

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

ITV News

ITV 1, 3 March 2006, 18:30 and 22:30

Introduction

10 viewers complained that reports carried on the *ITV News* bulletins at 18:30 and 22:30 distorted views that had been expressed by the Prime Minister about Iraq and God during an interview for the ITV programme, *Parkinson*. The interview on *Parkinson* was due to be broadcast the following day.

The substance of both news reports was that, in the interview with Michael Parkinson, the Prime Minister had said that his belief in God played an important part in deciding to go to war in Iraq; and that he prayed over the decision and before embarking on military action.

The complainants maintained that Tony Blair had said no such thing, and that *ITV News* had failed to show proper regard for due accuracy in its reporting.

Some complained that the tone of the news reports had been inflammatory, and could have provoked racial and religious tensions. In particular, some viewers objected to the Iraq war being described as a "Holy war".

Response

ITV said the Prime Minister had been interviewed by Michael Parkinson on Thursday 2 March 2006 for the *Parkinson* programme, scheduled for transmission on the following Saturday (4 March 2006). Clips from the interview were supplied to *ITV News* in advance of the broadcast, and one of these clips formed the basis of the *ITV News* stories carried on 3 March 2006.

ITV defended the substance of its reports. However, they acknowledged that the coverage should have been "a little less strident", "less provocative" in its use of language, and that it should have been made clear there were different possible interpretations of what Mr Blair had said on the *Parkinson* programme.

In the key clip, identified by ITV, Mr Blair spoke to *Parkinson* about going to war in Iraq, and was asked if he prayed to God when he made important decisions like that.

Parts of the exchange were indistinct because Mr Blair and Mr Parkinson were speaking simultaneously. But the transcript accepted as accurate by both Ofcom and ITV reads as follows:

Tony Blair: *The only way you can take a decision like that is to try to do the right thing, according to your conscience. And for the rest of it, you leave it, as I say, to the judgement that ...*

Michael Parkinson: *So....*

TB: *....history will make.*

MP: *So you, so you would... you would... you would... pray...to... to God whenever you make a decision like that?*

TB: *Well I... you know... I don't want to go into...*

MP: *No, but I mean, hey, you said that...*

TB: *...this side of this but it's...* [NB These two lines spoken simultaneously]

MP: *...you said that...you'd...*

TB: *Yeah I ... you, you...* [NB These lines also spoken simultaneously]

MP: *....been informed...*

TB: *but you... of course... It's... you, you struggle with your own conscience about it because people's lives are affected...*

ITV maintain that Mr Blair's answer ("*...but it's...yeah, I... you, you, but you... of course... it's ... you, you struggle with your own conscience about it because people's lives are affected*") was sufficiently clear for them to conclude that faith in God had played a part in the decision to go to war.

It is ITV's view that the Prime Minister's use of the words "of course" refers back to the question about praying before making decisions, rather than forward to his next thought, the question of personal conscience. They said this understanding was fair and legitimate, and the most obvious interpretation of what was said. This interpretation was the interpretation used in the *ITV News* reports.

ITV said that the wording of the transcript, as agreed between Ofcom and ITV, includes a reference made by Michael Parkinson - "you'd been informed" - just before the key point where Mr Blair says "of course". In this context, ITV argued "to be informed" would normally mean taking account of information from an outside source or third party.

It was made clear by ITV that its case primarily rests on this passage. ITV's editorial judgement was that this passage formed a proper factual basis to conclude Mr Blair had linked his decision to go to war with God and that he had prayed before embarking on military action.

ITV said that a proper editorial process was followed prior to broadcast. The footage was played twice at an editorial meeting, and those present had reached the unanimous view that Mr Blair was linking his decision on war to his religious beliefs. It was then played over the telephone to ITV's chief political correspondent who agreed (a copy of the recording was also sent to her to view). It was upon this basis that the *ITV News* reports of 18:30 and 22:30 took the approach they did. ITV added that words are often open to differing interpretations, but that *ITV News* maintained that its own judgement on what Mr Blair had said was "within the range of reasonable meanings" that could be derived.

It was also important, they said, to note that it was Mr Blair - and not Michael Parkinson - who first introduced the issue of faith and God into the interview. When Michael Parkinson then asked him directly whether he prayed to God when making a decision like that (i.e. going to war in Iraq), Mr Blair did not clearly say "no".

However, ITV conceded that some aspects of its reporting had been “wrong”. ITV stated that in her live interview, the chief political correspondent could have been clearer and instead of stating that:

“When it comes to the Middle East to talk about - or imply - that God was on your side is provocative and inflammatory”

it would have been better to say:

“By leaving this issue open to interpretation the Prime Minister afforded an opportunity to opponents of the war to suggest that he was being provocative or inflammatory”.

Therefore, in particular, it should have been made clear that Mr Blair’s comments were open to different interpretations. They also acknowledged that some of the language used in the presentation of the story should have been less provocative. In particular, the use of terms like “Holy War” and “Act of Faith” on strap-lines was “not wholly appropriate”.

Nevertheless, even bearing in mind these matters, ITV maintained that the broad thrust of the story was correct. They said that politics and political reporting is often about what has not been said, or the way words have been used, rather than the literal meaning. Within the principle of editorial discretion, different commentators may interpret issues in differing ways.

Finally, ITV said it had offered Mr Blair an opportunity to clarify the issue by recording a short interview for *ITV News*. The offer has not - so far - been taken up.

In a second letter to Ofcom, ITV insisted that the issues raised were not about hard facts that are right or wrong, but about “the meaning of words that are open to various interpretations and ambiguity”. ITV pointed to other media coverage which it argued had reached a similar interpretation: The *BBC News* website, The *Sky News* website and the *Daily Express*. In spite of the acknowledged shortcomings in its coverage, ITV maintained that their analysis was within the range of reasonable editorial discretion, and so complied with the requirement in the Broadcasting Code for due accuracy and due impartiality.

ITV also refuted suggestions by some complainants that two interviewees (first, the father of a soldier who had died in Iraq; and then a Philosophy Professor, Andrew Grayling) must have been “fed” the *ITV News* interpretation of the story before making critical comments. ITV said both interviewees had, in fact, been shown the clips in full and had made their own independent judgements about what was being said.

Decision

Rule 5.1: Due Accuracy

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

It should be noted that the war in Iraq has been particularly controversial, raising contentious issues about race and religion as well as the purely political. Against such a background it is important that news organisations take particular care to report matters with due accuracy.

In considering these complaints we took into account that these were the two evening bulletins of one of the UK's leading television news providers for a public service broadcaster. We also noted that although ITV wanted to get the story on air that evening this was not, in itself, breaking news. The items were pre-prepared and there was time (albeit a short time) to consider the content and the context of the *Parkinson* interview which was not to be broadcast until the following day.

The story was first trailed in the 18:30 news headlines, and then provided the lead story in this bulletin. The studio presenter gave a short introduction, before handing over to ITV's chief political correspondent live from Downing Street. She introduced a pre-recorded report which she also voiced. This consisted of an extract from the Blair/Parkinson interview, and then the critical interviews with the father of a soldier killed in Iraq, and with Professor Grayling. The item concluded with a brief "two-way" between the studio presenter and the chief political correspondent in Downing Street.

The story was developed further in the 22:30 news. Again, the story was trailed in the news headlines and then provided the lead story in the bulletin. There were two pre-recorded reports. The structure of the first item repeated the 18:30 item. However the report this time included an interview clip with Dr Evan Harris, a Liberal Democrat MP who is also an honorary associate of the National Secular Society, instead of the interview with the father of the soldier who had died in Iraq. Dr Harris was also critical of the Prime Minister.

The studio presenter then introduced a second pre-recorded report exploring parallels with comments made by George Bush who "was said to have claimed that he decided to invade Iraq because he was on a mission from God". This included an archive interview about Mr Bush with Nabil Shaath (Former Palestinian Foreign Minister); an extract from an interview between Jeremy Paxman and Tony Blair from January 2003, asking whether Blair and Bush prayed together; and a clip from Zulfikar Bukhari, of the Muslim Public Affairs Committee pressure group, about Mr Bush's use of the word "crusade". The package ended with the interview with the father of a soldier who died in Iraq. It was followed by a brief "two-way" between the studio presenter and ITV's chief political correspondent in Downing Street.

It is clear that in ITV's view, the integrity of the story hangs on an interpretation of one key exchange in the interview with Michael Parkinson, as set out above.

The two questions put by Michael Parkinson to the Prime Minister without interruptions and without deviation would read:

"...so you would... pray ...to God whenever you make a decision like that?"; and

"...you said that ...you'd... been informed".

It is the contention of *ITV News* that, although indistinct, Mr Blair says "yeah" and "of course" in the flow of his answer to the question about praying to God before taking a decision such as going to war and to the question "you'd been informed" (a question ITV took to imply Mr Blair had received guidance from God). ITV contend that this is an affirmative response which links God to the decision.

We accept that this exchange is indistinct. However we noted the following:

1. In an exchange immediately before the key clip Mr Blair comments upon the judgement that will be made about his decision to go to war in Iraq. This is when he first introduces God into the interview:

TB: *".... that decision has to be taken and has to be lived with, and in the end there is a judgement that, well, if I think you have faith about these things then you realise that judgement is made by other people...."*

MP: *Sorry, what do you mean by that?*

TB: *By other people, by, if you believe in God, it's made by God as well."*

One interpretation of this exchange would be that Tony Blair was stating that his decision to go to war would be judged by God - not that his judgement as to whether to go to war was made by God. Support for such an interpretation could be found in the fact that Mr Blair refers to a judgement that is made "in the end" (i.e. a historical judgement). It is clear that the Prime Minister also referred to "other people" making that judgement. If Mr Blair were stating that God had made the judgement about going to war, this would be inconsistent with a statement that "other people" would make that judgement. It is therefore possible to interpret Mr Blair's words as meaning that it would be God and the people who would ultimately judge him on his decision to go to war.

2. Mr Blair also says in the clip used by ITV - in a much clearer part, at the start of the clip, - that the only way a decision like that can be taken is "is to try and do the right thing according to your conscience".

This suggests that he is talking explicitly about his conscience rather than prayer in the clip relied upon by ITV.

3. Immediately after the key clip Mr Blair then says:

TB: *"... in the end, if you do the job, you've got to be prepared to take the decisions of the job, and in the end you've got to live with those decisions and live with your own conscience in them."*

Taken together, the only statements that are clear are that Mr Blair struggled with his own conscience about the decision to go to war; and that he believes history and ("if you believe in God") God will make the judgement on whether he was right. He clearly did not wish to be drawn on the question of whether he prayed *before* taking the decision (*"I don't want to go into this side"*).

His full answer may be open to interpretation but, taking into account the above, there can be no *certainty* that the words "yeah" and "of course" referred directly to the questions posed by Michael Parkinson. It may be that they were merely punctuations in Mr Blair's thought process, as he considered how to answer the question.

It is also not clear that "you'd been informed" was meant by Michael Parkinson or taken to mean by Tony Blair that the Prime Minister had received guidance from God.

When considering whether or not a broadcaster has reported with "due accuracy", it is important to recognise the importance attached to freedom of expression and the broadcaster's right to be able to interpret news events as it sees fit. This must be particularly the case in political reporting which is often dependent on nuances and interpretations of ambiguous statements. Intervention should only be necessary when that interpretation would be considered to breach the requirements of the Broadcasting Code. Ofcom considers that it would have been entirely appropriate, therefore, for *ITV News* to reflect that Mr Blair's reply had been unclear, was open to

interpretation, but that it was possible that some might conclude that God had played a part in his decision.

However, the ITV studio presenter and chief political correspondent made unequivocal statements in the 18:30 bulletin that:

"Tony Blair says his belief in God played a part in deciding to go to war in Iraq. The Prime Minister tells ITV1 he prayed over the difficult decision. Tonight the startling insight into how Mr Blair's faith influenced Britain's part in ousting Saddam. So was it holy war?"

"Tony Blair's belief in God played a crucial role in his decision to send British troops to war in Iraq".

"The Prime Minister ...tells Michael Parkinson ... that he prayed before embarking on military action".

"... The insight into his thinking strongly echoes that of President Bush, who's admitted his belief that God told him to attack Saddam Hussein".

"...it has come as a surprise in Westminster that sending troops to Iraq was an act of faith".

"...he tells of the guidance he got from a higher authority than military ones".

In the 22:30 bulletin the studio presenter and chief political correspondent said:

"Tony Blair revealed tonight that his Christian faith and his belief in God played an important part in sending troops to war in Iraq. The astonishing insight into the Prime Minister's frame of mind as he made the decision to go to war is revealed in an ...interview with Michael Parkinson".

"... now we know that, when it came to the biggest decision of his political life, whether to send troops to Iraq, he did call on God".

"...he tells of the guidance he got from a higher authority than military ones".

"... these remarks by the Prime Minister closely echo an earlier comment reported to have been made by George Bush. He was said to have claimed that he decided to invade Iraq because he was on a mission from God...".

"Confirmation that his Christian God was part of Blair's decision to send British troops to join the US... well, in Muslim eyes, will only give credibility to the extremists...".

There was no mention of any other possible interpretation of what the Prime Minister had said, even though the key clip, identified by *ITV News*, is indistinct and at the very least open to interpretation.

The key clip was played in both bulletins. However it began part way through Mr Blair's words (the extract actually used is in bold):

*TB: ".... that decision has to be taken and has to be lived with, and in the end there is a judgement that, well, **if I think you have faith about these things then you realise that judgement is made by other people...***

MP: *Sorry, what do you mean by that?*

TB: *By other people, by, if you believe in God, it's made by God as well.*

Arguably, using this selective wording without the fuller text, denied the viewers vital context in which to judge for themselves the Prime Minister's meaning: "judgement" therefore appears in the news report to refer to the judgement to go to war in Iraq as opposed to the judgement that will be made historically about the Prime Minister's decision to go to war.

Further, *ITV News* included a range of critical interviews in the packages which were predicated on ITN's interpretation of what the Prime Minister had said. For example Liberal Democrat MP Dr Evan Harris says: "This is deeply disturbing to people who, even those who might support the decision to go to war feel that its been made on that sort of basis and its exactly the sort of thing that is highly provocative when dealing with a region like the Middle East where everyone feels God is on their side." However we note that ITV say that the interviewees were shown the clip before they were interviewed and so were acting upon their own interpretation of the words spoken by the Prime Minister.

