

# **Ofcom Broadcast Bulletin**

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## Introduction

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes and licence conditions with which broadcasters regulated by Ofcom are required to comply. These include:

- a) Ofcom's Broadcasting Code ("the Code"), the most recent version of which took effect on 1 September 2010 and covers all programmes broadcast on or after 1 September 2010. The Broadcasting Code can be found at:  
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

Note: Programmes broadcast prior to 1 September 2010 are covered by either the 2009, 2008 or the 2005 versions of the Code (depending on the date of their broadcast).

- b) the Code on the Scheduling of Television Advertising ("COSTA") which came into effect on 1 September 2008 and contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at:  
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>.

- c) certain sections of the BCAP Code: the UK Code of Broadcast Advertising, which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
- the prohibition on 'political' advertising;
  - sponsorship (see Rules 9.2 and 9.3 of the Code);
  - 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising<sup>1</sup>; and
  - the imposition of statutory sanctions in advertising cases.

The BCAP Code can be found at:

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

- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information on television and radio licences can be found at: <http://licensing.ofcom.org.uk/tv-broadcast-licences/> and <http://licensing.ofcom.org.uk/radio-broadcast-licensing/>.

Other codes and requirements may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at:

<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/>

It is Ofcom's policy to describe fully the content in television and radio programmes that is subject to broadcast investigations. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.

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<sup>1</sup> BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted.

## Note to broadcasters

### 'Apps' and audience participation in programming

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#### Introduction

'Apps' are software applications downloaded to mobile phones and related devices.

It has become reasonably common for some broadcasters to include references within their programmes to *free* apps. These apps include, for example, offers of programme-themed games, or those that enable users to access behind-the-scenes footage of a particular programme. In general, **this type of app would meet the Code's definition of programme-related material (PRM)**, and the relevant rules in Section Ten of the Code apply.

However, Ofcom has also recently considered the suitability under the Code of apps **as a way to charge the audience to participate in programming**, e.g. an app which enables the user to buy votes or broadcast competition entries, and so participate or interact in programming.

If a broadcaster invites its audience to participate in or interact with programming, the Code requires that it may only charge for such activities:

“...by means of premium rate telephone services or other telephony services based on revenue-sharing arrangements” (**Rule 10.9**).

#### Is a paid-for app a telephony service?

Rule 10.9 (see above) serves to ensure that paid-for interaction between a viewer or listener and a broadcaster takes place through a *means of communication* rather than merely a money transfer instrument. In other words it seeks to prevent participation in programming by payment methods like credit cards, for example. In short, it ensures that a distinction is maintained between editorial content and advertising, and that programmes do not become vehicles for advertisements. To date, paid-for participation in programming has therefore been limited to telephony services (phone/text).

More is said about this in Ofcom's published guidance to the Code: see [http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/section10\\_2009.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/section10_2009.pdf).

However, Ofcom recognises the pace of change and innovation in the sector, and the advantages that evolving technologies offer to viewers and listeners. We also understand that licensees will want to add emerging proprietary platforms to ways that viewers and listeners can contact them or interact with them, where this involves an additional element of financial benefit for the licensee.

**We have therefore concluded that, in principle, the use of apps to charge the audience for participation is an acceptable form of premium-rated telephony service for the purposes of Rule 10.9.** This applies in cases where the app itself is paid-for, or where the app is free but enables payment to be taken - for example, to purchase a number or block of votes or competition entries. (The effect of this decision is confined to the Broadcasting Code: it does not affect the status of apps as premium rate services or otherwise under other codes or rules, such as the PhonepayPlus code or other provisions of the Communications Act 2003.) Currently,

we envisage that such apps will be linked to telephony platforms, i.e. they will not be self-standing mechanisms such as websites, independently existing payment methods and the like. We are however prepared to re-examine this area should developments make it desirable to do so.

#### What are the key considerations for broadcasters?

To comply with **Rule 10.9**, a key requirement for broadcasters to consider is whether revenue from the audience's use of such an app is shared, for example with the platform owner or service provider.

The app must also meet the requirements of **Rule 10.10** ("...enabling viewers/listeners to participate directly in or otherwise contribute directly to the editorial content of the programme" or meeting the definition of PRM) and **Rule 10.11** ("...where a premium rate service is featured in a programme, the primary purpose of the programme must continue to be clearly editorial. Promotion of the featured premium rate service must be clearly subsidiary to that primary purpose").

As with the use of conventional premium-rated telephony, apps will be subject to all other relevant rules in the Code. This includes, in particular, **Rules 10.1 to 10.5** which govern editorial independence and the need to avoid it being compromised by the promotion of, or unjustifiable exposure for, products and services in programming.

#### Undue prominence

Licensees should feature acceptable paid-for participation routes only in a manner and to an extent that can be editorially justified. General guidance on undue prominence and editorial justification can be found in Section Ten Code guidance (see weblink above). This contains advice on the use of PRS which is directly relevant to the use of apps.

However, a significant difference between conventional premium rate services (PRS) and apps is that the former are non-proprietary and the latter are not. Apps are created for particular platforms and devices. This gives rise to additional questions of undue prominence where programming references to participation or interaction through a particular app gives exposure to a specific platform operator or device manufacturer, or both.

Undue prominence will be a particular concern where a premium-rated app tied to only one platform is the sole means for viewers to participate. One way of managing this risk is to ensure that such an app is one of a range of possible other entry routes, such as conventional voice and text mechanisms. Of course, even in such circumstances, exposure for the app must be appropriately limited so as to comply with the undue prominence rule.

#### TV licensees: voting and competition entry: licence conditions and verification

In 2008 Ofcom varied all its television licences to include conditions that made clear that the licensee remains responsible for all communication with viewers. The conditions cover all forms of communications that are publicised in programmes. In particular, the conditions specify what constitutes a PRS, and require that where PRS are used for the purpose of viewer voting or competition entries, third party verification is required.

Where one of the possible entry routes is a PRS and verification is therefore required, all votes and entries, including those submitted via non-PRS routes, must be verified for the PRS verification to retain its integrity. For example, this applies to free entries to audience competitions that also include PRS entry routes.

Therefore in cases where paid-for participation via apps does not fall within the definition of PRS, those apps would not, *in themselves*, require third party verification for their use in voting or competitions. **However, licensees who use such apps alongside conventional PRS should be aware that all votes and entries made through apps (and other non PRS-means) should be included in a scheme of verification, in line with the licence conditions.**

This note will be included in the updated Ofcom guidance to accompany the revised Code, following the conclusion of Ofcom's ongoing review of Sections Nine and Ten.

## Standards cases

### In Breach

#### IslamiQa

*The Islam Channel, 18 May 2008*

#### Muslimah Dilemma

*The Islam Channel, 12 April 2009*

#### IslamiQa

*The Islam Channel, 30 October 2009*

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**This Finding was amended following a review by the Broadcasting Review Committee in relation to *Muslimah Dilemma*. The sections of the Finding below relating to *Muslimah Dilemma* have been removed.**

The Review Decision published in Issue 196 of the Broadcast Bulletin replaces the decision published here in relation to *Muslimah Dilemma*, and can be viewed on the Ofcom website at:

<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb196/>.

### Introduction

The Islam Channel is a specialist religious channel that broadcasts on the Sky digital satellite platform and is directed at a largely Muslim audience in the UK. Its output ranges from religious instruction programmes to current affairs and documentary programmes.

