitions	1
Prime Suspect - The Final Act	15/10/2006	ITV1	Generally Accepted Standards	5
Quiz Call	25/09/2006	Quiz Call	Competitions	1
Ramsay's F Word	09/08/2006	CH4	Other	60
Real Crime	09/10/2006	ITV1	Generally Accepted Standards	3
Real Sex	06/10/2006	Five	Sex/Nudity	1
Ricki Lake	07/06/2006	ITV2	Sex/Nudity	1
Robin Hood	14/10/2006	BBC1	Violence	1
Robin Hood	21/10/2006	BBC1	Violence	1
Sky News	06/09/2006	Sky News	Generally Accepted Standards	1
Sky News	08/09/2006	Sky News	Generally Accepted Standards	1
Sky Sports	15/10/2006	Sky Sports	Generally Accepted Standards	1
Star Bazaar TV	01/09/2006	Star Bazaar	Inaccuracy/Misleading	1
Star Bazaar TV	04/09/2006	Star Bazaar	Inaccuracy/Misleading	1
Stoned Invaders	21/08/2006	Play Jam	Generally Accepted Standards	1
Stoned Invaders	01/09/2006	Play Jam	Generally Accepted Standards	1
Sun FM	02/06/2006	Sun FM	Competitions	1
Tarrant on TV	12/10/2006	ITV1	Violence	1
Tarrant on TV	19/10/2006	ITV1	Religious Offence	1
Taxi Zum Klo (Taxi to the Toilets)	04/07/2006	Film Four	Sex/Nudity	1
The Apprentice USA	27/09/2006	BBC2	Generally Accepted Standards	1
The Beginner's Guide to Islam	05/09/2006	CH4	Generally Accepted Standards	1
The Bill	20/09/2006	ITV1	Generally Accepted Standards	2
The Champions	21/09/2006	ITV4	Sponsorship	1

The Doomsday Code	16/09/2006	Channel 4	Religious Offence	5
The Fridge	05/09/2006	INVICTAFM	Offensive Language	1
The Jeremy Kyle Show	16/10/2006	ITV1	Crime (incite/encourage)	1
The L Word	03/09/2006	Living	Sex/Nudity	1
The Mint	10/10/2006	ITV1	Competitions	1
The New Paul O'Grady Show	11/10/2006	Channel 4	Religious Offence	1
The Sharon Osbourne Show	06/10/2006	ITV1	Sex/Nudity	1
The Sharon Osbourne Show	10/10/2006	ITV1	Sex/Nudity	4
The Sharon Osbourne Show	11/10/2006	ITV1	Sex/Nudity	1
The Sharon Osbourne Show	12/10/2006	ITV1	Sex/Nudity	1
The Slammer	22/09/2006	BBC1	Generally Accepted Standards	1
The Weakest Link	09/10/2006	BBC2	Generally Accepted Standards	1
The X Factor	17/09/2006	ITV1	Generally Accepted Standards	1
The X Factor	30/09/2006	ITV1	Generally Accepted Standards	2
The X Factor	14/10/2006	ITV1	Generally Accepted Standards	1
Third Watch	20/09/2006	Channel 4	Violence	1
This Morning	12/10/2006	ITV1	Generally Accepted Standards	2
This Week	05/10/2006	BBC1	Generally Accepted Standards	1
Thunderbirds	various dates	BBC2	Smoking	1
Thunderbirds	various dates	BBC2	Smoking	1
TMi	07/10/2006	BBC2	Generally Accepted Standards	1
Toonattik	08/10/2006	ITV1	Generally Accepted Standards	1
Top Gear	18/07/2006	BBC2	Dangerous Behaviour	1
Top of the Pops	11/07/2006	BBC2	Crime (incite/encourage)	1
Torchwood trailer	14/10/2006	BBC1	Scheduling	1
Trinny and Susannah Undress	03/10/2006	ITV1	Sex/Nudity	12
Trinny and Susannah Undress	09/10/2006	ITV2	Sex/Nudity	1
Trinny and Susannah Undress	10/10/2006	ITV1	Sex/Nudity	2
Wankathon	n/a	Channel 4	Sex/Nudity	5
Whatever	15/09/2006	Channel 4	Offensive Language	1
Whatever	29/09/2006	Channel 4	Generally Accepted Standards	1
Who Wants to be a Millionaire	16/09/2006	ITV1	Competitions	1
Wire In The Blood	11/10/2006	ITV1	Violence	2
World Cup 2006	30/06/2006	BBC1	Violence	1
World Cup 2006	01/07/2006	BBC1	Violence	5
WWE Wrestling	17/09/2006	Sky Sports	Violence	1
WWE Wrestling	20/09/2006	Sky Sports	Violence	1
You Are What You Eat	11/10/2006	Channel 4	Generally Accepted Standards	1
You'll Have Had Your Tea	09/10/2006	Radio 4	Generally Accepted Standards	1