The 22:30 news then again relied on its interpretation in drawing comparisons with comments made by President Bush to a Palestinian delegation in 2003. An extract from an archive interview with the former Palestinian Foreign Minister was used saying:

"President Bush said to all of us I'm driven with a, with a mission from God, God would tell me George go and end this...and I did".

The alternative possible interpretations should, at the very least, have been acknowledged in any duly accurate report of Mr Blair's appearance on *Parkinson*. Taking into account the full context of the clips from the *Parkinson* interview, as well as the strong ambiguity in what Tony Blair said about whether or not he prayed before taking this decision, Ofcom does not consider that the above statements made by *ITV News* were reported with "due accuracy".

This lack of due accuracy was compounded by the strident presentation of the story, as told by *ITV News*. The issue of whether or not to send troops to war is clearly, what is described in the Broadcasting Code, as a major matter of political controversy. As such the importance attached to "due accuracy" should be particularly high.

In conclusion, because *ITV News* reported as fact its interpretation of the interview Tony Blair gave the *Parkinson Show*, when the interview was, at the very least ambiguous, and open to a number of differing interpretations, ITV was in breach of the requirement for reporting news with due accuracy, (Rule 5.1) for the reasons stated above.

Rule 3.1: encouragement or incitement of crime or disorder

We also considered in the light of the complaints, whether the reports amounted to a breach of Rule 3.1 which requires that:

"Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services."

We noted the use of the strap lines “Holy War?” and “Act Of Faith” and the comparisons with George Bush’s comments. There were also statements made by *ITV News* that antiwar campaigners, and some families who had lost relatives in Iraq, had called Mr Blair’s comments:

“abhorrent and nothing to do with God”; and

“some [MPs] have called it distasteful or even shocking and others have said when it comes to the Middle East to talk about or simply that you think God is on your side is provocative and inflammatory”.

However we also noted that ITV had also said of one interviewee’s interpretation - “God had told him [Tony Blair] to do it. Does he think he’s going on a crusade?” - that this “may not be exactly what Blair said but it is how ...many Muslims will interpret it”.

We agree with ITV that the reporting should have been “less provocative in the use of language” and that some of the straplines (“Holy War?” and “Act of Faith”) were not wholly appropriate. We were concerned that on such a sensitive subject, which has the potential to raise strong emotions on all sides that *ITV News* was so strident in its view that the interview could be interpreted as setting up the campaign as a Holy War. Nevertheless, on balance, we considered the reports did not include any direct incitement to commit crime or disorder. The report was therefore not in breach of Rule 3.1.

These news reports were in breach of Rule 5.1 (the requirement for due accuracy in news)

The original decision to find these bulletins in breach of the Code was appealed by the ITV, leading to a review by Ofcom’s Content Board. This finding is the result of that review.

Ofcom gave consideration as to whether this case should be referred to Ofcom’s Content Sanctions Committee for consideration of a statutory sanction. However, ITV voluntarily decided to carry a summary of Ofcom’s finding and therefore Ofcom considered that further formal regulatory intervention was unnecessary.

Key Seed Breakfast Show

Radio City 96.7, 10 November 2006, 08:30

Introduction

This show featured a regular 'wind-up' item where the presenter, pretending to be an old woman, called up unsuspecting businesses. The presenter was then 'required' to use certain phrases.

On this occasion, the show called and recorded a conversation with a butcher. Among the phrases the presenter used was:

- ◆ "How much are your bangers, dear?"
- ◆ "I don't mind a bit of pork, what have you got?"
- ◆ "I want a nice bit of meat, dear"
- ◆ "I'm after a bird for Christmas, dear"

The phrases were used many times with the result that the butcher became increasingly abusive.

A listener complained that the presenter had shown a complete lack of understanding in posing such questions. It was clear, to the complainant, that the programme had in fact called a halal butcher. He thought that the tone of the item was both anti-social and offensive.

Ofcom asked the licensee to comment on the item in respect of Rule 2.3 of the Broadcasting Code ("the Code"). This Rule requires that: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but is not limited to, offensive language,...humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the ground of...race, religion, beliefs...)"

Response

Emap Radio, which owns Radio City, acknowledged that the decision to broadcast the item had been ill-judged. They explained that this regular 'wind up' feature had been included in the breakfast show for seven weeks without complaint before the item complained of was broadcast. The character, *Peggy*, a 90 year old woman, relies in part on double entendres and gained popularity and even some notoriety within the station's transmission area. All of the previous recipients of calls had, until this item, recognised the comedic nature of the pre-recorded remarks and responded in a humorous manner.

Since many local recipients of the calls had started to recognise the presenter as *Peggy* almost immediately, it was decided to ask a directory enquiry service to provide random phone numbers for the chosen category of butchers from around the UK. Consequently, the only information the production team had about any potential victim prior to the call was a phone number. When making the call complained of, the presenter did not immediately realise that the recipient was a halal butcher. He was taken aback by the abuse and, according to Emap, was concentrating on trying to "win over" the victim and bring the call to a satisfactory, good natured conclusion. He failed to recognise the possible significance of the statement "*we don't do pork*", which the butcher made after the second time the presenter's phrase "*I don't mind a bit of pork*" was played. The presenter edited the call and put it to air without

consulting anyone about it. The Programme Director heard the item as it was broadcast and spoke to the presenter the moment he finished his programme. Emap said the matter was taken extremely seriously and the presenter was reminded that he must discuss and clear in advance all content with the programme's producer. Emap assured us that they had also undertaken additional internal training. They very much regretted any offence the item may have caused.

Decision

In this item, the presenter explained that the telephone number for the butcher had been chosen randomly and that it was somewhere in the UK. He said that although the exchange went on for a number of minutes, he would only play a minute or so of the call and said listeners would be shocked by the hostile response he had received. Although the language was bleeped, it was apparent that the victim became increasingly abusive and the presenter appeared unaware that his questions could be regarded as inflammatory.

On listening to the item, it is apparent that the original offence taken by the butcher is at the repeated nature of the questions about pork. When the butcher says "we don't do pork", the listener is left in little doubt that this is a halal butcher. The butcher is abusive (though the words are bleeped) at what he believes to be religious taunts directed at him.

Ofcom concluded that the execution of this particular 'wind up' call and the decision to broadcast it was a serious misjudgement. The presenter said that his decision to include the item was to demonstrate the degree of unwarranted hostility that his enquiry had attracted. However, it is clear this hostility was a result of what appeared to be unprovoked religious abuse. This was a pre-recorded item and it was, in Ofcom's view, extremely concerning that the licensee was unaware of the offence these stock phrases could have in the wrong context. Further, given the random nature of obtaining the phone number from outside the transmission, area it was extremely unlikely that the potential recipient would be familiar with the humorous intent of the *Peggy* character.

Given the circumstances of a wind-up, Ofcom found that there was no context to justify the use of this offensive material.

Ofcom welcomed the immediate action taken by the Programme Director and the seriousness with which the station regarded the unsuitability of the item. However, Ofcom regarded the decision to air the call as irresponsible and showed a worrying failure in compliance and production oversight (especially during a breakfast show which attracts a wide ranging audience). Ofcom will consider further regulatory action if a breach of a similar nature occurs again.

Breach of Rule 2.3

Cricket AM

BSkyB Sports 1, 5 August 2006, 09.00

Introduction

This series was sponsored by *npower*. The programme featured the former England cricketer, David Lloyd, at Headingley Cricket Ground prior to the Test Match between England and Pakistan, discussing the forthcoming day's play with five *npower girls*.

Ofcom asked the broadcaster for its comments on the appearance of the *npower girls* in relation to Rules 9.5 (sponsor influence) and 9.6 (references to the sponsor) of the Broadcasting Code ("the Code").

Response

BSkyB explained that *Cricket AM* was sponsored by *npower*. Under a separate and unconnected arrangement that does not involve BSKyB, *npower* was also the English Cricket Board's sponsor for all domestic Test Matches.

BSkyB explained that, in addition to the branding opportunities (such as hoardings) presented by *npower's* sponsorship of the Test Match, over the course of the season *npower* employed the *npower girls*, whose role during Test Matches is described by *npower* as being to "keep thirsty photographers well watered, distribute 4 and 6 cards to the crowds and help us all get behind the boys - and spur them on to victory." The *npower girls* attended every day of every Test Match (35 in total) and were a well established and popular feature for all those attending the matches, particularly due to their instantly recognisable red and green uniforms. Accordingly, on the morning of the Test Match, the *npower girls* were already in attendance and were not there at the request of BSKyB.

BSkyB said that a regular feature on *Cricket AM* was David Lloyd interviewing different "component parts" of the live Test Match event. In previous weeks he interviewed not only players, but also ground staff, scoreboard operators and serving staff at a food concession. On 5 August 2006, David Lloyd had intended to interview members of the England cricket team during this segment. Unfortunately, this interview fell through on the morning of the programme. The executive producer for the programme therefore took the decision to ask the *npower girls* to take part in an interview, and to conduct it in a "commentary team-style" look-back at the Test Match so far. The majority of the interview involving the girls was scripted by BSKyB, and was otherwise ad-libbed. Accordingly, viewers were treated to David Lloyd interviewing his "fellow commentators" seated around him in their uniforms.

The interview was intended to be a light-hearted item leading up to a brief discussion of the day's play between David Lloyd and the studio presenters. The principal 'gag' of the piece was as much David Lloyd's evident excitement at being in such close proximity to the *npower girls*, as it was the girls' slightly risqué views on the Test.

The item was entirely in keeping with the irreverent and humorous style of the programme and in no way compromised the integrity of the format. In relation to the sponsor branding shown, BSKyB stated that:

- ◆ the *npower girls* were a regular feature at domestic Test Matches and, in their uniforms, would have been recognised as such by *Cricket AM* viewers;

- ♦ the interview was arranged by BSkyB at short notice in place of an interview with England players;
- ♦ the interview was scripted by BSkyB in a manner in keeping with the overall tone and style of the programme and did not feature any scripted references to *npower*; and,
- ♦ the inclusion in the programme of the girls dressed in clothes bearing *npower's* logo was editorially justified. Similarly, the references to *npower* that appeared on-screen were incidental to the main purpose of the interview and the programme generally, and occurred solely due to the fact that the sponsor is also the event sponsor for the Test Match and not as a result of its sponsorship of the programme. Although the girls' uniforms featured prominent *npower* branding, during the interview, where possible the shots of the girls were cropped tightly so as to avoid branding appearing in the shot. BSkyB quoted Ofcom guidance on sponsor references in programmes and said that the references not only appeared "to occur naturally within the programme (regardless of the sponsorship arrangement)", but did so.

BSkyB believed this demonstrated that the sponsor did not influence the content of the programme, and that the references to the sponsor were not promotional, were editorially justified and incidental.

Decision

Ofcom acknowledged that the *npower girls'* presence at the event resulted from *npower's* sponsorship of domestic Test Matches and not its sponsorship of *Cricket AM*. Ofcom therefore accepted that shots of these individuals, who were present at the grounds, may occur as a result of filming coverage of the matches and that these incidental references to the sponsor are unlikely to breach the Code.

However, in this case, the interview itself was a scripted item. As is evident from their title, the *npower girls* were employed by the sponsor for promotional purposes. While the editorial justification for including light-hearted interviews with a variety of individuals present at the ground (including the *npower girls*) may be adequate in the context of an irreverent programme such as *Cricket AM*, Ofcom considered that the decision to interview the programme sponsor's promotions staff, wearing uniforms displaying the sponsor's branding, resulted in references to the sponsor that were not incidental and were therefore in breach of the Code.

Breach of Rule 9.6

Dohri

ARY Digital, 8 October 2006, 11:00-12:00

Introduction

Ofcom received a complaint from a competitor who said that a programme broadcast on ARY Digital carried too many breaks and that these breaks had been inadequately spaced.

Rule 5.4 of the Rules on the Amount and Distribution of Advertising (RADA) sets a standard for the time allowed between advertising breaks within programmes. It requires that a period of at least 20 minutes should normally elapse between each successive internal break, with the time being measured from the start of one break to the start of the next. Ofcom asked the broadcaster to comment on the complaint in the context of this Rule.

Response

ARY Digital confirmed that the programme, scheduled to run for a period of one hour, had carried four breaks. It explained that its normal practice was to schedule three breaks. However, in this instance the programme tape supplied had contained an incorrect set of break cues for the particular episode which had led to an extra break being included. This was the result of it having had been formatted for use in other markets where a greater number of breaks were permitted.

It stated that as a result of the incident it had changed its procedures and in particular had added additional checks in its software to ensure that the limit on break numbers was not exceeded, and that the separation of such programme breaks complied with Ofcom rules.

Decision

Rule 5.4 of RADA requires that a period of at least 20 minutes should normally elapse between each successive internal break. Exceptions exist for certain types of programmes and circumstances. These were not relevant in this case. In this instance, as an hour long programme, the maximum number of internal breaks permissible within it had been three, whereas four had in fact been taken. Ofcom welcomed the broadcaster's revised procedures to ensure compliance with the requirements of this rule, however the programme was in breach of Rule 5.4 of RADA.

Breach of Rule 5.4 of RADA

Resolved

Jonathan Ross

BBC Radio 2, 16 September 2006, 10:50

Introduction

During a live interview, the actor Rupert Everett used the word “fuck” twice, in quick succession, and used a slang word to refer to female genitalia (“muff”). Three listeners complained that the language and discussion was inappropriate for the time of broadcast.

One of the complainants believed the jocular tone of the warning given to the guest by the presenter exacerbated the situation.

Response

The BBC acknowledged that the show had a family audience and stated that it very much regretted the offence caused. It said that guests were briefed about the nature of the audience and Mr Everett was no exception.

The BBC felt that the tone of Jonathan Ross’ intervention was appropriate to the circumstances. It was good humoured, but made quite clear to his guest - and to listeners - that this kind of language was not acceptable. After both Jonathan Ross and Rupert Everett apologised to listeners, the production team moved swiftly to a music break which gave the Producer the opportunity to reinforce in direct conversation with Mr Everett what the presenter had said on air. Any doubts that the guest may have had about the tone of the show were cleared up, and he was reminded that it was a live transmission in which such language was completely unacceptable.