In March 2010, the Quilliam Foundation (“Quilliam”), which describes itself as a “counter-extremism” think-tank, published a report *De-programming British Muslims – Sky Channel 813*<sup>1</sup> (“the Quilliam Report”). The Quilliam Report was an analysis of the output of a range of the Islam Channel’s output over a number of months, looking in particular at various religious and political programmes broadcast in 2008 and 2009.

The Quilliam Report made a number of allegations about compliance of the Islam Channel with the Code. In Ofcom’s view, some of these allegations raised potential issues under the Code as regards harm and offence. Ofcom therefore requested recordings of the relevant material relating to a small number of programmes. Having watched the output, Ofcom decided to investigate the following three programmes in relation to harm and offence issues. In these programmes the presenters and their guests all spoke in English.

#### IslamiQa, 18 May 2008

*IslamiQa* is a ‘phone-in’ programme where viewers pose the presenter questions, by telephone, asking for religious-based advice on a range of issues. In this particular programme, we noted a telephone call from a female caller asking:

*“If your husband is hitting you, do you have the right to hit him back?”*

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<sup>1</sup> The Quilliam Report is available at:

<http://www.quilliamfoundation.org/images/stories/islamchannelreport.pdf>

As part of his response back to this caller, the presenter, Sheikh Abdul Majid Ali, gave the following advice:

*“And as far as the hitting is concerned, in Islam we have no right to hit the woman in a way that damages her eye or damages her tooth or damages her face or makes her ugly. Maximum what you can do, you can see the pen over here, in my hand, this kind of a stick can be used just to make her feel that you are not happy with her. That’s the only maximum that you can do, just to make her understand. Otherwise your husband has no right to hit you that way and at the same time even if he has done that, may Allah forgive him”.*

Ofcom asked the broadcaster how the presenter’s comments to the caller, including the above, had complied with Rule 2.3 of the Code, which states:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context”.

#### IslamiQa, 30 October 2009

In this edition of *IslamiQa* the issue of women wearing perfume was discussed. We noted that during this programme, the presenter, Sheikh Abdul Majid Ali, received a telephone call from a female caller asking:

*“You know when you buy perfume, some have alcohol in it. Is it OK...when you pray while you have the cream on?”*

As part of his response back to this caller, the presenter gave the following advice:

*“But, when it comes to the woman using the perfume, then we have to be very, very careful. A woman is allowed to use perfume only for her husband. Woman – if she goes out, from her house – applying – wearing perfume. And even if she goes to the Masjid [mosque] to pray, and her smell of the perfume is smelt by the strangers. Non-Mahram. Opposite sex people. Then she is declared as a prostitute by Rasool Allah [the Prophet Mohammed]”.*

Ofcom asked the broadcaster how the presenter’s comments to the caller, including the above, had complied with Rule 2.3 of the Code.

## **Response**

In its response, the Islam Channel said that given that the programmes were broadcast during 2008 and 2009, it was “unreasonable for Ofcom to now raise issues relating to programmes that were allegedly broadcasted such a time ago, whereby a broadcaster only needs to retain footage for 60 days under the licence conditions”. However, the broadcaster provided the following comments in relation to the programmes.

#### IslamiQa, 18 May 2008

The Islam Channel said that *IslamiQa* is a daily “live answer session where viewers’ questions are answered by Islamic scholars from around the United Kingdom”. This particular programme was presented by Abdul Majid Ali, whom the broadcaster described as “an eminent scholar who has been presenting on Islam Channel for over 2 years”.

According to the Islam Channel, the presenter’s comments should be seen in context, and that he was not condoning or encouraging violence towards women. In

summary, the broadcaster said that the presenter was asked a question as to whether the female caller can use violence against her husband, to which the presenter said she should not; went on “to comment and clarify Islamic teaching that is misinterpreted in relation to this topic”; and stated that the act of hitting a woman is “evil”.

In addition, the broadcaster pointed to the following references from the Qur’an and Hadith<sup>2</sup> which provided backing for the presenter’s comments

Qur’anic reference:

“As to those women on whose part you see ill-conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly, if it is useful); but if they return to obedience, seek not against them means (of annoyance). Surely, Allah is Ever Most High, Most Great” (An-Nisa’ 4:34).

Hadith Reference:

“Ata said: ‘I said to Ibn ‘Abbaas, “what is the kind of hitting that is not harsh?” He said, “Hitting with a siwaak<sup>3</sup> and the like”. Al-Hasan al-Basri said: “This means that it should not cause pain”.

The Islam Channel said that following on from the Hadith reference: “The presenter in his response therefore uses a pen as a comparison to the ‘Siwaak’ which is a light twig and taps his own hand to show that it is unjustifiable to hit a woman which could in any way cause any harm, damage or pain”. In addition, the broadcaster said that “This Islamic evidence is similar to the law in the UK, which allows a parent to hit their child as long as it does not cause any visible marks”.

The Islam Channel also pointed to a range of contextual factors that should be taken into account when considering the presenter’s comments. These included the fact that: the presenter was giving advice from an Islamic perspective on a religious channel; that the advice would not have gone beyond audience expectations which was for the programme to include “ruling[s] based on Islamic principle”.

In conclusion, the broadcaster said that it “does not condone or encourage violence towards women under any circumstances”. Further, in this case “it is clear...that the presenter is merely trying to prevent violence in a household. Further, he has not in any way condoned or encouraged violence towards women”.

#### IslamiQa, 30 October 2009

In relation to this edition of *IslamiQa*, the Islam Channel said that the presenter, Sheikh Abdul Majid Ali, received a telephone call from a female caller asking whether it was permissible for her to pray while wearing perfume. In his response, the presenter said it was permissible to wear perfume in some circumstances but not, for example, when a woman goes to a Mosque.

The broadcaster cited a number of references from the Hadith that it said backed up the point of view expressed by the presenter, including the following:

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<sup>2</sup> The Hadith are supplementary texts which help interpret the Qur’an.

<sup>3</sup> According to the Islam Channel: “A siwaak is a small stick or twig used for cleaning the teeth – like a pen”.

“Any woman who puts on perfume then passes by people so that they can smell her fragrance, is an adulteress.”<sup>4</sup>

“If any one of you (women) goes out to the mosque, let her not touch any perfume.”<sup>5</sup>

“Any woman who has scented herself with bakhoor (incense), let her not attend ‘Ishaa’ prayers with us.”<sup>6</sup>

The Islam Channel also pointed to a range of contextual factors that should be taken into account when considering the presenter’s comments. These included the fact that: the presenter was giving advice from an Islamic perspective on a religious channel; and that the advice would not have gone beyond audience expectation, which was for the programme to include “ruling[s] based on Islamic principle”.

In conclusion, the broadcaster said that: “The comment was not made to cause any offence, but was to explain the position in Islam on women wearing perfume outside of the house...different faiths have different rules and in this case the presenter is not forcing anyone to comply with any particular ruling, but is merely informing viewers about the Islamic teaching”.

## Decision

Ofcom notes that a number of its licensees will broadcast programming that will derive from a particular religious or spiritual viewpoint, and that such programming will include advice to followers of particular faiths as to how to lead their lives. It is therefore unsurprising if at times such advice might cause offence to different sections of the audience. Ofcom therefore recognises that it would be an unacceptable restriction on a broadcaster’s and audience’s freedom of expression to curtail the transmission of certain views, just because they cause offence. In addition, in exercising its functions Ofcom must take account of the right to freedom of expression. This encompasses the broadcasters’ right to transmit and the audience’s right to receive creative material, information and ideas without interference but subject to restrictions prescribed by law and necessary in a democratic society. This right is enshrined in the European Convention on Human Rights. Broadcasters must be permitted to deal with religious interpretations of various matters, so long as the material complies with the requirements of the Code, including the application of generally accepted standards. Therefore, broadcasters should not be prohibited from transmitting potentially offensive material, as long as it is justified by the context.