The BBC said that when this kind of thing happens on live radio, the role of the production team is essentially one of damage limitation. Much as the broadcaster regretted the offence listeners were caused, it believed the team was right to respond as it did. The show relied for its broad appeal on a range of guests who can take part in discussions which, while sometimes frank, remain generally acceptable in terms of taste and standards. This incident gave the team a chance to re-emphasise the character of the show, both on and off-air, and they did so clearly and firmly.

Decision

Ofcom welcomed the BBC’s acknowledgement that the content of the programme was unsuitable for the time of broadcast.

Ofcom recognises that one of the risks associated with live programming is that broadcasters have less control over content. Ofcom expects broadcasters to have sufficiently robust procedures in place to minimise the risk of unsuitable material being broadcast.

In this case, Ofcom noted that the guest was briefed prior to his appearance about appropriate standards based on the nature of the programme. When the guest began a discussion and used language that was inappropriate, the presenter swiftly addressed the issue and the production team intervened, reinforcing the directions

given to the guest by the presenter. While the tone of the presenter's intervention was jovial (in keeping with the nature of the show) Ofcom did not consider that this undermined the situation or rendered the warning given to the guest any less effective.

In view of the BBC's response and actions, Ofcom considers the matter resolved.

Resolved

Club Cupid Trailer

STV, 25 November 2006, 19:35

Introduction

Club Cupid was a regional programme transmitted at 23:00 by STV in Scotland. It was a dating show which gave one man and one woman the chance to speed date five potential suitors in a bid, according to the broadcaster, “to find true love, a soulmate, or new friends”.

A trailer for the programme was broadcast at approximately 19.35 during the programme *The X Factor*. Two viewers complained to Ofcom about the content and scheduling of this trailer which they considered to be inappropriate for children who were watching.

Response

STV accepted that this trailer was inappropriately transmitted during *The X Factor* and explained this was as a result of human error. STV had investigated the issue fully at the time and as a result, measures were put in place to avoid a recurrence of what was a misinterpretation of scheduling advice. STV also sent a letter of apology and explanation to complainants who contacted them.

Decision

Ofcom agreed that the sexual content of this trailer was inappropriate to show during a show designed for viewing before the watershed when many children would have been watching. Ofcom welcomed the broadcaster’s apologies to complainants and assurances that steps had been taken to prevent in future the showing of trailers at inappropriate times. Ofcom therefore considered that on this occasion the case was resolved.

Resolved

Fairness and Privacy Cases

Upheld in part

Complaint by Newspin PR Limited on behalf of UP Trips Limited

The Curse of Club 18-30, Five, 6 May 2005

Summary

Ofcom has partly upheld this complaint of unfair treatment made by Newspin PR Limited on behalf of UP Trips Limited (“the company”) of which *Club 18-30* forms a part.

The programme looked at the *Club 18-30* type of holiday experience and included interview footage with a number of contributors, many of whom were former *Club 18-30* representatives or holidaymakers, who recounted their experiences and the repercussions some had faced as a result of those experiences. Not all the contributors in the programme or the stories featured were connected to or involved *Club 18-30*.

Newspin PR Limited (“Newspin”) complained on behalf of the company that it was not given an opportunity to respond to the damaging critique made in the programme; that the company had no employment record of two contributors described as former *Club 18-30* representatives; that it implied that *Club 18-30* was in some way responsible for an assault on a holidaymaker and a separate incident at a bar in Faliraki; that the footage shown was out of date and edited to be misleading; that it inferred that binge drinking was the creation of *Club 18-30*; that it was suggested that *Club 18-30* representatives had difficulty settling back into the UK on their return; and, that the company left resorts once “the curse” had taken hold.

Ofcom finds as follows:

- (a) In Ofcom’s view the allegations made about *Club 18-30*, particularly those relating to the company’s treatment of employees and holidaymakers, were clearly capable of adversely affecting the reputation of *Club 18-30*. Overall, Ofcom considered that the programme presented a potentially damaging critique of *Club 18-30*, and in the interests of fairness, the company should have been offered an opportunity to respond to the allegations made in the programme. Failure to provide the company with such an opportunity was unfair.
- (b) Ofcom was not in a position to determine whether two contributors, described in the programme as former employees, had in fact worked for the company. In Ofcom’s view, it was, in any event, unlikely that incorrectly identifying the contributors as former employees would in itself result in unfairness to the company. Instead Ofcom examined the content of their contributions as part of finding (a) summarised above.
- (c) Ofcom was satisfied that the programme did not imply that *Club 18-30* was responsible, in some way, for an incident presented in the programme in

which a holidaymaker had her head shaved. In these circumstances, Ofcom found no unfairness to the company.

- (d) Ofcom considered that the inclusion of an incident at the Bedrock Bar in Faliraki in the programme was unlikely to have materially affected viewers understanding of the events in a way that was necessarily unfair to *Club 18-30*. Ofcom was satisfied that the programme's commentary made it sufficiently clear to viewers that the person involved was neither a *Club 18-30* representative nor holidaymaker. Ofcom found no unfairness to the company in this respect.
- (e) Ofcom took the view that the manner in which particular archive footage of Faliraki was used in the programme was unlikely to have materially misled viewers in a way that resulted in unfairness to the company.
- (f) Ofcom considered that the programme did not give the impression, expressly or implicitly, that *Club 18-30* was responsible for the social issue of binge drinking. It was clear from the programme that the activities engaged in on youth orientated holidays were an extension of the behaviour of the young adults that go on such holidays. Ofcom therefore found no unfairness to the company in this respect.
- (g) Ofcom was satisfied that the programme did not suggest that all former *Club 18-30* representatives found it difficult to readjust or that any difficulties experienced by former employees were the responsibility of the company. Ofcom, therefore, found no unfairness to the company in this respect.
- (h) Ofcom considered that the comments made in the programme inferred that the "brand" of *Club 18-30* was responsible for the downfall of a particular resort, Faliraki. Ofcom found that the failure to provide the company with an opportunity to respond to this allegation created unfairness to it in the programme (as stated at head a) above).

Introduction

On 6 May 2005, Five broadcast *The Curse of Club 18-30*, a programme that looked at the *Club 18-30* type of holiday experience. The programme stated that *Club 18-30* was the market leader in youth holidays, but that "for some holiday makers it's been a cul-de-sac of curse full of chaos, misery and pain". Interview footage was included with a number of contributors, many of whom were former *Club 18-30* representatives or holidaymakers, who recounted their experiences and the repercussions some had faced as a result of those experiences. Not all the contributors in the programme or the stories featured were connected to or involved with *Club 18-30*. The programme also included archive footage taken at *Club 18-30* resorts.

The programme featured a number of stories from people who had had a negative experience during their time abroad. Two of these were specifically referred to in the complaint. The first story recounted was that involving Ms Georgina Ludden, a *Club 18-30* holidaymaker, who had her head shaved by two men while she slept. The other story featured was that of Ms Jemma Gunning who was arrested by the Greek police and later fined for exposing herself in a public bar. Ms Gunning was not working for *Club 18-30* or a holidaymaker at the time.

The programme also included interview footage with two individuals, Ms Anita Phillips and Ms Nikki Gale, who were described in the programme as having worked for *Club 18-30* as representatives and between them made comments relating to, among

other things, the difficult life of representatives and the alleged harsh treatment of *Club 18-30* representatives by their employers.

Club 18-30 is part of UP Trips Limited (“the company”), which, in turn, is one of the specialist businesses owned and managed by Thomas Cook UK Limited.

Newspin PR Limited (“Newspin”) complained to Ofcom on behalf of the company that the programme treated the company unfairly.

The Complaint

The Company’s case

In summary, Newspin complained on behalf of the company that:

- (a) The company was not given an opportunity to respond to the damaging critique of *Club 18-30* contained in the programme or the accusations made by former employees. Newspin said that during a telephone conversation that had taken place between Five and Newspin a week before the programme was first broadcast, Five had said that that the programme was not a critical look at *Club 18-30*; that it was not a damaging critique of the company in any way; and, that it did not require a right of reply. Five had also added that the programme would be using statements issued by *Club 18-30* at the time the incidents referred to in the programme occurred.

Newspin had said that the company were not happy for second-hand statements to be used in the programme as they may not have accurately reflected the company’s view of the incidents. However, Five had insisted that it was satisfied with the fairness of the programme. Despite the assurances given by Five to Newspin during the telephone conversation, Newspin said that the inclusion of statements such as “*Club 18-30* has infested every corner of the Med” amounted to a damaging critique of the company in the programme.

The programme also included interview footage with a number of people who, it was claimed, had worked for *Club 18-30* as representatives and who commented on the *Club 18-30* brand and operations. However, the company itself was denied an opportunity to respond to these allegations.

- (b) Two contributors, Ms Anita Phillips and Ms Nikki Gale, were described in the programme as having worked for *Club 18-30* as representatives and made comments about the company. However, Newspin said that the company had no record of the two women having worked in the positions claimed.
- (c) The programme implied that *Club 18-30* was responsible in some way for the assault on Ms Georgina Ludden, the *Club 18-30* holidaymaker who had her head shaved by two men while she slept. At the time of the incident, *Club 18-30* issued a 30 page statement that stressed that the company did not condone assault or criminal behaviour. Also, Ms Ludden’s parents praised *Club 18-30* for the way it dealt with the matter. However, no reference to this statement or Ms Ludden’s parents’ praise was made in the programme, despite the assurance given by Five that statements issued by the company at the time of the incidents would be used. Newspin said that the programme’s failure to refer to the company’s views implied that the company was responsible in some way for what happened to Ms Ludden.

- (d) There was no relation between the incident involving Ms Jemma Gunning at the Bedrock Bar in Faliraki and *Club 18-30's* activities. Mr Gunning, who was working in Faliraki, was arrested by the Greek police one evening for publicly exposing herself in the bar. Although the programme made it clear that Ms Gunning was neither a *Club 18-30* holidaymaker nor a representative, the incident was related to the *Club 18-30* brand, which was the subject of the programme, by its inclusion in the programme.
- (e) The footage shown in the programme was out dated and edited out of context to convey an image of the *Club 18-30* brand that was inaccurate or deliberately misleading. For example, footage of a Greek man walking on a beach in Faliraki was shown saying that they (the residents of the holiday resort) wanted the tourists back. Newspin said that this footage was filmed two years ago and was used as generic footage for *Tenerife Uncovered* - a programme that did not feature events organised by *Club 18-30*. However, this footage, along with other footage of Faliraki, was edited and used in this programme to infer that it depicted or was related to *Club 18-30* activities.
- (f) The manner in which binge drinking was referred to in the programme inferred that the whole social problem of binge drinking was the creation of the *Club 18-30* brand. This was misleading as it was not the case.
- (g) The programme suggested that all *Club 18-30* employees experienced trouble settling back into the UK on their return. This was a misleading and inaccurate. Newspin said that in incidences where a holiday representative found it difficult to settle back in the UK, it was irrespective of what "brand" or company they had worked for.
- (h) The programme suggested that *Club 18-30* left resorts and moved on elsewhere once the "curse" had taken hold. This was misleading and inaccurate. *Club 18-30* have continued to operate in Faliraki and Ayia Napa every year for a decade without a break in its operations.

Five's case

In summary, Five responded that:

- (a) The programme was a light-hearted and "tongue-in-cheek" look at the repercussions of the *Club 18-30* holiday experience. It did not intend to criticise *Club 18-30* or highlight specific allegations of wrongdoing. Five said that as *Club 18-30* marketed itself as the "brand leader" in the type of holiday experience it provided, it was entirely justifiable for the programme to concentrate on its holidays rather than look at the generic youth holiday experience. The nature of the *Club 18-30* holiday experience was well known and it was accurately portrayed, in general terms, within the programme.

Five made no judgement on this type of holiday experience. This was made clear both at the beginning of the programme and in its concluding statements. However, the programme did seek to highlight some of the repercussions of the *Club 18-30* holiday experience by looking at a number of stories from holidaymakers, holiday representatives and local resorts who had had a bad experience. Five said that this was not a criticism of how *Club 18-30* ran its business or that they were to blame for any of the incidents or stories featured in the programme. Rather, the programme looked at some of the "fallout" from these holidays for those concerned. The programme did not criticise, either expressly or implicitly *Club 18-30*, but, it presented a number

of personal testimonies and cautionary tales. Five said that the programme did not amount to a damaging critique of the company that required a right of reply.

Five said that in all of the stories featured in the programme, it was apparent that *Club 18-30* was not to blame or where *Club 18-30* could have been accountable, a published comment from the company was included in the programme. In certain cases, a comment from the company would have been wholly fatuous.

Former representatives were interviewed for the programme in order to illustrate their experiences working on *Club 18-30* holidays. During their interviews at no time was any criticism made of the company or any allegation made of significant wrongdoing which would warrant the allegation to be put to *Club 18-30* to obtain a response.

- (b) Five said that Ms Phillips had informed them that when she worked for *Club 18-30* she had used her maiden name, Stinton. Ms Gale had worked as a *Club 18-30* representative in Lloret de Mar. A still “shot” of Ms Gale on stage working as a *Club 18-30* representative was shown in the programme.
- (c) The programme made it clear, through the comments of a number of contributors and by the fact that the men responsible were convicted of a criminal offence, that Ms Ludden’s scalping was unacceptable. Five said that the cause of this incident was in no way directed at *Club 18-30* and that any statement, as suggested by the complainant, that *Club 18-30* did “not condone assault or criminal behaviour” and that Ms Ludden’s parents had praised *Club 18-30* would have been irrelevant. The issue was that Ms Ludden had been assaulted in an upsetting way while on a *Club 18-30* holiday. While the company was not responsible for the incident, it was difficult to believe that such an incident would have occurred on anything other than a youth orientated holiday such as those offered by *Club 18-30*.
- (d) The incident involving Ms Gunning at the Bedrock Bar in Faliraki was included in the programme to highlight the significant cultural difference between young British people on holiday and the local population. It was made clear in the programme that Ms Gunning was not working for *Club 18-30* or a holidaymaker when she disported herself. The point the programme made was that such uninhibited behaviour, which was part and parcel of the youth holiday (of which *Club 18-30* was the self proclaimed market leader and most well known), could cause considerable upset to other cultures and lead to serious repercussions.
- (e) The footage from Faliraki referred to by the complainant was shot in August 2004 and so was not that dated. Most of the footage illustrating holidaymaker revelry did show *Club 18-30* events; however, there were some images that were not specifically related to *Club 18-30*, as well as street scenes. However, from evidence obtained from the programme’s researcher who went on a *Club 18-30* holiday; the filming work done in Faliraki; and, the testimonies of holidaymakers and representatives, there was nothing in the programme that did not accurately represent the kind of activities seen every day on a *Club 18-30* holiday. Therefore, Five said that it did not accept that any of the footage used was unfair.
- (f) At no point during the programme was the culture of binge drinking blamed on *Club 18-30*. Five said that the phenomenon of binge drinking was a much

wider social and cultural issue that existed both in the UK and when young people went on holiday. It would have been far too simplistic for the programme to have suggested that binge drinking was caused by one holiday company.

Although the programme made it clear that *Club 18-30* had “dropped” the bar crawls, it could not be denied that drinking alcohol formed a significant part of the *Club 18-30* holiday experience. While binge drinking may not be overtly encouraged by the company, the organised events, boat trips, beach parties and other activities included drinking as the central element. The programme’s researcher who went on a *Club 18-30* holiday experienced considerable emphasis being placed by the representatives on the drinking culture. He was never told about the dangers associated with drinking or drunkenness and it was never suggested that responsible drinking would be more appropriate.

- (g) Five did not accept that the programme alleged that all employees who worked for *Club 18-30* had trouble settling back in the UK on their return. The issue of how representatives coped with returning from a constant holiday atmosphere, with all that entails, to a more mundane life was raised in the programme and some personal testimony was given by former representatives. However, Five said that the programme did not allege that all *Club 18-30* representatives experienced significant problems on their return to the UK. The point being made was that representatives became local celebrities in the world of youth holidays and spent the holiday season in a state of high energy. The return to winter in the UK was, self evidently, going to involve, in many respects, a significant come down for them.
- (h) The point the programme made was that resorts became dependent on *Club 18-30* holidaymakers and sought to cater for their needs and that there could be significant repercussions for those resorts when they become less popular and people moved on. Five said that this was not the fault of *Club 18-30* and the programme did not say that it was. It was not intended to suggest that *Club 18-30* had deserted resorts, as alleged by the complainant, but that they moved on to include new resorts such as Cancun in Mexico. From the evidence obtained by the programme makers and, in particular, a bar owner in Faliraki, a resort specifically mentioned in the programme, it was believed that in 2005 the number of holidaymakers at that resort was significantly down, and, according to the bar owner, by as much as 80 per cent. He put this drop down to the adverse image of the resort portrayed in the media. Therefore, the mention of the “curse” in respect of the impact on resorts was not unfair in all the circumstances.

The Company’s comments

In summary, Newspin responded on behalf of the company that:

- (a) Elements of the commentary were critical of *Club 18-30*. For example, the programme stated, “But why booze, shag, and fight in the rain when Spain and the sun was just a short flight away”. Newspin said that it was difficult to accept that the commentary would have left any viewer of a reasonable mind in any doubt that the programme was a critical assessment of *Club 18-30*. In these circumstances, the right to reply should have been made available to the company.
- (b) Despite a further check of the company’s employment records, there was no

trace of Ms Phillips (nee Stinton) or Ms Gale having worked for *Club 18-30* in the positions claimed.

- (c) No further relevant comments about the incident involving Ms Ludden were made.
- (d) Five had admitted that footage of generic incidents such as Ms Gunning's experience at the Bedrock Bar was in no way related to *Club 18-30*. This undermined Five's assertion that the programme was a look at the 18-30 experience and not a wider generic look at the youth holiday.
- (e) The footage of Faliraki was not taken in August 2004, as stated by Five. Some of the footage shown relating to Faliraki was filmed throughout the summer in 2001 by SMG TV Productions for the first series of *Club Reps*.
- (f) The programme did not explicitly make the statement that the problem of binge drinking could not be blamed on *Club 18-30*. In the absence of a clear statement to this effect, it would not be unreasonable for viewers to have been left with the impression that the programme inferred that *Club 18-30* was responsible, in some part, for the phenomenon.
- (g) No further relevant comments about holiday representatives settling back into life in the UK were made.
- (h) It was not made explicitly clear in the programme that the impact youth holidaymakers had on resorts was not the fault of *Club 18-30*. It included comments from "celebrity" contributors and programme commentary that suggested that *Club 18-30* was, in fact, to blame for the impact on some resorts. *Club 18-30*'s operations in Greece and Cyprus have continued for more than two decades without any break. It has never left any of those resorts as suggested in the programme and the company should have been given the opportunity to set that record straight.

Five's comments

In summary, Five responded that:

- (a) The tone of the commentary was pitched in a jocular manner and manifestly referred to the stereotypical view of the British holidaymaker rather than *Club 18-30*. Poking fun at and reviewing a well publicised phenomenon did not automatically create an obligation to give the subject-matter of the film a right to reply. Five maintained that the programme gave no rise to criticism that warranted giving the company the right to reply. The programme contained a series of stories about experiences of those on *Club 18-30* holidays or former holiday representatives. A right of reply would only have been appropriate if the programme amounted to a damaging critique, which was not the case.
- (b) Ms Phillips confirmed to the programme makers that she had worked for *Club 18-30* and believed that employment records may have been lost during the collapse of the parent company during the 1990s. The programme makers were also shown a home video that was filmed at the *Club 18-30* offices in Benidorm and which featured Ms Phillips wearing *Club 18-30* attire.

The programme makers were unable to contact Ms Gale because she had relocated to Spain. However, they confirmed through the brother of Ms Gale's former boyfriend that she also worked for *Club 18-30* at Lloret de Mar. Five

were satisfied that the two women had worked as *Club 18-30* representatives.

- (c) No further relevant comments about the incident involving Ms Ludden were made.
- (d) No further relevant comments about the incident involving Ms Gunning were made.
- (e) The footage of Faliraki was shot by the producer, North One, in August 2004. Only one brief clip of third party archive footage was used in the programme.
- (f) Although the programme may not have explicitly said that *Club 18-30* was not responsible for the phenomenon of binge drinking, there was no basis on which the company should have been afforded the right to reply. The programme had stated that binge drinking formed part of the *Club 18-30* experience, which was demonstrated by its marketing, including its 2004 brochure [provided to Ofcom], and personal testimony from representatives and holidaymakers alike. The programme did not assert, expressly or implicitly, that *Club 18-30* was responsible in any way for the social/cultural phenomenon of binge drinking. In these circumstances, it was fair to make references to the holiday drinking culture in its various forms. There was no unfairness in the programme to the company in respect of this issue.
- (g) No further relevant comments about holiday representatives settling back into life in the UK were made.
- (h) The use of emotive and “over the top” language in the commentary to describe the impact *Club 18-30* had on resorts was not intended to be taken seriously. Also, the comment by one contributor that the company built up a resort and then “move[d] out and move[d] to another resort” was not intended to mean that they physically left the resort altogether, but rather, that they moved on to concentrate on a new location.

Five maintained that the comments made in the programme did not amount to a damaging critique on which the company was entitled to a right of reply.

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 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. The Group’s decision is set out below, by reference to each of the heads of Newspin’s complaint made on the company’s behalf.

- (a) Newspin complained that the company was not given an opportunity to respond to the damaging critique of *Club 18-30* contained in the programme or the accusations made by “former” employees despite the assurance given by Five that the programme would not be a critical look at *Club 18-30*.

Where a programme alleges wrongdoing or incompetence, or contains a damaging critique of an individual or organisation, those criticised should normally be given an appropriate and timely opportunity to respond to or comment on the arguments and evidence contained in the programme.

Also, special care should be taken by broadcasters when programmes are capable of adversely affecting the reputation of individuals, companies and other organisations. They should take all reasonable care to satisfy themselves that all the material facts have been considered before transmission and as far as possible fairly presented.

In the circumstances of this particular case, Ofcom noted Five’s assertion that the programme was intended to be light-hearted look at the repercussions of the *Club 18-30* experience and that the nature of the programme was very much in keeping with the rest of “*The Curse of...*” series of programming. It also noted that *Club 18-30* was a “brand leader” in the provision of the particular holiday experience the programme focused on and that that was why Five had chosen to concentrate on *Club 18-30* rather than the generic youth holiday experience.

Ofcom therefore examined the contents of the programme with specific regard to determine whether or not it could reasonable be considered to have amounted to a damaging critique of *Club 18-30* which, in the interest of fairness would require an opportunity to respond.

It was clear within the programme that not all the incidents featured concerned *Club 18-30*. It was also clear that specific incidents, for instance, a hotel fire, an allergy experienced by one holidaymaker to the foam used at a “foam party” , could not and was not laid at the door of the holiday company and so did not require an opportunity for *Club 18-30* to respond.

However, in Ofcom’s view the majority of the experiences recounted in the programme did relate to *Club 18-30* and the title of the programme - *The Curse of Club 18-30* - clearly indicated to viewers that *Club 18-30* would be at the core of the programme’s content. The tone and direction of the programme was set at the outset. The narrator stated that “*Club 18-30* is the market leader in youth holidays, giving our great British youth the trip of a lifetime every time every summer”. Within a minute this was qualified with the following statement “but for some holidaymakers it’s been a cul-de-sac of curse full of chaos, misery and pain”. The commentary added shortly afterwards that “the reps that lead the charge can be cursed as well ending their days exhausted and unemployed. The programme also claimed that “*Club 18-30* has infested every corner of the Med, allowing us to let our hair - and our pants down”.

Ofcom also noted that the conditions of the representatives were discussed. The commentary said that “As a club rep, you’re paid 75 quid a week and your only chance to make some real money is to sell your soul and a few excursions door to door,” Interviewee comments included “they get paid a very low basic wage,” “the reps do get it hard. If you don’t hit a certain target,

you're sacked. I mean how harsh is that?". "They can just say well you're not up to scratch, you know what we need and they can just get rid of you".

Ms Philips, specifically referred to in the complaint and described in the programme as a former rep, alleged that reps were not given a day off; worked seven days a week, and on many occasions she ended up in tears through exhaustion. Ms Gale, also specifically referred to in the complaint and described in the programme as a former rep, alleged that trips sold to holidaymakers were not value for money.

With regard to these particular contributions Ofcom noted that *Club 18-30* claimed to have no record of either Ms Gale or Ms Phillips as having been employed in the positions that the programme claimed they had worked. Although Five maintained that the two women had worked for *Club 18-30*, had footage of one of them in the *Club 18-30* office and apparently had confirmation to this effect from Ms Phillips and the brother of Ms Gale's former boyfriend, Ofcom noted that Five had not submitted any documentary evidence to support the assertion that the two women had, in fact worked for *Club 18-30* in the roles claimed. Ofcom was not in a position to determine the factual position regarding their previous employment. In the circumstances, Ofcom examined the content of their contributions, along with the other contributions to determine whether or not the programme's contents amounted to a damaging critique of *Club 18-30* and its operations.

Ofcom noted that the programme then went on to look at the culture of drink and sex. The commentary explained that the "curse blinds them [the representatives] to the extremes they're promoting". A cocktail "the bowl of shame", that holidaymakers were expected to drink if caught out by the representatives (for example, drinking with the right hand) was described by a representative as "this potion was really bad and I think it contravenes health and safety ...this cocktail did have coffee, mustard - everything you could possibly imagine. Bits of skin, pubic hair. I mean, vomit in it". The representative cabaret was described as "Although not part of the holiday as advertised, naked reps became an unofficial bonus". One representative explained that "...you can't really take individual responsibility and say right I'm not going to do this because of the peer and corporate pressure you're under". The working hours were also described as "You work from nine o'clock in the morning roughly until two in the following morning...we didn't have a day off basically. We had to work seven days a week... it's like 18 hour days minimum".

Ofcom also noted that the final section of the programme described the impact on resorts. One interviewee said "*Club 18-30*, their history indicates that if they go to a resort, they build it up and then two or three years later they move on to another resort".

Ofcom recognises that individuals have a right to freely express their views and opinions and that former employees of *Club 18-30* or holidaymakers with *Club 18-30* should not feel constrained in expressing their genuinely held views and recounting their experiences of *Club 18-30*. However, in Ofcom's view the allegations made about *Club 18-30*, particularly those relating to the company's treatment of employees and holidaymakers, were clearly capable of adversely affecting the reputation of *Club 18-30*. Taking the above into account along with the programme's title and the largely negative nature of the experiences presented Ofcom considered that the programme's presented a potentially damaging critique of *Club 18-30*. In the circumstances,

and in the interest of fairness, *Club 18-30* should have been offered an opportunity to respond to the allegations made in the programme. Failure to provide the company with such an opportunity was unfair.

- (b) Newspin complained that the programme contained interview footage from people (Ms Gale and Ms Philips) who claimed to have worked for the company, but of which *Club 18-30* had no record of them being employed in the positions claimed.

As explained above in finding (a) above, Ofcom was not in a position to determine the factual position regarding Ms Gale's or Ms Philips' previous employment. In Ofcom's view it was, in any event, unlikely that incorrectly identifying the contributors as former employees would in itself result in unfairness to the company. In Ofcom's view, what was important in this case was the content of their contributions and whether or not it resulted in unfairness to the company. Ofcom therefore examined the content of their contributions above, along with the other contributions to determine whether or not the programme's contents amounted to a damaging critique of *Club 18-30* and its operations. Please see finding (a) above.

- (c) Newspin complained that the programme implied that *Club 18-30* was responsible in some way for the assault on Ms Ludden, a *Club 18-30* holidaymaker who had her head shaved by two men while she slept.

Ofcom was satisfied that the programme did not imply that *Club 18-30* was responsible, in some way, for the incident in which Ms Ludden had her head shaved. In Ofcom's view, viewers were likely to have understood that the reference to the incident was to highlight a negative experience suffered by a holidaymaker on a youth orientated holiday rather than a criticism of the company itself. Given that the commentary made it clear that the perpetrators were caught and punished by the Greek authorities and that their behaviour was in no way condoned by the other contributors in the programme, it was unlikely that viewers would have taken the inclusion of the incident as a criticism of the company. Therefore, Ofcom considered that it was not incumbent on the programme makers to have included previous statements made by *Club 18-30* in relation to Ms Ludden or to give them an opportunity to comment on it. In these circumstances, Ofcom found no unfairness to the company in this respect.