In its response, the Islam Channel said that given that the programmes were broadcast during 2008 and 2009, it was “unreasonable for Ofcom to now raise issues relating to programmes that were allegedly broadcasted such a time ago, whereby a broadcaster only needs to retain footage for 60 days under the licence conditions”. We recognise that we commenced our investigation into these programmes, outside the retention period for which broadcasters are required to retain recordings of their

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<sup>4</sup> As spoken by the Messenger of Allah according to Abu Moosa al-Ash’ari.

<sup>5</sup> As spoken by the Prophet Mohammed according to Zaynab al-Thaqafiyyah.

<sup>6</sup> As spoken by the Messenger of Allah according to Abu Hurayrah.

output<sup>7</sup>. However, Ofcom has a statutory duty to enforce programme standards<sup>8</sup>. We therefore have an obligation to consider evidence of potential breaches of the Code, irrespective of when a programme may have been broadcast. When deciding whether to investigate programming that was transmitted a long time ago, Ofcom will take into account a number of factors but, in particular, the nature, number and relative seriousness of complaints or allegations. In this case, Ofcom noted that the Quilliam Report made a number of allegations against the Islam Channel, some of which appeared to be potentially serious. Further, we note that Quilliam provided copies of various Islam Channel programmes to Ofcom, the Islam Channel did not deny that it broadcast the three programmes referred to in the Quilliam Report and investigated by Ofcom in this case, and provided formal comments to Ofcom on the content of these three programmes.

In this case, the Islam Channel transmitted various programmes aimed at an Islamic audience, which included interpretations and analysis of Islamic law and teaching on a range of issues. The editions of *IslamiQa* provided advice from an Islamic perspective to a range of questions. However, Ofcom had concerns as to whether the programmes complied with the harm and offence provisions of the Code.

#### *IslamiQa*, 18 May 2008

Ofcom noted that at one point in this particular programme, the presenter answered a question from a female caller asking whether it is permissible, if a husband is hitting his wife, for the woman to hit her husband. We noted that in his response, the presenter said that it was not permissible for a wife to hit her husband. In addition, he made a number of points which could be portrayed as encouraging a husband to treat his wife with respect. For example, at different times in his advice to the caller in question, the presenter said the following, as regards to how a husband should treat a wife:

*"I would advise your husband if he is listening to me, please don't use that kind of attitude towards your wife and my sister you should have patience...towards your husband and you should not be reacting towards your husband the way he is reacting, that will not bring any solution. If you remain calm...most certainly...Allah will change his heart and he will start respecting you and honouring you...I will advise your husband if he is listening to me, my brother...you are a man when you are fighting for the right cause and you are using your strength for the right purpose and it is not like your manhood when you hit the woman".*

We noted that in its response, the broadcaster said that "it is unjustifiable to hit a woman which could in any way cause any harm, damage or pain", and that the presenter demonstrated this point by tapping his own hand with a pen "as a comparison to the 'Siwaak' which is a light twig". However, Ofcom considered that the presenter was clear that some form of physical punishment was acceptable. The presenter used the following words to make it clear that a husband could use some form of physical violence against his wife:

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<sup>7</sup> Under the terms of its Ofcom Licence, the Islam Channel is required to retain recordings of its output for 60 days.

<sup>8</sup> See section 3(2)(e) of the Act, under which Ofcom is required to secure "the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services".

*“In Islam we have no right to hit the woman in a way that damages her eye or damages her tooth or damages her face or makes her ugly. Maximum what you can do, you can see the pen over here, in my hand, this kind of a stick can be used just to make her feel that you are not happy with her. That’s the only maximum that you can do, just to make her understand. Otherwise your husband has no right to hit you that way”.*

Ofcom notes that at no point did the presenter clearly state on air that he did not condone or encourage violence towards women under any circumstances – which Islam Channel has informed Ofcom is its formal stance on this issue.

Ofcom considered that the presenter did therefore give advice to viewers that it was permissible for a husband to physically punish his wife, even though according to the broadcaster it was to be only in certain circumstances, and undertaken with restraint, and even if the language used by the presenter could be perceived by some as relatively mild. In Ofcom’s opinion, the advocacy of any form of violence (however limited), as happened in this particular case, is not acceptable and would be offensive to many in the audience.

Further Ofcom considered that this offensive material could not be justified by the context. This was due to factors such as: the lack of any mediating or counteracting views within the programme, the presenter’s advocacy of physical violence; and the lack of any unequivocal condemnation by the presenter of violence towards women under any circumstances. Even taking into account the fact that this channel often broadcasts programmes containing analysis and discussion of Islamic teachings and associated sacred texts to an Islamic audience, Ofcom remained of the view that the broadcaster failed to apply generally accepted standards and that the offensive content referred to above could not be justified by the context. Ofcom considered that it was highly likely that any advocacy and support of any form of domestic violence would be offensive. This was particularly the case given that domestic violence is potentially criminal under UK law.<sup>9</sup> The programme was therefore in breach of Rule 2.3.

#### IslamiQa, 30 October 2009

Ofcom noted that at one point in this particular programme, the presenter answered a question from a female caller asking whether it is permissible for her to pray while wearing perfume. In his response, the presenter said it was permissible to wear perfume in some circumstances, for example, if a woman *“is in the house and she is only going to attend the gathering of the women”*. However, the presenter said that if a woman wears perfume to a mosque she *“is declared as a prostitute”* by the Prophet Mohammed.

We are aware that there are a number of references in the Hadith, cited by the broadcaster, which proscribe the wearing by women of perfume whilst, for example, visiting a mosque. We are conscious that different religious traditions take a range of views on what are deemed appropriate forms of personal behaviour amongst their followers. However, we noted that the Islam Channel did not cite any references from the Hadith or other Islamic religious teachings, which specifically state that a woman

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<sup>9</sup> In this respect we noted that the Islam Channel, in its response said that the “Islamic evidence is similar to the law in the UK, which allows a parent to hit their child as long as it does not cause any visible marks”. However, the broadcaster did not refer to the legal situation relating to domestic violence within marriage.

would be considered “*a prostitute*” under Islamic teaching or Islamic law, if she wore perfume to pray at a mosque or other activities.

In reaching our decision, Ofcom took account of the fact that this channel often broadcasts programmes containing analysis and discussion of Islamic teaching and associated sacred texts. In addition, we considered that the likely level of offence caused in this case would in all probability be less than in the other case covered in this Finding (i.e. *IslamiQa*, 18 May 2008).

However, Ofcom remained of the view that the broadcaster failed to apply generally accepted standards and the offensive content referred to above could not be justified by the context. Ofcom considered that it would be likely that the labelling of a woman as “*a prostitute*” for the act of the wearing of perfume in various public places would be highly offensive. Further Ofcom considered that this offensive material could not be justified by the context, because for example: of the lack of any mediating or counteracting views or comments to the presenter’s remarks; and the fact that there was the potential for the term “*prostitute*” to be considered pejorative abuse rather than a comment grounded in religious teaching, given the lack of what appears to be clear theological backing for the remark from Islamic sacred texts. We therefore considered that the programme was in breach of Rule 2.3.