- (d) Newspin complained that although the programme made it clear that Ms Gunning was neither a *Club 18-30* representative or holidaymaker, the inclusion of the story involving her at the Bedrock Bar in Faliraki in the programme related the incident to the *Club 18-30* "brand", which was the subject of the programme.

Ofcom recognised that the incident involving Ms Gunning at the Bedrock bar in Faliraki was featured in this programme (entitled "*The Curse of Club 18-30*") and which included experiences from former *Club 18-30* representatives and holidaymakers. However, Ofcom considered that the inclusion of the incident in the programme was unlikely to have materially affected viewers understanding of the events concerning Ms Gunning at the Bedrock Bar in a way that was necessarily unfair to *Club 18-30*. Ofcom was satisfied that the programme's commentary made it sufficiently clear to viewers that Ms Gunning was neither a *Club 18-30* representative nor holidaymaker. It explained that "Jemma Gunning was neither rep nor holidaymaker". In these circumstances, Ofcom found no unfairness to the company.

- (e) Newspin complained that the footage used in the programme was out of date and was edited out of context to convey an image of the *Club 18-30* "brand" that was inaccurate and deliberately misleading.

Where the use of material originally recorded for one purpose and then used in a different programme, broadcasters should take special care that it does not create material unfairness.

In this case, although there was some disparity between Newspin and Five about the date and source of some of the third party archive footage used in the programme, the issue of when it was filmed and by whom was not necessarily relevant in deciding whether its inclusion in the programme was unfair to the company or not. In Ofcom's view, given the inclusion of the experiences told by former *Club 18-30* representatives and holidaymakers, the programme's researcher's own experience and the programme makers' own filming in Faliraki, the use of the archive footage of Faliraki and the manner in which it was presented in the programme as an illustration of the kind of activities that can be seen on the type of experience offered by youth orientated holiday companies, such as *Club 18-30*, was unlikely to have materially misled viewers a way that resulted in unfairness to *Club 18-30*. Ofcom found no unfairness in this regard.

- (f) Newspin complained that the programme inferred that the whole social problem of binge drinking was the creation of the *Club 18-30* "brand". This was misleading.

Broadcasters should avoid creating doubts on the audience's part as to what they are being shown if it could mislead the audience in a way which would be unfair to those featured in the programme.

In this case, Ofcom considered that the programme did not give the impression, expressly or implicitly, that *Club 18-30* was responsible for the social issue of binge drinking. It was clear from the programme that the activities engaged in on youth orientated holidays were an extension of the behaviour of the young adults that go on such holidays. Ofcom was satisfied that the programme's commentary made it sufficiently clear to viewers that the issue of binge drinking was not the creation of *Club 18-30* or that the company was in anyway responsible for it. In these circumstances, Ofcom found no unfairness to the company in the programme by featuring accounts about binge drinking.

- (g) Newspin complained that the programme suggested that all *Club 18-30* representatives experienced trouble settling back into the UK on their return. This was misleading and inaccurate.

Ofcom was satisfied that viewers would have clearly understood that the views given by those former representatives featured in the programme were their own personal views that were based on their own experiences. It noted, however, that the experiences recounted were mainly told by former *Club 18-30* representatives and that the issue about resettling back in UK after being a holiday representative was included in this programme (entitled "*The Curse of Club 18-30*"),

Ofcom considered that simply referring to the fact that some representatives found it difficult to readjust on their return to the UK was unlikely to have

materially affected viewers understanding in a way that was necessarily unfair to the company. The programme had not suggested that all former *Club 18-30* representatives found it difficult to readjust or that any difficulties experienced by former employees was the responsibility of the company. In these circumstances, Ofcom found no unfairness to the company.

- (h) Newspin complained that the programme suggested that *Club 18-30* left resorts and moved on elsewhere once the “curse” had taken hold. They claimed that this was misleading and inaccurate.

The programme concluded that Faliraki had been “reduced to a shadow of its former self. Gorged on and spat out by the curse of *Club 18-30*”. It also stated that “with the tourists gone, the Mayor of Faliraki has a radical solution to win them back”. A contributor to the programme also referred expressly to *Club 18-30* as having a history of building up a resort and then, after a few years, move on. He said that the company had done this in Ayia Napa and Faliraki and had moved on to Zante and Mexico.

Ofcom took the view that it was legitimate for the programme makers to hold and present the views of the contributors to the programme and it was quite proper for them to echo those views in the commentary. However, the inclusion of such comments in the programme could have led viewers into understanding that certain resorts had been abandoned by the company and that new resorts were being moved to. In particular, Ofcom took the view that the comments made in the programme inferred that *Club 18-30* was responsible for the downfall of a particular resort, Faliraki. Apart from the testimony of a bar owner who said that tourist rates were down as much as 80 per cent, Five failed to provide evidence to support its assertion that the company had left the resort or been the cause of its negative reputation.

Ofcom considered that had these allegations been put to the company before the transmission of the programme and had it been given the opportunity to respond the broadcaster could have ensured that any ambiguity in relation to the relationship between the company and the resorts mentioned could have been explained and clarified before transmission. In these circumstances, Ofcom found that the failure to provide the company with an opportunity to respond to these particular allegations created unfairness to in the programme (as stated at head (a) above).

The complaint of unfair treatment was partly upheld.

Not Upheld

Complaint by Nottingham City Council

Best and Worst Places to Live, Channel 4, 9 August 2005

Summary

Ofcom has not upheld this complaint of unfair treatment. The programme looked at the ten worst and ten best places to live in the UK. Nottingham was identified as the second of the ten worst places to live and reference was made in the programme to the high level of crime, “gangsters” and “drug-related gun battles”.

Nottingham City Council complained that it was treated unfairly in the programme as broadcast in that the statistical analysis used was flawed and because it made numerous gratuitously unfair and unsubstantiated references to gun and weapon crime.

Ofcom found as follows:

- a) It was not Ofcom’s role to determine the adequacy of the statistics used in the programme, but to consider whether the broadcaster took reasonable steps to ensure that the material facts it used concerning Nottingham were fairly presented in the programme.

Ofcom noted the broadcaster’s use of expert statisticians and statistical sources which could be regarded as reasonably reliable. Ofcom considered that the programme made clear that it was assessing local authorities in the UK against a set of clearly defined criteria: crime; education; employment; environment and lifestyle. In these circumstances, Ofcom considered that the steps taken by Channel 4 to ensure that the material facts it presented about Nottingham did not result in unfairness to the complainant, were reasonable.

- b) Ofcom considered that the data relating to gun crime referred to in the programme was provided by a reliable and authoritative source and reported in the programme in good faith. The programme’s comments concerning gun crime did not affect the City’s position as “second worst place to live” and would not, in Ofcom’s opinion, have materially affected viewers understanding of the City of Nottingham in a way that was unfair to the Council.

The complaint of unfairness was not upheld.

Introduction

On 9 August 2005, Channel 4 broadcast *Best and Worst Places to Live in the UK*, a programme featuring the presenters of, 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 434 Local Authorities and sought to identify the type of property (and its social environment) £180,000 could buy.

Nottingham was identified as the second of the ten worst places to live and reference was made in the programme to the high level of crime, “gangsters” and “drug-related gun battles”. The programme’s presenters stated that Nottingham offered “a great

night out” and that it was a “Mecca for developers” who had “reaped the rewards” of the city’s increasing popularity. 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”.

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

Complaint

Nottingham City Council's case

In summary, the Council complained that:

- (a) The damaging statement that Nottingham was the second worst place to live in the UK was unfair as the statistical analysis on which it was based was flawed. The City of Nottingham was not the same as the wider geographical area of Nottingham. Using data concerning the City of Nottingham alone to describe Nottingham (the wider geographical area) was not valid. The Council said that this confusion meant that the programme “did not compare like with like”. Nottingham, the wider geographical area, comprised of all or most of three other local authorities and, as such, cannot be reasonably compared with metropolitan areas such as Leeds, Sheffield or Glasgow. Had the data concerning the relatively more affluent suburbs of Nottingham been taken into account then Nottingham would have fared better against the criteria of crime, education, employment and the environment.

Also, the programme disregarded Nottingham’s high student population when analysing employment criteria. Nottingham had a high student population which would have affected its ranking in this respect.

Finally, the programme’s approach was quantitative and did not include any qualitative data in its analysis. This would have had an impact on the ranking. For example the number of parks and open spaces in a local authority would always count against urban areas such as the City of Nottingham.

- (b) The programme made numerous gratuitous, unfair and unsubstantiated references to gun and weapon crime in Nottingham. The programme’s presenters made references to sharpening knives, gangsters, guns and bullet-proof vests and glass. The Home Office statistics used by the programme did not specifically refer to gun crime, as the Home Office does not provide these by local authority area, but by police force area. To associate Nottingham with gun and weapon crime when the programme’s research did not specifically examine this category was unfair.

Channel 4's Response

In summary, Channel 4 responded that:

- (a) The rankings used in the programme were compiled by an expert statistician, on data gathered in the same way for all local authorities. The study used the most recent figures available for all local authorities across the UK for each of the categories commonly considered by people when they are considering where they would like to live. Channel 4 said that if it had varied the study periods between local authorities to capture the latest available for each, they

would not be comparing like with like which would be unfair to local authorities who did not have up-to-date figures.

Channel 4 said that the survey was not skewed against Nottingham as the Council claimed by not taking into account the affluent areas of greater Nottingham. The neighbouring boroughs were included in the profiles of local authorities to which they belonged and to link them to the City of Nottingham - the local authority area - would not be comparing like with like. The survey considered the local authority of the City of Nottingham and there were many references to "the City" in the programme and it would have been clear to viewers that this was the area that was being referred to.

Channel 4 said that the City of Nottingham's high student population did not unfairly affect its ranking. It explained that it used statistics from the Office of National Statistics which included most students as they work part-time and are therefore considered economically active. Channel 4 pointed out that Cambridge, Oxford, Southampton and other local authorities with comparably high student populations scored higher than Nottingham in the employment category. Therefore, a high student population did not necessarily affect the economic data.

Also, Channel 4 said that the programme's intention had been to assess the availability of green spaces rather than their quality and that a qualitative assessment would not give a more objective judgement of the issue. However, it said that the environmental survey did involve measurements such as the number of hours of rainfall, sunshine and the average life-expectancy.

- (b) Channel 4 said that although the Home Office did not provide comparative statistics in respect of gun crime, it did provide comparative figures for six key serious criminal offences. When the figures were analysed by the expert retained by the programme makers the City of Nottingham ranked 433rd out of 434.

Channel 4 said that it was apparent from the statistics that Nottingham's poor performance was largely based on its high rate of crime. This led to the programme makers researching deeper into the issues behind the statistics. Press reports had indicated that gun crime and drug gangs were a problem and the programme makers obtained gun crime statistics for the City of Nottingham local authority area from the Nottinghamshire Police press office. Channel 4 said that it had since learned that the figures it was given and which were quoted in the programme were for the County of Nottinghamshire as a whole, not the City of Nottingham local authority area and that it had been unable subsequently to get those figures from the police. Channel 4 said that it was reasonable for the programme makers to rely on the figures provided by the police and had it known of the nature of these figures before broadcast, it would have been made clear in the programme.

However, although the figures were for the County of Nottinghamshire as a whole, the City of Nottingham was "the most significant urban area" in Nottinghamshire and the prevalence of gun and weapon crime in the City of Nottingham had been well reported in the national media (six examples were provided to Ofcom). Given the City's wide reputation for gun crime, the programme's commentary that the Council objected to, was not unfair. The commentary was based on trusted statistics and press reports and was in keeping with the editorial style of the programme.

Channel 4 said that the comments made by the presenters in the programme were not meant to be taken literally and were tongue-in cheek. Taken into account the context in which they were used and considering the supporting evidence from press and police the use of the comments in the programme were justified. The statements were not gratuitous, unfair or unsubstantiated and viewers would be familiar with this style of programme where “the commentary was intended to inform and entertain at the same time”. It added that the programme was no more critical of Nottingham than any national media report on the City.

Channel 4 said that there was no criticism of the Council’s management of crime or any other aspects of the survey and that the programme praised the City and highlighted its positive aspects.

Nottingham City Council's response

In summary, the Council responded that:

- (a) The Council maintained that the survey did not compare “like with like”. The confusion between the City of Nottingham and Nottinghamshire, the County, was a long standing one and feedback from viewers of the programme confirmed that there had been confusion as to whether the programme was referring to the City or the County. The Council said that local residents themselves would not have been able to reliably distinguish the City of Nottingham, (the local authority area) from the Nottingham (the place).
- (b) The Council disputed Channel 4’s reference to the City of Nottingham as “the most significant urban area” in the County. The City of Nottingham is comprised of less than one half of the most significant urban area in Nottinghamshire, the misrepresentation of which was fundamental to the Council’s complaint.

The Council said that the “widely reported” press stories cited were not necessarily true and it was unfair to have relied on them as indicative of a problem. The press reports did not cover crime exclusively in the City of Nottingham and so the assumption that most gun crime happened in the City was flawed. The Council also said that the programme makers knew before broadcast that the figures supplied by Nottinghamshire Police were incorrect and that they knowingly misrepresented the facts in the programme.

The Council did not believe that the editorial style of the programme was an acceptable defence for the comments made in it.

Channel 4’s comments

In summary, Channel 4 responded that:

- (a) Channel 4 reiterated the points made in its original statement concerning the reliability of its statistical analysis. It also said that the programme made “unambiguous references to ‘the City’”, so the majority of viewers would have been aware that the programme was referring to the City of Nottingham. Channel 4 argued that the City’s second worst status was determined by analysing all the statistics not just those for crime; that that ranking was based

on the five criteria, the methodology for which the Council agreed was sound; and that the City's status in the survey was not influenced by the subsequent gun crime figures.

- (b) Although the press release supplied by the police containing inaccuracies was sent out before the programme, none of the inaccuracies were contained in the programme as broadcast; and they did not affect the research which produced the rankings, and which was based on the correct figures for the City of Nottingham.

Channel 4 also said that the press release reference to Nottingham having one gun-related incident almost every day was taken from figures quoted in the Nottingham Evening Post, but that the figures for gun crime used in the programme were those supplied by Nottingham Police which were deemed to be a more reliable source. Therefore the Evening Post figures were not used in the programme and not unfair to the Council.

Channel 4 maintained that there was no confusion between the County of Nottinghamshire, and the City of Nottingham in the programme. Channel 4 also argued that on the basis of population size the City of Nottingham was the most significant urban area in Nottinghamshire.

Channel 4 refuted the allegation that it was aware that the gun crime figures were for the County, prior to broadcast. The figures were used in the programme in good faith. Channel 4 said that the programme makers contacted Nottingham Police to clarify the figures because the Council contacted the programme makers following transmission to point out the confusion.

Channel 4 admitted that while it was true some of the press reports were for crime committed outside the City of Nottingham, it maintained that the majority had occurred within the City, and the articles made reference to it as "gun city" and "assassination city". Although the "county" figures for gun crime were included in the programme instead of the "city" figures, Channel 4 said that the inclusion was not unfair to the Council as the overall ranking had already been concluded. Channel 4 said that the material facts had not been misrepresented; that the Council had not been treated unjustly or unfairly; and, that the programme was not unfair to the Council.

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.

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

- (a) Ofcom first considered the Council's complaint that the damaging statement made in the programme that Nottingham was the second worst place to live in the UK was unfair because the statistical analysis on which it was based was flawed. The local authority area of the City of Nottingham was confused with the wider geographical area of Nottingham which resulted in it not being compared on a "like with like" basis in the programme.

It was clear from the written submissions that the Council believed that the programme's assertion that the City of Nottingham was the second worst area in which to live was unfair since it was based on a flawed statistical analysis. It was equally clear from the written submission that Channel 4 believed that the statistical analysis was sound and that the programme's presentation of this information did not result in unfairness to 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 and broadcaster had dealt with the Council in a manner consistent with their obligation to avoid unfairness to it.

Before broadcasting a factual programme, Ofcom requires broadcasters to take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom examined the written submissions of both the Council and Channel 4. It concluded that it was not Ofcom's role to determine the adequacy of the statistics used in the programme, but to consider the extent to which Channel 4 took reasonable steps to ensure that the material facts it used concerning Nottingham were fairly presented in the programme. To that extent, Ofcom noted Channel 4's use of expert statisticians and statistical sources which could be regarded as reasonably reliable.

Ofcom considered that the programme made clear that it was assessing local authorities in the UK against a set of clearly defined criteria: crime; education; employment; environment and lifestyle. With that in mind Ofcom was not persuaded by the Council's claim that the programme did not compare like with like. Ofcom further considered that on the basis of the programme's clear prospectus it was not incumbent on the programme makers, in the interest of fairness, to have taken into account data relating to the arguably more affluent suburbs of Nottingham (the wider geographical area) which fell under separate local authorities.

On the basis of the material available to Ofcom, it considered that the Council's claim that the programme confused the City of Nottingham with the wider geographical area of Nottingham and the County of Nottinghamshire was not supported by evidence. Ofcom was not persuaded that the programme needed to explain the difference between the City of Nottingham and the wider Nottingham area, as there was no language used in the programme that could have been misleading to viewers. In fact, the programme repeatedly referred to "the City".

Also, Ofcom was not persuaded that the City of Nottingham's high student population unfairly affected its ranking as the programme used statistics from the Office of National Statistics which included most students as they work part-time and are therefore considered economically active and other areas with student populations would in any event be similarly affected.

Finally, Ofcom recognised that rural areas were likely to score more highly than urban areas, such as the City of Nottingham, in any analysis of the number of green spaces available. However, in Ofcom's view this would not in itself be likely to result in unfairness to the complainant. This was just one of a number of criteria used in the programme to assess each local authority. Further, it was reasonable to have expected viewers to have understood that urban areas might score relatively poorly in any analysis of the number of green spaces available.

Taking all of the above into account, Ofcom considered that the steps taken by Channel 4 to ensure that the material facts it presented about Nottingham in the programme as broadcast did not result in unfairness to the complainant, were reasonable.

Ofcom found no unfairness to the Council in this respect.

- (b) Ofcom then considered the Council's complaint that the programme made gratuitous, unfair and unsubstantiated references to gun crime, when this particular sub-section of crime was not one of the comparative categories of the survey.

Again, Ofcom requires broadcasters to take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom was not required to determine whether or not the statements made in the programme about gun crime in the City of Nottingham were true. Instead it was required to determine two things:

whether in Ofcom's opinion the broadcaster took the "reasonable care" required by the Ofcom Broadcasting Code; and,

whether in Ofcom's opinion material facts had been presented, disregarded or omitted in a way that was unfair to the complainant.

In determining this, Ofcom first considered the adequacy of the steps taken by the programme makers. In doing so Ofcom specifically considered whether or not it was reasonable for the programme makers to rely on the information relating to gun crime supplied by the police.

The programme makers contacted the Nottinghamshire Police Press Office prior to the programme to obtain the gun crime statistics for the City of Nottingham. They were told that there had been 59 recorded incidences of guns being fired and 61 incidences of robberies involving gun crime.

The programme reported this information as follows:

"Last year there were 120 gun related incidents - that's over two every week."

Both the complainant and broadcaster now agree that this information (provided by the Nottinghamshire Police Press Office) in fact related to Nottinghamshire, the County as a whole, and not the City of Nottingham. The information, as presented in the programme, was therefore demonstrably inaccurate. The broadcaster stated that they only became aware of this error when compiling information needed to respond to this complaint (after the programme was broadcast).

Ofcom considered that there was no persuasive evidence before it to suggest that the programme makers knowingly misrepresented these facts in the programme, as suggested by the complainant. Further, although the statistics were later proved to be incorrect, it was in Ofcom's view reasonable for the programme makers to consider the police to be a reliable and authoritative source of information of this kind and appeared, on the evidence available, to have reported the information in good faith.

Ofcom next considered whether or not (in any event) the programme makers had presented, disregarded or omitted material facts in a way that is unfair to the complainant. In doing so, Ofcom considered the comments that were made relating to gun crime (and the fact that the statistics were later revealed to be inaccurate) as well as the context in which those comments were made.

The programme made clear that (according to their analysis of official statistics) the City of Nottingham came "second from bottom for crime".

The programme went on to state that:

"Reading beyond the stats the city has been plagued by drug-related gun battles."

It also stated that:

"Last year there were 120 gun related incidents - that's over two every week."

Ofcom acknowledged that the Home Office did not publish comparative statistics in respect of gun crime. However, they did provide comparative data on crime generally (broken down into six key offences) which were analysed by the expert statistician engaged by the programme makers. On the basis of these figures (as analysed by the programme's statistician) the City of Nottingham was found to be, on crime alone, placed 433rd out of 434 local authorities.

Ofcom considered that the City of Nottingham's place as "second worst place to live" was determined following an analysis of all the clearly outlined criteria and with a particular focus on its poor performance in relation to crime generally (not gun crime). The programme's comments concerning gun crime (which were described in the programme as "reading beyond the stats") did not affect the City's position as "second worst place to live" and would not therefore have materially affected viewers understanding of the City of Nottingham in a way that was unfair to the Council.

In reaching this decision Ofcom noted the conflict between the parties over whether the City of Nottingham represented the most significant urban area in the County of Nottinghamshire and whether or not it could therefore be said to

represent the majority of the gun crime statistics for the area. Ofcom also took into consideration that, on the evidence available to it, there appeared to be some general confusion and disagreement between local politicians and Councillors about the extent of gun crime in the area.

Ofcom was not persuaded by the Council's argument that it was never appropriate to make "tongue in cheek remarks about gun crime" and considered that, in any event the light-hearted nature of some of the comments was not, in the particular circumstances, capable of materially affected viewers understanding of the City of Nottingham in a way that was unfair to the Council.

Ofcom also noted the Council's argument that Channel 4's justification for highlighting gun crime which the Channel claimed was "widely reported" in the press was unfair because the press claims were unsubstantiated. Ofcom was not required to determine whether earlier claims made in the print media concerning gun crime in Nottingham were true or not. As noted above Ofcom was required to consider the steps taken by the programme maker and whether the presentation of these matters in the programme as broadcast was unfair.

In all these circumstances, Ofcom considered that the programme makers took reasonable care to satisfy themselves that material facts had not been presented, disregarded or omitted in a way that was unfair to the complainants. As stated above, the data was provided by a reliable and authoritative source and reported in good faith. Further, the programme's presentation of the data (which was later found to be inaccurate) was unlikely to have materially affected viewers understanding of the City of Nottingham in a way that was unfair to the complainants. Ofcom found no unfairness to the Council in this respect.

The complaint of unjust or unfair treatment was not upheld.

Complaint by Mr John Glester

Tonight with Trevor McDonald, ITV1, 17 March 2006

Summary

Ofcom has not upheld this complaint of unfair treatment in the broadcast of the programme.

Mr John Glester, chairman of the Merseyside Pathfinder Housing Market Renewal Scheme ("NewHeartlands") complained that both he and the NewHeartlands scheme were treated unfairly in an edition of the ITV1 current affairs programme *Tonight with Trevor McDonald*. The programme examined the government's Pathfinder Housing Market Renewal Scheme ("Pathfinder") and in particular arguments for and against the demolition of houses as part of this scheme. The programme included an interview with Mr Glester and examined Pathfinder schemes in different areas of the country.

Mr Glester complained that the programme: unfairly depicted the extent of support for the Pathfinder scheme; unfavourably featured him from a side camera angle; re-used footage of a re-furbished house suggesting the refurbishment had been a success; focussed on demolition when this accounts for only 1% of the work of the Pathfinder scheme; described him as responsible for overseeing demolition; and, failed to make clear measures are in place to help residents buy new homes following demolition.

ITV responded that the programme: included contributions from both sides of the debate on demolition; the camera angle was limited by the interview location; the refurbishment was accurately described; the programme focussed on demolition as the aspect of the Pathfinder scheme over which there is a difference of opinion; Mr Glester's responsibilities as chairman of NewHeartlands include its demolition work; and, measures to help residents buy properties following demolition were explained by the appropriate government minister.

Ofcom concluded that while the programme looked at the issue of demolition from a particular perspective, it was entirely appropriate for the programme makers to exercise editorial freedom in highlighting this aspect of the Pathfinder scheme as long as material was fairly presented. Ofcom found that contributions from both sides of the argument featured in the programme; the camera angle of Mr Glester's interview did not disadvantage him; the refurbishment footage was signalled as re-used material and fairly used; the programme fairly described an aspect of Mr Glester's responsibilities; and, the programme fairly included material concerning measures to help residents following demolition.

Accordingly, the complaints of unfair treatment were not upheld.

Introduction

This edition of the series *Tonight with Trevor McDonald*, was subtitled *Bulldozer Battles* and examined the government's Pathfinder Housing Market Renewal Scheme. This is an initiative which seeks to modernise housing stock across different regeneration areas in England and includes both refurbishment and demolition work. The programme considered whether the demolition of housing under local Pathfinder schemes led to much needed regeneration or destroyed local communities and their access to affordable housing.

The programme included interviews, at a national and local level, with those in favour of demolition and rebuild on the one hand, and with those arguing for the refurbishment of their existing homes on the other. One of the regeneration areas considered by the programme was the part of Liverpool known locally as the Welsh Streets area. The programme included footage of the renovation of a dilapidated house in this area, carried out for a previous edition of the programme on the same topic.

The programme included an interview with Mr John Glester, chairman of NewHeartlands which is the Merseyside Pathfinder scheme. Mr Glester complained that he was treated unfairly in the programme as broadcast. He also complained of unfair treatment on behalf of the NewHeartlands Pathfinder scheme.

The Complaint

Mr Glester's case

In summary, Mr Glester complained that he and the NewHeartlands Pathfinder Scheme were treated unfairly in that:

- a) In each of the regeneration areas featured in the programme only the views of a minority of people living in the area - those against demolition - were covered in great depth, resulting in unfairness to the NewHeartlands Pathfinder scheme by association with the other Pathfinder schemes.
- b) In the Welsh Streets area featured in the programme, 70 per cent of people supported the clearance of properties but none were interviewed for the programme. This was in spite of the fact that NewHeartlands had offered a list of 26 people willing to speak to the programme-makers and resulted in an unfair portrayal of support for the NewHeartlands scheme.
- c) The programme used old footage (interviews with two residents in favour of demolition) filmed in May 2005, in order to make the programme seem balanced and fair. This footage lasted less than a minute while the interview with the resident who was against the clearance featured throughout the programme resulting in an unfair portrayal of support for the NewHeartlands scheme.
- d) The programme featured Mr Glester from a side angle which made him appear as if he couldn't look people in the eye and was hiding something, and compared unfavourably with the filming of the interviewee from Save British Heritage who made the opposing case i.e. against demolition, resulting in unfairness to Mr Glester.
- e) The programme included a total of twelve segments of interview against the Pathfinder schemes, and only seven in favour which included three clips of the Housing Minister Yvette Cooper. This resulted in unfairness to the NewHeartlands Pathfinder scheme by association with the other schemes.
- f) The programme used footage of a house in the Welsh Streets area refurbished the previous year by ITV for an earlier programme, making it appear that the refurbishment work on the house had been a success and not explaining that the house is now boarded up and no one lives in it, which was unfair to the presentation of the NewHeartlands scheme.
- g) The tone of the programme was pre-decided and focussed on demolition, despite the fact that only 1% of the houses in the Merseyside Pathfinder scheme will be demolished, resulting in an unfair presentation of the NewHeartlands scheme.

- h) The programme described Mr Glester as “the man responsible for overseeing the clearance” which is not his role and resulted in an unfair portrayal of Mr Glester.
- i) The programme portrayed a case from the Manchester/Salford Pathfinder in which a man was unable to afford a new house, which was untrue as the Pathfinder scheme has a number of measures in place to help residents. This was not made clear and resulted in unfairness to the NewHeartland Pathfinder by association with the other schemes.