### **Breaches of Rule 2.3**

Ofcom has some concerns about Islam Channel’s compliance. See page 15 for more information.

## In Breach

### **Ummah Talk**

*The Islam Channel, 14 October 2009*

### **Politics and Beyond**

*The Islam Channel, 16 October 2009*

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**This decision has been removed from Issue 169 of the Broadcast Bulletin following a review by the Broadcasting Review Committee.**

**The Review Decision published in Issue 196 of the Broadcast Bulletin replaces the decision originally published here, and can be viewed on the Ofcom website at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb196/>.**

## In Breach

### Family Food Fight with Flora

Five, 18 May 2010 to 29 June 2010, 19:30

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#### Introduction

*Family Food Fight with Flora* was a series of six, 30-minute programmes. During each episode, two chefs, Jean-Christophe Novelli and Matt Tebutt, were each teamed up with a family. Each family's usual diet consisted mainly of convenience food, high in saturated fat and/or salt, and they wanted to learn how to cook healthier meals.

During the first half of each episode, each chef taught their family how to cook a healthier version of one of their usual meals focusing on using less salt or less saturated fat. In the second half of each episode, each chef taught their family how to cook a two-course meal, which the family then had to cook for 40 diners. The diners voted for their favourite main course and dessert and the winning family was announced at the end of each episode.

The series was sponsored by Flora (a food range which includes low-fat and low-cholesterol spreads, yoghurts and milk). The sponsorship credits that appeared around the programme consisted of a child and a parent cooking a dish using one of Flora's spreads called Flora Buttery. A logo for Flora's "Heart Age" campaign<sup>1</sup> was visible on the pack shot and the text "www.floraheartage.com" was shown at the bottom of the screen throughout the credits. The final shot featured the Flora Heart Age logo and the voiceover, "*Family Food Fight with Flora. Recipes for the heart.*"

Ofcom noted that, in episodes one, two, three, five and six, there were various visual and verbal references to choosing to use low-fat spread rather than butter as a means of keeping your heart healthy. Examples included:

#### Episode One – 18 May 2010

Narrator: *"In fact there is so much butter in their diet, Rachel has had a worrying health scare."*

Contestant: *"Four months ago, I had a blood test and it came back that I had raised cholesterol. That really did worry me"*

Narrator: *"Rachel's processed pie is loaded with saturated fat known to raise cholesterol in the blood which could be prematurely aging her heart by almost a decade. For a woman, the government recommends a maximum of twenty grams in any one day."*

Narrator: *"To help lower Rachel's cholesterol, Matt doesn't use any butter"*

Narrator: *"Matt glazes the filo pastry with a melted sunflower spread and scrunches it on top."*

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<sup>1</sup> Flora's campaign to get 11 million people in the UK to use their Heart Age Calculator by 2020.

Matt Tebutt: *"In terms of saturated fat, we're only looking at four grams."*

Narrator: *"Four grams per portion?! That's an eighty per cent reduction in saturated fat! My hero!"*

#### Episode Two – 25 May 2010

Narrator: *"And it's stuffed with saturated fat known to raise cholesterol, increasing the chance of heart disease. If Gail wants to keep her family's hearts healthier for longer, they need to cut back. The government's daily maximum for an adult woman is 20g a day."*

JC Novelli: *"This portion contains twenty six grams of saturated fat...which is a lot..."*

Contestant: *"That's unbelievable! If you have a warning on a packet of cigarettes there should be a warning on a packet of cheese sauce mix."*

JC Novelli: *"I'm going to show you an alternative."*

Narrator: *"He starts with a healthier cheese sauce."* [image of low-fat spread being put into a pan]...

Narrator: *"The secret is to avoid using butter."*

Narrator: *"Using lean mince and avoiding butter has helped Jean-Christophe's cottage pie contain seventy-five per cent less saturated fat than a traditional cottage pie recipe."*

Given the references in the programmes to using lower fat alternatives in several of the recipes, and the fact that the sponsor's brand includes a range of low-fat products, Ofcom requested the following information from Five:

- any contracts or agreements relating to the funding arrangement for the series; and
- Five's comments in relation to the following Code rules:

Rule 9.4: A sponsor must not influence the content and/or scheduling of a channel or programme in such a way as to impair the responsibility and editorial independence of the broadcaster.

Rule 9.5: There must be no promotional reference to the sponsor, its name, trademark, image, activities, services, or products or to any of its other direct or indirect interests. There must be no promotional generic references. Non-promotional references are permitted only where they are editorially justified and incidental.

## **Response**

Five explained that the series was funded by Unilever's Flora brand. It said the programme idea was created before Flora's funding was sought or agreed. A production company pitched the programme idea to Five and to Unilever's media agency for funding. Five worked with the production company on the format of the programme. Five provided Ofcom with a copy of its agreement with the production company and a copy of the funding agreement between the production company and an agency representing Unilever.

Five said that: “Flora had no influence over the editorial content or scheduling of the programme and the editorial content was not distorted to suit Flora’s objectives. The series did not contain any references to Flora’s branded products or interests. Any references to Flora’s generic products were non-promotional, editorially justified, and incidental, and occurred naturally and regardless of the sponsorship arrangement.” It continued that “Unilever viewed the programme prior to delivery to Five but was not permitted to exert any influence over the editorial content.”

Five said that: “the focus of the series was on showing families with limited culinary ability how to cook delicious, healthy meals with minimal fuss. The families chosen for the series were typically living on a diet of fast and convenience food which, by its nature, was unhealthy in that it was high in one or more of fat, salt, and sugar.” It continued that: “the aim of the series was to demonstrate that home-cooked meals could be simple and healthy, firstly by showing the ease with which tasty and healthy meals could be created using a variety of fresh ingredients, and secondly by emphasising the ease with which their newly learned cookery skills could be transferred to large-scale mass catering in the form of a competition between two families to feed forty diners in a restaurant environment.” Five added that while the programme did explain the negative consequences the families’ poor diets could have on their health, it did not consider this to be the focus of the series.

With regard to the reference to the Flora Heart Age campaign in the sponsorship credits, Five said that the Flora Heart Age campaign is an initiative between Unilever and the World Heart Foundation to promote awareness of the Flora Heart Age calculator which is based on the well-established Framingham Risk Score and which uses standard factors for heart disease or stroke (such as age, weight, gender, cholesterol, blood pressure, and smoking) to estimate a person’s ‘Heart Age’. This could be higher than chronological age if personal cardiovascular disease risk factors are high.

Five noted that the Heart Age calculator is a proprietary marketing tool owned by Flora, but submitted that encouraging healthier lifestyles and diets is not. It said that: “Such encouragement is not unique to Flora nor to the healthy-foods industry.” Five referred to a recent Ofcom finding<sup>2</sup> in which Ofcom considered a programme about healthy eating to be a general, non-proprietary subject. Five considered that Flora was not an unsuitable sponsor for *Family Food Fight with Flora*, because healthy eating is a general, non-proprietary subject in the public interest. In addition, it considered that the series did not promote, or appear to promote, Flora or its interests.

Five submitted that it did not consider that: “Flora’s adoption of a well-established message to encourage healthy eating, advocated initially by the medical profession and subsequently adopted by a wide range of agencies including government, prevents it from sponsoring a programme that encourages participants and viewers to follow a healthier diet by avoiding frozen, take-away and processed convenience or ready-meals.”

With regards to the references to butter, sunflower spread and dairy products in the series, Five said that 36 recipes were shown across the series, with each recipe containing between 5 and 15 ingredients, some of which were mentioned in the

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb163/issue163.pdf>  
(pages 36 to 50).

programme, and some not. Five continued that as over 150 ingredients were used in the recipes, it was unsurprising that dairy products featured in them. It stated: “Viewers would have expected to see fats and oils used in a programme about cookery and we do not believe that viewer trust in the programme would have been undermined by Flora’s funding; they would have expected to see these references regardless of the sponsorship arrangement. The same applies to salt. It follows that a programme about healthy eating would incidentally refer to lower fat products, and to the avoidance or replacement of salt. Any references were, therefore, editorially justified and incidental.”

Five continued that “any incidental references to Flora’s generic products occurred naturally within the editorial content of the programme and were consistent with the style of reference to other ingredients throughout the series. They were not promotional and did not encourage the use of the sponsor’s branded or generic products, and it was clear that the healthy credentials of each meal came from the absence of reliance on frozen, processed, or takeaway food combined with the use of traditional cooking from scratch and alternative methods of adding flavour. Responsibility for the healthier meals produced by the chefs did not lie with the use of Flora’s generic products, nor do we believe the series would have left viewers with this impression or encouraged their use.” In Five’s view, “any references to low-fat dairy products occurred naturally in the course of a programme about healthy eating, and viewers would not have believed the editorial content was distorted to promote Flora’s interests.”

To summarise, Five considered that the series was compliant with Rules 9.4 and 9.5 of the Code, because:

- it had maintained control over the programme’s content and scheduling;
- there were no references to the sponsor or its branded products or interests;
- generic references occurred incidentally and naturally in the course of each programme and were non-promotional and editorially justified in the context of the series’ healthy eating theme, which is a non-proprietary, public interest message;
- the series was not promotional of Unilever’s interests either by promoting the Flora range of products or the Flora Heart Age calculator marketing campaign;
- viewers would not have felt that the integrity of the programme was undermined by Flora’s involvement.

## Decision

Section Nine of the Code defines a sponsored programme as one that has had some or all of its costs met by the sponsor, with a view to the sponsor promoting its own or another’s name, trade mark, image, activities, services, products or any other direct or indirect interest.

The rules that apply to sponsored programmes are derived from the requirements of European legislation<sup>3</sup>, and from the Communications Act 2003 (“the Act”). The Act specifically requires Ofcom to ensure that the “unsuitable sponsorship” of programmes is prevented.

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<sup>3</sup> The Television Without Frontiers (TWF) Directive which was amended by the Audiovisual Media Services (AVMS) Directive.

Ofcom's rules on programme sponsorship prevent "unsuitable sponsorship" by ensuring that:

- the editorial independence of the broadcaster is maintained and that programmes are not distorted for commercial purpose;
- sponsorship arrangements are transparent; and
- sponsorship credits are kept separate from programme content and distinct from advertising.

The promotional benefits a sponsor is permitted to gain from contributing to the funding of a programme is through associating itself with the programme, not by being referred to during it. This association is identified through the sponsorship credits that are broadcast around the programme.

Rule 9.5 of the Code prohibits promotional references (including generic references) to the sponsor in a sponsored programme. It also requires that any non-promotional reference to the sponsor, or to its interests, must be incidental and editorially justified. These rules help maintain viewer trust in the integrity of programmes by ensuring editorial content is not distorted, or does not appear to be distorted, to suit the objectives of the sponsor.

In this case, Ofcom noted the overall message communicated to the audience via the combination of the sponsorship credits and the first half of each programme. The sponsorship credits, which appeared before and after the programme, and before and after each commercial break, showed a family cooking various recipes using Flora Butterly. The "Heart Age" logo was visible on the pack shot and text stating "www.floraheartage.com" was shown at the bottom of the screen throughout the credits. The final shot featured the Flora Heart Age logo and the voiceover, *"Family Food Fight with Flora. Recipes for the heart."*

Ofcom considered that these sponsorship credits clearly associated Flora low-fat spread with heart health and healthy eating. While the credits themselves did not raise any issues under the Code, it was Ofcom's view that this association was relevant, because it was developed subsequently in the first half of some of the programmes (episodes one, two and five).

Ofcom noted that during the first half of each of the programmes the effects of saturated fat and salt on the body, and in particular, the heart, were explained. The narrator referred to the effects of saturated fat in a number of the programmes. Examples of these references included:

Episode One – 18 May 2010

Narrator: *"In fact there is so much butter in their diet, Rachel has had a worrying health scare."*

Contestant: *"Four months ago, I had a blood test and it came back that I had raised cholesterol. That really did worry me"*

Narrator: *"Rachel's processed pie is loaded with saturated fat known to raise cholesterol in the blood which could be prematurely aging her heart by almost a decade. For a woman, the government recommends a maximum of twenty grams in any one day."*

Episode Two – 25 May 2010

Narrator: *"And it's stuffed with saturated fat known to raise cholesterol, increasing the chance of heart disease. If Gail wants to keep her family's hearts healthier for longer, they need to cut back. The government's daily maximum for an adult woman is 20g a day."*

Episode Five – 22 June 2010

Contestant: *"Our family have a history of cholesterol and diabetes so I just need to get rid of churning out rubbish foods and I just want to learn how to do it."*

Matt Tebutt: *"Nutritionally, in saturated fat terms, there's about eleven and a half grams of saturated fat in there which is a lot."*

Narrator: *"Eleven and a half grams of saturated fat! That's over half a child's daily allowance. What kids eat now can affect their health later in life. Reduce the fry-ups and you'll keep their heart healthier for longer."*

Ofcom then went on to consider the series' compliance with Rule 9.5 by assessing any references to the sponsor's products during the series. Ofcom noted there were no references to Flora's branded products in the programmes. However, there were generic references to the sponsor's products ("sunflower spread" and "low-fat dairy ingredients") in episodes one, two, three, five and six.

Ofcom took into account Five's argument that these generic references were non-promotional, incidental and editorially justified. However, Ofcom did not agree that the generic references to the sponsor's products were non-promotional. Ofcom noted that, in each of the episodes in question, butter was referred to in a negative light, with an emphasis on its adverse effects on health, while low-fat alternatives were referred to (either explicitly or through visual references) as a means of keeping your heart healthy. For example:

Episode One – 18 May 2010

Narrator: *"To help lower Rachel's cholesterol, Matt doesn't use any butter"*

Narrator: *"Matt glazes the filo pastry with a melted sunflower spread and scrunches it on top."*

Matt Tebutt: *"In terms of saturated fat, we're only looking at four grams."*

Narrator: *"Four grams per portion?! That's an eighty per cent reduction in saturated fat! My hero!"*

Episode Two – 25 May 2010

JC Novelli: *"This portion contains twenty six grams of saturated fat...which is a lot..."*

Contestant: *"That's unbelievable! If you have a warning on a packet of cigarettes there should be a warning on a packet of cheese sauce mix."*

JC Novelli: *"I'm going to show you an alternative."*

Narrator: *"He starts with a healthier cheese sauce."* [image of low-fat spread being put into a pan]...