ITV's case

In summary ITV responded to the fairness complaint as follows:

- a) The basis for the programme was the difference of opinion over the impact and desirability of the government's Pathfinder initiative which combined demolition, building of new homes and refurbishing existing ones. There were those in favour of demolition while others were opposed to demolition. The scale of those opposed was unclear but according to the Office of the Deputy Prime Minister may be substantial. The programme included interviews with experts in favour of the initiative and of demolition plans including John Glester of the Merseyside Pathfinder scheme, the Minister for Housing and Planning Yvette Cooper MP and Mike Cook of Burnley Borough Council. Adam Wilkinson of Save British Heritage who opposed demolition was also interviewed. At a human level the programme interviewed a number of residents most of whom were upset by demolition. Both the studio introduction and programme commentary put both sides, namely regeneration and demolition. Overall, the programme fairly covered the central issues on which opinion is strongly divided.
- b) The programme's commentary made clear that the Government said 70 per cent of residents in the Welsh Streets area favoured demolition and this figure was repeated by Mr Glester in interview. ITV argued that this statistic was misleading as some of those in favour of demolition/regeneration are living in areas due to be renovated rather than demolished but the programme allowed it to stand uncontested.

NewHeartlands provided the programme with a list of three residents, and an offer of more than twenty others, in favour of the scheme. One had been interviewed at length and was included in the programme, another was too ill to contribute (see also response at head c).

- c) As was routine practice in documentaries and news and current affairs programmes, the programme re-used interviews with two residents in favour of the demolition plans. The interviews had been conducted the previous year, and had been included in an earlier programme on the topic. It was established that their views were unchanged and they did not object to the re-use of their contributions.
- d) The programme makers utterly refuted any suggestion that camera angles or any other aspects of the interview were constructed in order to disadvantage Mr Glester. The team had wanted to record the interview in a location, such as a hotel suite, which could have been lit in a way that stylistically sat easily with the rest of the programme, however they were told the interview could only be conducted at NewHeartlands offices and the room provided was long, narrow and with windows down one side. This made lighting very difficult but the team did the best they could in the circumstances demanded of them.

- e) The issue of balance is set out at head a) above. ITV argued that a quantitative approach to measuring each side of the argument presented was not a practical yardstick of fairness. There was no requirement on broadcasters to balance opposing words by the stopwatch or word-count.
- f) The footage of the house renovated by ITV for an earlier *Tonight* programme was not used misleadingly. The programme made clear that renovation was carried out the previous year and made no claims about what subsequently happened to the property. The programme sought to show that renovation was a viable financial option, costing far less than demolishing and rebuilding a property. The programme makers understood that it was subsequently sold but was not occupied, as it was one renovated house in a street earmarked for demolition.
- g) As discussed above at head a) the scale of demolition was unclear but may be substantial. The programme focussed on demolition because this was where the difference of opinion lay, not over regeneration more broadly. In the programme Mr Glester referred to developing areas and refurbishment of existing properties. The interview with government minister Yvette Cooper MP made clear the broader Pathfinder initiative aims of regeneration of neglected areas. It was made clear throughout the programme that the regeneration initiative included development and refurbishment work as well as demolition.
- h) The programme's understanding was that Mr Glester was chairman of the board members for NewHeartlands which was responsible for restructuring the local housing market by demolishing some properties, refurbishing others and developing areas. The programme interviewed him on the basis that he had overall responsibility for the scheme including, and in particular, its demolition work.
- i) The programme made clear that those who could not afford to buy a new house, from the compensation received following the demolition of the old one, would be entitled to equity loans and a right of appeal. This was explained by the Government Minister, Yvette Cooper MP, in her interview.

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.

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 Glester's complaint was considered by Ofcom's Executive Fairness Group which considered the complaint and the broadcaster's response, together with a recording of the programme as broadcast. Ofcom noted that the complaint of unfair treatment was entertained in so far as it related to Mr Glester and the NewHeartlands Pathfinder scheme. Complaints relating to third parties including the national Pathfinder scheme were considered only in so far as they related to alleged unfairness to Mr Glester and the NewHeartlands Pathfinder scheme.

In the circumstances of this case Ofcom found the following:

- a) Ofcom considered Mr Glester's complaint that in each of the regeneration areas featured in the programme only the views of a minority of people living in the area (those against demolition) were covered in great depth, resulting in unfairness to the NewHeartlands Pathfinder scheme by association with the other Pathfinder schemes.

In its consideration of Mr Glester's complaint Ofcom noted that this complaint of unfair treatment was entertained only in so far as it related to the NewHeartlands Pathfinder scheme. This complaint's reference to other Pathfinder schemes was considered only in so far as it related to alleged unfairness to the NewHeartlands Pathfinder scheme. However, Ofcom was alert to the potential risk that the treatment of Pathfinder schemes in other areas could, individually or cumulatively, affect the fair treatment of the NewHeartlands Pathfinder scheme.

Ofcom first considered the context of the programme as a whole which looked at the issue of regeneration in different areas: Liverpool; Salford near Manchester; and, Burnley and Stacksteads in Lancashire. In Ofcom's view the programme undoubtedly set out to look at a particular aspect of housing regeneration plans, namely the issue of demolition and the sensitivities surrounding this, from a particular perspective. The programme's opening commentary contrasted a "pleasant street of terraced houses" which is "highly valued and...valuable" with other areas, stating "elsewhere in the country the Government seems to have a rather different attitude to our heritage, that's because thousands of terraces are being torn down - part of a Government scheme called Pathfinder".

While it is entirely appropriate for programme makers to exercise editorial freedom and explore a particular issue, (in this case demolition and its consequences), programme makers must also ensure fairness to those directly affected by programmes. It was incumbent on the programme makers to ensure they took reasonable care to satisfy themselves that material facts had not been presented, disregarded or omitted in a way that was unfair to an individual or organisation (Practice 7.9 of the Ofcom Broadcasting Code).

Programme makers can quite legitimately select, omit or edit interviews provided for inclusion in a programme. Ofcom was not therefore concerned with whether particular interviewees were included in the programme or not. This is rightly an editorial decision for programme makers to take. Nor was Ofcom concerned with the number of (or length of) contributions made (and subsequently included in the programme) from each side of the debate regarding demolition. Rather Ofcom sought to determine whether the programme makers' actions were consistent with their obligation's to avoid unfair treatment of those directly affected by the programme. In particular Ofcom considered whether the programme makers took the reasonable care required by the Code to satisfy themselves that material facts had not been presented, disregarded or omitted in a way that was unfair to the NewHeartlands Pathfinder Scheme.

Ofcom noted that the programme included contributions both for, as well as against, demolition. Ofcom further noted that the programme's commentary clearly named each area of the country under consideration in each section of the programme so that different Pathfinder schemes were not confused with each other. The section of the programme which considered Liverpool and the NewHeartlands scheme included an interview with Mr Glester himself, Chairman of the NewHeartlands Pathfinder scheme in Liverpool, and the commentary included a reference to a wider survey of residents: "The Government says 70

per cent of resident here are actually in favour of demolition". This section also included contributions from two residents who supported demolition. Furthermore, the programme as a whole included further interviews in support of the Pathfinder scheme. Yvette Cooper MP, Minister for Housing and Planning, gave a national perspective on the government's scheme, which was used throughout the programme and Mike Cook of Burnley Borough Council explained decisions made in his area.

Ofcom therefore found that the programme did not result in unfair treatment of the NewHeartlands Pathfinder scheme in this regard.

- b) Ofcom then considered Mr Glester's second complaint that in the Welsh Streets area featured in the programme, 70 per cent of people supported the clearance of properties but none were interviewed for the programme, in spite of NewHeartlands offering a list of people willing to speak to the programme-makers, resulting in an unfair portrayal of support for the NewHeartlands scheme.

As discussed above at Decision head a), in Ofcom's view the programme undoubtedly set out to look at a particular aspect of housing regeneration plans, namely the issue of demolition and the sensitivities surrounding this, from a particular perspective. However, and again as discussed in detail above at head a) Ofcom was not concerned, in terms of fairness, with whether particular interviewees were included in the programme or not, nor with the number of (or length of) contributions made (and subsequently included in the programme) from each side of the debate regarding demolition. Rather Ofcom considered whether the programme makers took the reasonable care required by the Code to satisfy themselves that material facts had not been presented, disregarded or omitted in a way that was unfair to the NewHeartlands scheme.

As discussed above, Ofcom noted that the programme included contributions both for, as well as against, demolition at a national and local level. The section of the programme complained of, which dealt with the Welsh Streets area of Liverpool, included an interview with Mr John Glester, Chairman of the NewHeartlands Pathfinder scheme in Liverpool, and the commentary included a reference to a wider survey of residents: "The Government says 70 per cent of resident here are actually in favour of demolition". The programme also included contributions from two residents who supported demolition and Ofcom noted from the broadcaster's response that while the interviews had been conducted the previous year, the programme makers had established that the interviewees' views remained unchanged and there were no objections to the re-use of this material.

Ofcom therefore found that, in this regard, there was no unfairness to the NewHeartlands Pathfinder scheme.

- c) Ofcom considered Mr Glester's next complaint that the programme used old footage (interviews with two residents in favour of demolition) filmed in May 2005, in order to make the programme seem balanced and fair. Mr Glester complained that this footage lasted less than a minute while the interview with the resident who was against the clearance featured throughout the programme resulting in an unfair portrayal of support for the NewHeartlands scheme.

As discussed above at Decision head b), in including the footage of the two residents interviewed the previous year for an earlier programme, it was incumbent on the programme makers to ensure that they took reasonable care to satisfy themselves that material facts had not been presented,

disregarded or omitted in a way that was unfair to an individual or organisation (Practice 7.9 of the Ofcom Broadcasting Code).

As discussed in detail above at Decision head a), Ofcom was not concerned with the number of (or length of) contributions made (and subsequently included in the programme) from each side of the debate regarding demolition. Rather Ofcom considered whether the programme makers took the reasonable care required by the Code to satisfy themselves that material facts had not been presented, disregarded or omitted in a way that was unfair to the NewHeartlands scheme.

Ofcom was satisfied that in the re-use of the contributions from residents interviewed the previous year, the programme makers had taken all reasonable steps to establish that the interviewees' views remained unchanged and there were no objections to the re-use of this material. It was therefore fair and reasonable for the programme to include this material in presenting alternative perspectives on the issue of demolition.

Ofcom therefore found that, in this regard, there was no unfairness to the NewHeartlands Pathfinder scheme.

- d) Ofcom then considered Mr Glester's complaint that the programme featured him unfavourably from a side angle.

Ofcom viewed the interview with Mr Glester as broadcast and noted that he had been filmed from a side angle. Ofcom, noting Practice 7.2 of the Code which states that broadcasters and programme makers should be fair in their dealings with potential contributors, then considered whether this camera angle resulted in any unfairness to Mr Glester. In Ofcom's view there was nothing to indicate that the camera angle had, in any way, prevented Mr Glester from making a full contribution, nor in any way impeded him from getting his views across nor showed him in a bad light.

Ofcom therefore found that the interview camera angle resulted in no unfairness to Mr Glester.

- e) Ofcom considered Mr Glester's complaint that the programme included a total of twelve segments of interview against the Pathfinder schemes, and only seven in favour which included three clips of the Housing Minister Yvette Cooper. This resulted in unfairness to the NewHeartlands Pathfinder scheme by association with the other schemes.

As discussed in detail above at Decision head a), Ofcom was not concerned with the number of (or length of) contributions made (and subsequently included in the programme) from each side of the debate regarding demolition. Rather Ofcom considered whether the programme makers took the reasonable care required by the Code to satisfy themselves that material facts had not been presented, disregarded or omitted in a way that was unfair to the NewHeartlands scheme.

Again for the reasons set out in head a) above, Ofcom found that in view of the range of contributions included in the programme from both sides of the debate, at both national and local level, there was no unfairness to the NewHeartlands Pathfinder scheme in this regard.

- f) Ofcom next considered Mr Glester's complaint that the programme used footage of a house in the Welsh Streets area refurbished in May 2005, making it appear that the refurbishment work on the house had been a success and not explaining

that the house is now boarded up and no one lives in it, which was unfair to the presentation of the NewHeartlands scheme.

Ofcom took account of the obligations on broadcasters regarding the re-use of material. Ofcom's Broadcasting Code states that broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create unfairness (Practice 7.8).

In examining the section of the programme complained about, Ofcom noted that the re-use of the material featuring the makeover was clearly signalled in the programme's commentary which stated: "last year, the *Tonight* programme...", and the end of this section was again signalled in the programme's commentary with the words "This week I returned to Liverpool...". Ofcom considered that it would therefore have been likely that viewers would have been in no doubt as to the nature of the footage being shown.

In considering the complaint that the make over unfairly made it appear that the refurbishment work had been a success, Ofcom noted the obligations on broadcasters to ensure they take reasonable care to satisfy themselves that material facts had not been presented, disregarded or omitted in a way that was unfair to an individual or organisation (Practice 7.9 of the Ofcom Broadcasting Code).

Ofcom noted that the programme's commentary stated that the property featured was "A nineteenth century house - complete with a twenty first century spec". Ofcom further noted the broadcaster's submission which stated that the programme sought to show that renovation was a viable financial option, costing far less than demolishing and rebuilding a property. The footage of the property was followed by comments from local residents admiring the success of the changes made, however Ofcom considered that the commentary clarified the current status of the property when it described it as "one of the doomed houses" that are "going to be erased".

Ofcom therefore found that the programme's presentation of the makeover was not unfair to the NewHeartlands Pathfinder.

- g) Ofcom then considered Mr Glester's complaint that the tone of the programme was pre-decided and focussed on demolition, despite the fact that only 1% of the houses in the Merseyside Pathfinder scheme will be demolished, resulting in an unfair presentation of the NewHeartlands scheme.

As discussed above at Decision head a), in Ofcom's view the programme undoubtedly set out to look at a particular aspect of housing regeneration plans, namely the issue of demolition and the sensitivities surrounding this, from a particular perspective. While it is entirely appropriate for a programme maker to exercise editorial freedom and explore a particular issue (in this case demolition and its consequences) programme makers must also ensure fairness. It was incumbent on the programme makers to ensure they took reasonable care to satisfy themselves that material facts had not been presented, disregarded or omitted in a way that was unfair to an individual or organisation (Practice 7.9 of the Ofcom Broadcasting Code).