Narrator: *"The secret is to avoid using butter."*

Narrator: *"Using lean mince and avoiding butter has helped Jean-Christophe's cottage pie contain seventy-five per cent less saturated fat than a traditional cottage pie recipe."*

#### Episode Three – 1 June 2010

Narrator: *"When they actually do cook, mum throws together this Chicken Supreme, lobbing in loads of cream and butter, ending up like a pan of sick."*

Narrator: *"Jean-Christophe starts off cooking the onions and garlic in just a touch of oil, then mixes in sunflower spread with the mushrooms and chicken."*

Narrator: *"The secret to his healthy mash is to bind celeriac in low fat milk. This is then added to the mash potato which – Jason, listen up! – uses no butter."*

#### Episode Five – 22 June 2010

Narrator: *"Now Matt scores the spuds and bastes them in a sunflower spread and rosemary."*

Narrator: *"Now mash up the spuds without using butter and serve with steamed vegetables."*

Narrator: *"Now for round two. Healthy, simple desserts made from low fat dairy ingredients."*

#### Episode Six – 29 June 2010

Narrator: *"For the potato wedges, JC adds seasoning of paprika and pepper to the sliced spuds ... and avoiding butter, spritzes them in a light oil."*

Narrator: *"He starts his healthy creamy sauce with a knob of sunflower spread, chopped onions and garlic."*

Narrator: *"Both desserts use lower fat dairy ingredients to reduce the fat content."*

Ofcom accepted that references to sunflower spread and low-fat products could be seen to be editorially justified in a healthy eating cookery series of this nature. It also accepted that heart health and healthy eating are general, non-proprietary subjects. In that respect, a brand such as Flora could, in principle, sponsor a series about heart health and healthy eating.

However, Ofcom noted the clear focus within these episodes on the health benefits of sunflower spread and other such low-fat products. It also took into account the way in which the chefs, and the narrator, encouraged the use of such products in the place of butter and other saturated fats. Even taking into account the editorial justification for these references within a healthy eating cookery series, Ofcom nevertheless considered that they amounted to promotional generic references to the sponsor's products. In Ofcom's view, this promotional effect was further emphasised by the association established within the sponsorship credits between the sponsor's branded product, and heart health.

Ofcom therefore found the promotional generic references to the sponsor's products in episodes one, two, three, five and six of the series in breach of Rule 9.5 of the Code.

In relation to Rule 9.4 (editorial independence), Ofcom carefully considered Five's submissions and the detailed contractual information it provided. Ofcom found no evidence to suggest that the sponsor had required the inclusion of the generic references to its products, or that Five had not maintained its independence of editorial control over the series. In the circumstances, Ofcom is not recording a breach of Rule 9.4.

Ofcom nevertheless reminds Five and all broadcasters that the inclusion of promotional generic references to the sponsor in a sponsored programme (even where these are editorially justified) has the potential to give the impression that the programme has been created as a vehicle for the purpose of promoting the sponsor's products. Depending on the facts of the case in question, this may result in Ofcom concluding that a broadcaster's editorial independence has been impaired by the sponsorship arrangement, in breach of Rule 9.4.<sup>4</sup>

**Breach of Rule 9.5:** episode one, 18 May 2010, episode two, 25 May 2010, episode three, 1 June 2010, episode five, 22 June 2010 and episode six, 29 June 2010

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<sup>4</sup> See finding referred to in footnote 2.

## In Breach

### Islamabad Grill sponsorship of *Zaika he Zaika*

*DM Digital, 10 July 2010, 13:00*

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#### Introduction

DM Digital is a free-to-air general entertainment channel, available via cable and satellite in the UK, Europe, Middle East, Africa and Asia and broadcasts mainly in Urdu to the UK Asian community.

The channel broadcast a cookery programme called *Zaika he Zaika* which was sponsored by the Islamabad Grill restaurant. Ofcom requested a recording of the programme from the broadcaster on 12 August 2010. Having received no response, Ofcom contacted the broadcaster by email on 24 August 2010 and 31 August 2010, and by telephone on 31 August 2010 and 2 September 2010, to reiterate its request. Ofcom received a recording of the programme on 6 September 2010.

Ofcom noted that this programme's sponsorship credits displayed details of the sponsor's address, landline and mobile telephone numbers and prices of lunch and evening buffet meals. The voiceover, in Urdu, told viewers to "*see us today*" and "*eat as much as you want*" before giving details of the restaurant's address.

Ofcom therefore sought the broadcaster's comments under Rule 9.13 of the Code, which states:

"...Sponsor credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party".

Under Condition 11 of DM Digital's TLCS licence to broadcast, DM Digital is required to keep recordings of its output in sound and vision for 60 days after transmission. If requested by Ofcom, Condition 11 also requires licensees to provide such recordings to Ofcom "forthwith".

Given the amount of time taken by DM Digital to provide Ofcom with a recording of the programme, Ofcom also asked the broadcaster for its comments with regard to Condition 11 of its TLCS licence.

#### Response

DM Digital said that it monitored the sponsorship credits broadcast on other channels a reference point and had "tried to keep as little information in the sponsor credits as was possible...to comply with Rule 9.13". However, following Ofcom's request for comments, the broadcaster said it "reconsidered its interpretation of Rule 9.13" and therefore "issued revised instructions to its staff regarding the criteria they must apply when assessing the suitability of sponsorship credits."

DM Digital told Ofcom that it also reviewed the sponsorship credit in question and acknowledged that the information it contained may have pushed "the boundaries" for what was considered acceptable for the purposes of Rule 9.13. Nonetheless, it urged Ofcom to take a lenient view of what it deemed to be a marginal instance.

With regard to Condition 11 of its licence, the broadcaster said the delay in providing the recording was owing to Ofcom sending its initial requests to the email address of a DM Digital employee who was on extended leave. The broadcaster added that following this, its management team “set up a separate mailbox for all Ofcom communication.”

## Decision

Ofcom noted that the broadcaster said it had used the sponsorship credits broadcast on other channels as a guide for what information is acceptable in a credit. As stated in a note to broadcasters published in Ofcom’s Broadcast Bulletin 130<sup>1</sup>, we urge all broadcasters to note that: “Compliance decisions should not be based on material previously broadcast - by the licensee or any other licensee - which Ofcom has not considered” and that we “strongly advise broadcasters not to make assumptions about the compliance of their material on the basis that similar content may have already been broadcast.”

Rule 9.13 prohibits sponsorship credits from containing calls to action or encouraging the purchase or rental of the products and services of the sponsor. This rule is derived directly from European legislation, the Audiovisual Media Services (AVMS) Directive. The AVMS Directive states that broadcasters can only transmit a set amount of advertising per hour. Sponsorship credits are exempt from this limit and are treated as part of the sponsored programme. Therefore, to ensure that sponsorship credits are distinct from advertising, the Directive requires that sponsored programmes “shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those products or services.

Ofcom’s guidance on Rule 9.13 relating to sponsorship states that while basic contact details can be given in credits (such as a website address or a telephone number) to help identify the sponsor, this should not be accompanied by language which could be seen as inviting the audience to contact the sponsor.

Ofcom noted the broadcaster’s review of the sponsorship credit and subsequent acknowledgement of the compliance issues it raised with regard to Rule 9.13. However, since the credit included references to the sponsor’s location, two methods of telephone contact details and pricing information, Ofcom concluded that this went beyond the basic information required to identify the sponsor. Further, the credit’s voiceover contained a direct call to action for viewers to visit the restaurant. Ofcom therefore considered that this was not a “marginal instance” as suggested by the broadcaster but a clear breach of Rule 9.13 of the Code.