In its consideration of whether the programme was fair in its depiction of demolition within the wider aims of the Pathfinder scheme, and in particular the NewHeartlands Pathfinder, Ofcom noted that in the opening of the programme

the commentary described the aim of the Pathfinder scheme solely in terms of demolition:

“Thousands of terraces are being torn down - part of a government scheme called Pathfinder. The aim is to regenerate run-down areas by knocking down old houses and replacing them with new ones”.

However Ofcom also noted that in the section on Liverpool Mr Glester’s interview referred to the “refurbishing of homes round the corner” and ended by placing the issue of demolition within the context of “a major regeneration scheme”. Furthermore, later in the programme Yvette Cooper MP, Minister for Housing and Planning, explained that “we are seeing less than 1% of the housing being replaced”. In this context Ofcom considered that the presentation of the Pathfinder scheme was fair.

Ofcom therefore found that there was no unfairness to the NewHeartlands Pathfinder in this regard.

- h) Ofcom considered Mr Glester’s complaint that the programme described him as “the man responsible for overseeing the clearance” which is not his role and resulted in an unfair portrayal of Mr Glester.

Ofcom noted the broadcaster’s response on this issue: “It is our understanding that Mr Glester is chairman of the board members for NewHeartlands. The programme makers interviewed him on the basis that he had...responsibility towards the whole scheme, in particular the demolition work”.

The programme described Mr Glester as “the man responsible for overseeing the demolition of these streets [in Liverpool]”. As discussed above it was entirely appropriate for the programme makers to highlight concerns about a particular aspect of the Pathfinder scheme, namely demolition. In the context of this programme, Ofcom considered that it was appropriate to describe this aspect of Mr Glester’s responsibilities.

Ofcom therefore found that there was no unfairness to Mr Glester in this regard.

- i) Ofcom turned to Mr Glester’s final complaint that the programme portrayed a case from the Manchester/Salford Pathfinder in which a man was unable to afford a new house, which was untrue as the Pathfinder scheme has a number of measures in place to help residents, and resulted in unfairness to the NewHeartlands Pathfinder by association with the other schemes.

Ofcom noted that this section of the programme looked at a case in which a man was described as being forcibly evicted as part of demolition in Salford, and in receipt of compensation which fell far short of the amount needed to buy a new home. Ofcom further noted that this was followed by an interview with Yvette Cooper MP, Minister for Housing and Planning, in which she explained:

“A lot of the Pathfinder schemes are offering equity loans, they’re offering support for people to move home and they’re offering people alternatives. Now there is an independent tribunal so anybody who thinks they’re not getting a fair deal can appeal and they should do so because it’s right that people should get a fair deal.”

In Ofcom's view the programme fairly explained measures to help residents under the national Pathfinder scheme. Ofcom therefore found that no unfairness resulted to the NewHeartlands Pathfinder, by association with the other schemes, in this regard.

The complaints of unfair treatment were not upheld.

Complaint by Mrs Irene Milson on behalf of the WDC Tenants and Residents Association

Tonight with Trevor McDonald, ITV1, 17 March 2006

Summary

Ofcom has not upheld this complaint of unfair treatment in the broadcast of the programme.

Mrs Irene Milson, chairperson of the WDC Tenants and Residents Association (“WDC”) complained on behalf of residents represented by the WDC that they were treated unfairly in an edition of the ITV1 current affairs programme *Tonight with Trevor McDonald*. The programme examined the government’s Pathfinder Housing Market Renewal Scheme (“Pathfinder”) and in particular arguments for and against the demolition of houses as part of this scheme.

Mrs Milson complained that the community represented by the WDC was unfairly represented in the programme, that the programme showed footage of the makeover of a house which unfairly depicted the situation in the local area and unfairly depicted the aspirations of the community. ITV responded that the programme fairly represented the difference of views over the Pathfinder initiative, including those of the local community. ITV further responded that the footage of the renovated house was fairly represented and the programme made no suggestions regarding the aspirations of the local community.

Ofcom found that the programme was fair in its representation of local and national opinion concerning demolition and that the depiction of the makeover of a house in the local area was fair. Ofcom found that no comments were made in the programme regarding the aspirations of the local community and there was therefore no unfairness in this regard.

Accordingly, the complaints of unfair treatment were not upheld.

Introduction

This edition of the series *Tonight with Trevor McDonald*, was subtitled *Bulldozer Battles* and examined the government’s Pathfinder Housing Market Renewal Scheme (“Pathfinder”). This is an initiative which seeks to modernise housing stock across different regeneration areas in England and includes both refurbishment and demolition work. The programme considered whether the demolition of housing under local Pathfinder schemes led to much needed regeneration or destroyed local communities and their access to affordable housing.

The programme included interviews, at a national and local level, with those in favour of demolition and rebuild on the one hand, and with those arguing for the refurbishment of their existing homes on the other. One of the regeneration areas considered by the programme was the part of Liverpool known locally as the Welsh Streets area. The programme included footage filmed in the Welsh Streets area: interviews with local residents; and, footage of a make-over of a dilapidated house in this area, carried out for a previous edition of the programme on the same topic.

Mrs Milson, chairperson of the Windermere, Dovetail and Camelot Tenants and Residents Association (“WDC”) complained on behalf of the residents represented by the WDC that they were treated unfairly in the programme as broadcast. She stated that the

WDC is a residents' association which represents three estates (Windermere, Dovetail and Camelot) and includes the Welsh streets area featured in the programme.

The Complaint

Mrs Milson's case

In summary, Mrs Milson complained that residents represented by the WDC were treated unfairly in that:

- a) The programme was unfairly biased against the community represented by the WDC, in that people who were in favour of demolition were interviewed but not shown.

Furthermore, the programme did not fairly represent the wider views of the community (when 72% of the community voted for demolition and this has now risen to 83%).

- b) The programme showed footage of a house in the Welsh Streets area, on which the programme had spent £25,000 on a makeover, which was taken from May 2005, not at the time of broadcast when it was boarded up. This was an unfair depiction of the situation in the community's local area.

Furthermore, the makeover was a sham and had no running water, damp course or new windows. This upset the 83% of the community in favour of demolition as it made it seem as if they aspire to damp crumbling houses infested by rats, when in fact they want decent houses.

ITV's case

In summary ITV responded to the fairness complaint as follows:

- a) The basis for the programme was the difference of opinion over the impact and desirability of the government's Pathfinder initiative which combined demolition, building of new homes and refurbishing existing ones. There were those in favour of demolition while others were opposed to demolition. The scale of those opposed was unclear but according to the Office of the Deputy Prime Minister may be substantial. The programme included interviews with experts in favour of the initiative and of demolition plans including John Glester of the Merseyside pathfinder scheme, the Minister for Housing and Planning Yvette Cooper MP and Mike Cook of Burnley Borough Council. Adam Wilkinson of Save British Heritage who opposed demolition was also interviewed. At a human level the programme interviewed a number of residents most of whom were upset by demolition. Both the studio introduction and programme commentary put both sides, namely regeneration and demolition. The programme included interviews with two residents in favour of the demolition plans. As was routine practice in documentaries and news and current affairs programmes, the programme re-used interviews, conducted the previous year and included in an earlier programme on the topic. It was established that the interviewees' views were unchanged and they did not object to the re-use of their contributions.

The programme's commentary made clear that the Government said 70 per cent of residents in the Welsh Streets area favoured demolition and this figure was repeated by Mr Glester in interview. ITV argued that this statistic was misleading as some of those in favour of demolition/regeneration are living in

areas due to be renovated rather than demolished but the programme makers were happy to let the figure stand uncontested.

- b) The programme's presentation of the renovated house by ITV was absolutely fair in context. The commentary stated:

Commentary: But last year, the Tonight programme set interior designer Julia Kendell and builder Tim Foley a challenge: renovate one of the doomed houses - make it fit to live in again.

Designer to camera: Cracks in the ceiling...you can almost feel the damp in here.

Commentary: They did just that - and look at the results. A nineteenth century house - complete with twenty first century spec. All this cost just £24,000. Not much more than it costs, apparently, to knock it down. And a lot less than the price of building a new home in its place.

The commentary reported that the earlier programme had economically made the house "fit to live in". That it was not presently lived in was irrelevant and no unfairness arose to the community from the programme's reporting.

The programme makers refuted absolutely the complaint that "the makeover was a sham". The schedule of works on the property was drawn up on the advice of a qualified structural surveyor and after the work was carried out it was inspected and fully approved by a Liverpool City Council building inspector. The house was fully plumbed and, although it could not be connected to the mains before the end of filming, full provision was made for running water. The building inspection confirmed that the damp proofing and timber treatment was carried out satisfactorily. The windows were renovated to approved standards and undertaken with comprehensive guarantees. The programme did not suggest, explicitly or implicitly, that those in favour of demolition aspired to sub-standard housing.

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.

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.

Mrs Milson's complaint was considered by Ofcom's Executive Fairness Group. Ofcom considered the complaint and the broadcaster's response, together with a recording of the programme as broadcast.

In the circumstances of this case Ofcom found the following:

- a) Ofcom considered Mrs Milson's complaint that the programme was unfairly biased against the community represented by the WDC, in that: people who were in favour of demolition were interviewed but not shown; and, the wider views of the community were not fairly represented.

Ofcom first considered the context of the programme as a whole which looked at the issue of regeneration in different areas: Liverpool; Salford near Manchester; and, Burnley and Stacksteads in Lancashire. In Ofcom's view the programme undoubtedly set out to look at a particular aspect of housing regeneration plans, namely the issue of demolition and the sensitivities surrounding this, from a particular perspective. The programme's opening commentary contrasted a "pleasant street of terraced houses" which is "highly valued and...valuable" with other areas, stating "elsewhere in the country the Government seems to have a rather different attitude to our heritage, that's because thousands of terraces are being torn down - part of a Government scheme called Pathfinder".

While it is entirely appropriate for programme makers to exercise editorial freedom and explore a particular issue (in this case demolition and its consequences) programme makers must also ensure fairness. It was incumbent on the programme makers to ensure that they took reasonable care to satisfy themselves that material facts had not been presented, disregarded or omitted in a way that was unfair to an individual or organisation (Practice 7.9 of the Ofcom Broadcasting Code).

Programme makers can quite legitimately select, omit or edit interviews provided for inclusion in a programme. Ofcom was not therefore concerned with whether particular interviewees were included in the programme or not. This is rightly an editorial decision for programme makers to take. Nor was Ofcom concerned with the number of (or length of) contributions made (and subsequently included in the programme) from each side of the debate regarding demolition. Rather Ofcom sought to determine whether the programme makers' actions were consistent with their obligations to avoid unfair treatment of those directly affected by the programme. In particular Ofcom considered whether the programme makers took the reasonable care required by the Code to satisfy themselves that material facts had not been presented, disregarded or omitted in a way that was unfair to the community represented by the WDC.

Ofcom noted that the programme included contributions both for, as well as against, demolition. An interview with Yvette Cooper MP, Minister for Housing and Planning, who gave a national perspective on the government's scheme, was used throughout the programme. The section of the programme complained of, which dealt with the Welsh Streets area of Liverpool, included an interview with Mr John Glester, Chairman of the NewHeartlands Pathfinder scheme in Liverpool regarding the scheme in the local area, and the commentary included a reference to a wider survey of residents:

"The Government says seventy per cent of residents here are actually in favour of demolition".

The programme also included contributions from two residents who supported demolition and Ofcom noted from the broadcaster's response that while the interviews had been conducted the previous year, the programme makers had established that the interviewees' views remained unchanged and there were no objections to the re-use of this material.

Ofcom therefore found that, in this regard, there was no unfairness to the community represented by the WDC.

- b) Ofcom next considered Mrs Milson's complaint that: the programme unfairly depicted the situation in the local area by showing footage from May 2005 of the

makeover of a house in the Welsh Streets area; and, the makeover was a sham and unfairly depicted the aspirations of the community.

Ofcom took account of the obligations on broadcasters regarding the re-use of material. Ofcom's Broadcasting Code states that broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create unfairness (Practice 7.8).

In examining the section of the programme complained about, Ofcom noted that the re-use of the material featuring the makeover was clearly signalled in the programme's commentary which stated: "last year, the *Tonight* programme...", and the end of this section was again signalled in the programme's commentary with the words "This week I returned to Liverpool...". Ofcom considered that it would, therefore, have been likely that viewers would have understood the nature of the footage being shown. The commentary clarified the current status of the property when it described it as "one of the doomed houses" that are "going to be erased".

In considering the complaint that the makeover was a sham and unfairly depicted the aspirations of the community, Ofcom took account of the obligations on broadcasters to ensure they take reasonable care to satisfy themselves that material facts had not been presented, disregarded or omitted in a way that was unfair to an individual or organisation (Practice 7.9 of the Ofcom Broadcasting Code).

Ofcom noted that the programme's commentary stated that the property featured was "A nineteenth century house - complete with a twenty first century spec". Ofcom further noted the broadcaster's submission which stated that the property was inspected and fully approved by a Liverpool City Council building inspector. The footage of the property was followed by comments from local residents admiring the changes made. At no point did the programme state, or imply, that the local community aspired to sub-standard housing.

Ofcom therefore found that the programme's presentation of the makeover was not unfair to the community represented by the WDC.

The complaints of unfair treatment were not upheld.

Other Programmes Not in Breach/Out of Remit

19 January 2007 - 2 February 2007

Programme	Trans Date	Channel	Category	No of Complaints
Alternative Christmas Message	25/12/2006	Channel 4	Religious Issues	2
Casualty	14/10/2006	BBC1	U18 /Coverage of Sexual/other offences	1
Champions League Live	21/11/2006	ITV1	Violence	1
Commander In Chief	07/11/2006	More4	Advertising	1
Don't Get Me Started	19/09/2006	Five	Crime (incite/encourage)	3
Eastenders	25/08/2006	BBC1	Violence	1
F1: Japanese Grand Prix	08/10/2006	ITV1	Advertising	1
Guns are Cool	18/01/2007	Channel 4	Inaccuracy/Misleading	1
The Perfect Parents	28/12/2006	ITV1	Religious Offence	1
The Politics Show	14/01/2007	BBC One	Due Impartiality/Bias	2
Today	27/01/2007	BBC Radio 4	Due Impartiality/Bias	1
Trail	06/11/2006	STV	Offensive Language	2