In relation to DM Digital’s delay in providing the recording in this case, Ofcom considered the broadcaster’s explanation that its compliance contact had been on extended leave when Ofcom sent its recording request. In order for Ofcom to carry out its statutory duties, it is essential that broadcasters make necessary arrangements to ensure requests from Ofcom are received. Broadcasters are therefore required to provide Ofcom with accurate and up-to-date details of compliance contacts. Ofcom could find no record of receiving notification from DM Digital that the broadcaster’s contact details held on Ofcom’s records should be

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<sup>1</sup> Ofcom Broadcast Bulletin 130: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb130>

updated. In the circumstances, Ofcom concluded that DM Digital did not provide the requested recording “forthwith” as required by Condition 11 of its licence.

**Breach of Rule 9.13**

**Breach of Licence Condition 11 (retention and production of recordings)**

## In Breach

### Viewer Competition

*True Movies 2, 28 July 2010, 06:20*

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#### Introduction

From 28 July to 10 August 2010, True Movies 2 ran a viewer competition to win a trip to New York and VIP concert tickets for two people. Viewers were asked to identify the answer to a question from three options presented during the promotion as A, B or C. Viewers could enter by calling a premium rate telephone number, charged at £1.00 per minute from a BT line, or by text message, charged at £1.50 plus the user's standard network rate.

Ofcom received a complaint from a viewer who had called the telephone entry line and heard a recorded message which referred to a different competition question than the one that had been broadcast in the promotion.

Ofcom therefore sought comments from CSC Media Group ("CSC Media"), the owner of True Movies 2, under Rule 2.13 of the Code which states:

"Broadcast competitions...must be conducted fairly."

#### Response

CSC Media explained that on this occasion, the competition question that was broadcast had been changed by the Compliance Manager, but unfortunately this was not communicated to the person who recorded the telephone message. Callers therefore heard a different question to the one broadcast.

The broadcaster said that it did not receive any complaints about the competition directly and only became aware of the error when it was notified by Ofcom. It said that within an hour of being notified, the competition promotion was taken off air. A winner was then selected from the list of eligible entrants. CSC Media said that as True Movies 2 does not have live presenters or continuity announcers, it was unable to broadcast an immediate announcement and so none was made. It also said it had not broadcast a subsequent apology, as it questioned the relevance to its audience given that only one person out of a total of 1,032 telephone entrants had complained.

CSC Media said it did not consider it necessary to reimburse entrants because it had ensured that the correct answer to both multiple-choice style questions was "C". CSC Media stated that: "To avoid exacerbating any errors we always ensure that if we change the question we also keep the same answer as the previous question". It was therefore of the view that correct entrants in this instance would have been entered into the draw "irrespective of which question they were answering". The broadcaster therefore believed that it had "systems in place...aimed at mitigating any human errors that might occur".

However, CSC Media acknowledged that this error should not have happened and stated that it has now implemented an extra stage in its compliance procedures with regard to viewer competitions. The Compliance Manager must now sign off the telephone message to ensure that, if changes have been made, the team

responsible for preparing it are aware. It also said that it was willing to refund the individual that had made the complaint.

## Decision

In recent years, Ofcom has recorded numerous breaches of its rules relating to audience competitions. Ofcom has made it clear that it expects all broadcasters to exercise particular caution when inviting audiences to enter broadcast competitions, particularly where they are required to pay a premium rate to participate.

Viewers pay to participate in such competitions on the basis that they believe they know the answer to the question posed and therefore have a fair chance of winning the prize on offer.

In this case, telephone entrants decided to pay to enter the competition based on the question that had been provided on air, only to discover - on connection to the telephone entry line - that they were being asked a different competition question. Ofcom noted the broadcaster's explanation of the circumstances in which this error occurred. However, in Ofcom's view, inviting the audience to enter a competition on the basis of one question and subsequently changing that question to another amounts to unfair conduct of that competition. The competition was therefore in breach of Rule 2.13.

Ofcom noted the broadcaster's reasoning for deciding not to broadcast an on-air apology or implement refund procedures. In particular, Ofcom noted the broadcaster's submissions that only one viewer had complained, and that it had put "systems in place" to mitigate any errors, namely ensuring that the answer to both the questions was "C".

The fact that only one entrant complained does not, in Ofcom's view, lessen the fact that the competition had been conducted unfairly. Further, Ofcom considered that the fact that the answer to both questions was "C" would not, in itself, have mitigated the unfairness caused by the error. Telephone entrants had decided to pay to enter the competition on the basis that they believed they knew the answer to the competition question, as broadcast. Unless they had also known the answer to the question they subsequently heard on the telephone entry line, they would not have had the same chance of winning.

In addition, Ofcom considers that, in the circumstances, it was likely that some of the 1,032 telephone entrants who heard the different competition question may have terminated their call due to confusion. However they would still have been charged a premium rate. As such, Ofcom did not accept the broadcaster's argument that its actions in making the answer to both questions "C" were sufficient to ensure the fair conduct of the competition.

In Broadcast Bulletin 116<sup>1</sup>, Ofcom recorded two breaches of Rule 2.11 of the (2005) Code - the rule at the time that required fair conduct of broadcast competitions - for content transmitted by CSC Media on its channels True Movies, True Movies 2 and Kix! Further, Ofcom recently issued formal guidance to CSC Media following errors identified during another competition's promotion on Pop TV. In light of the breach now being recorded in this case, Ofcom is putting CSC Media on formal notice that it has serious concerns about the broadcaster's approach to compliance in this area,

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<sup>1</sup> See Ofcom Broadcast Bulletin 116 (published on 1 September 2008)  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb116/>

and is requiring the broadcaster to attend a meeting to discuss its compliance procedures in this area. In the event of a recurrence, Ofcom will proceed to consider taking further regulatory action.

**Breach of Rule 2.13**

## In Breach

### Elite Nights

*Elite TV, 8 August 2010, 00:00 to 00:30 and*

*Elite TV & Elite TV 2, 14 August 2010 22:00 to 22:14 (simulcast)*

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***Please note this finding contains extremely strong and explicit sexual language***

#### Introduction

The channels Elite TV and Elite TV 2 (“the Channels”) are owned and operated by Prime Time TV Limited (“the Licensee”). The Channels broadcast interactive chat programmes that are freely available and without mandatory restricted access. They are located in the ‘adult’ section of the Sky Electronic Programme Guide (“EPG”). Elite TV is situated on Channel 965 of the EPG and Elite TV 2 at Channel 914 of the EPG. Viewers are invited to call adult sex chat premium rate telephone numbers. The content of the conversations between onscreen presenters and callers may be sexually explicit; however viewers do not hear the content of those conversations. Generally the female presenters dress and behave in a provocative and/or flirtatious manner.

Ofcom received one complaint about the content on both channels. The complainant was concerned about the strong language used during the times highlighted above.

#### Elite Nights, Elite TV, 8 August 2010, 00:00 to 00:30

Ofcom viewed the material and noted there were two presenters. Presenter One was wearing a black thong, a strip of black material across her breasts and fishnet stockings. Presenter two was wearing a black leather bodice and leather, thigh-high boots. During the broadcast the presenters adopted various sexual positions for prolonged periods of time, including: lying on their backs with their legs wide open to camera and kneeling with their buttocks to camera and licking and stroking each other’s inner thigh, anal and genital area; mimicking oral sex with a whip; and thrusting their bodies as though miming sexual intercourse. We noted in particular that during this output a explicit sexual discussion took place approximately 15 minutes into the broadcast:

Presenter One: *“Well guys we’re feeling so fucking dirty now.”*

Presenter Two: *“I absolutely love playing with your pussy.”*

Presenter One: *“I love the way you do it. You’re the only woman that gets my cunt that wet.”*

Presenter Two: *“Do you like me touching your clit like that.”* [Presenter Two’s hand is out of frame].

Presenter One: *“Yes. Feel like I need to repay the favour though.”* [Presenter One’s hand is out of frame].

Presenter Two: [Presenter One kissing Presenter Two’s breasts] *“I love it when you just suck my tits like that. Oh yes, fucking suck my tits. Oh your tongue all over my tits. Imagine you’re cock rubbing all*

*over my tits and her licking your cock. Whilst your cock is rubbing on my tits at the same time. I love the thought of that. And then watching a cock sliding up inside your pussy."*

[Presenter Two stroking thigh, breasts, genital area and stomach of Presenter One for remainder of conversation].

Presenter One: *"Coming all over us. I love it in my arse."*

Presenter Two: *"Taste it after it's been in up your arse."*

Presenter One: *"All that shit covered cock in my mouth..."*

Presenter Two: *"...I want them to fuck your arse until its gaping sore."*

#### Elite Nights, Elite TV 2 & Elite TV 14 August 2010 22:00 to 22:14

Ofcom viewed the material and noted the presenter was wearing a black and white bodice, suspenders, a black thong, white stockings, black gloves and black shoes. During the broadcast the presenter adopted various sexual positions for prolonged periods of time, including: lying on her back with her legs spread wide open to camera; bending on all fours with her buttocks to camera and lying on her side with her legs wide open to camera. While in these positions the presenter: thrust her body as though miming sexual intercourse; and mimicked oral sex with a whip. We noted in particular that approximately twelve minutes into the broadcast the presenter spoke directly to camera with a microphone:

*"Well guys I've got my big juicy tits out as you can see ... [stroking left breast]. Guys I want you to be as filthy as you can. I want to feel my pussy throbbing. I want you to make me so fucking turned on that I can't keep my knickers on [touching genital area]. My pussy to be so wet and my lips to be so fucking swollen, that I'm ready for cock, because I'm a cock hungry little fucking slut. Imagine your tongue over these big tits [stroking breasts]. I love my tits getting sucked and licked and played with, whilst a nice big juicy cock is pumping me, full of spunk."*

#### Relevant Code Rules

Ofcom requested comments from Primetime TV Limited in relation to the following rules for both broadcasts:

- Rule 2.1 - (the broadcaster must apply generally accepted standards);
- Rule 2.3 - (offensive material must be justified by context).
- Rule 1.18 - ('Adult sex material' - material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation - must not be broadcast at any time other than between 22:00 and 05:30 on premium subscription services and pay per view/night services which operate with mandatory restricted access).

#### **Response**

Primetime TV Limited offered their sincere apologies that this content was aired and assured Ofcom that they have "taken sufficient measures to ensure that this situation cannot and will not arise again". As a consequence, a number of processes have been put into place to prevent any recurrence of this problem, including revising their internal compliance procedures; ensuring the presenters are aware of the importance

of the internal compliance procedures, particularly the result of failing to comply with those procedures; and removing the producer who was on duty during the broadcasts in question from their employment.

Primetime TV limited explained that an inexperienced producer had been in charge during those broadcasts and acknowledged that level of compliance was unacceptable. The Licensee said “it is clear that the content not only was in breach of our own internal compliance procedures but, we entirely accept, raises potential issues under rules 1.18, 2.1 and 2.3 of the Broadcasting Code”. It added: “We believe this was an isolated incident which occurred over a relatively short programme segment”.

## Decision

Ofcom has a duty to ensure that generally accepted standards are applied to the content of radio and television services so as to provide adequate protection from the inclusion of harmful or offensive material. In relation to generally accepted standards, including those in relation to sexual material, Ofcom recognises that what is and is not generally accepted is subject to change over time. When deciding whether or not particular broadcast content is likely to fall within generally accepted standards it is necessary to assess the character of the content itself and the context in which it is provided.

In relation to the broadcast of material of a sexual nature this normally involves assessing the strength or explicitness of the content and balancing it against the particular editorial or contextual justification for broadcasting the content. Ofcom seeks to ensure that material of a sexual nature, when broadcast, is editorially justified, appropriately scheduled and where necessary access is restricted to adults.

Broadcasters are allowed to broadcast after the watershed (and without other access restrictions) material which is of a stronger sexual nature as long as it is justified by the context. However, this material must not be considered to be “adult sex material” (i.e. it is not strong sexual images and/or language which is broadcast for the primary purpose of sexual arousal or stimulation), or BBFC R-18 rated films or their equivalent.

Rule 1.18 of the Code requires “adult sex material” to be broadcast only between 22:00 and 05:30, and then only if mandatory restricted access is in place. In judging whether material is “adult sex material”, and therefore is subject to this Rule, broadcasters should be guided by the definitions used by the BBFC when referring to “sex-works at 18”<sup>1</sup>. This guidance has been supplemented by various decisions of Ofcom through a series of published findings, and published decisions of the Content Sanctions Committee. By these means Ofcom has made clear what constitutes “adult sex material”<sup>2</sup>.

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<sup>1</sup> BBFC Classification Guidelines 2009, <http://www.bbfc.co.uk/downloads>

<sup>2</sup> For example: Sanctions decision against Satellite Entertainment Limited concerning its channel SportxxxBabes, dated 26 August 2008,

[http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/sportxxxbabes.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/sportxxxbabes.pdf);

Sanctions decision against Satellite Entertainment Limited concerning its channel SportxxxBabes, dated 26 August 2008,

[http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/sportxxxbabes.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/sportxxxbabes.pdf);

Sanctions decision against Playboy TV UK/Benelux Limited concerning its channel Playboy One, dated 2 April 2009, [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/playboytv.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/playboytv.pdf);

In considering the contents of each of these programmes Ofcom asked itself two questions as relevant in each case:

- was the content of the programme 'adult sex material'; and
- if it was not 'adult sex material', did the broadcaster ensure that the content was provided with sufficient contextual justification so as to ensure that it fell within generally accepted standards.

When setting and applying standards in its Code to provide adequate protection to members of the public from harm and offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998. This is the right of a broadcaster to impart information and ideas and the right of the audience to receive them. Accordingly, Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these rights in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and are necessary to achieve a legitimate aim. Ofcom notes, however, that a broadcaster's right to freedom of expression, although applicable to sexual content and pornography, is more restricted in this context compared to, for example, political speech, and this right can be legitimately restricted if it is for the protection of the public, including the protection of those under 18.

*Elite Nights, Elite TV, 8 August 2010, 00:00 to 00:30*

Ofcom considered this broadcast in respect of Rules 1.18, 2.1 and 2.3 of the Code.

In relation to Rule 1.18, Ofcom examined the content of the broadcast and considered that it contained material of a strong sexual nature. For example, during the broadcast the presenters were shown: licking, rubbing and kissing each other's inner thigh, anal and genital areas ; kissing and sucking each other's breasts; mimicking sexual intercourse and oral sex with a whip; and thrusting their bodies miming sexual intercourse. The presenters adopted various positions for prolonged periods of time, including lying on their backs with their legs wide open to camera and on their knees with their buttocks to camera.

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Breach Finding on Playboy One, licensed by Playboy TV UK/Benelux Limited, Broadcast Bulletin 134, <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb134/>;  
Breach Finding on Live 960, licensed by Hoppr Entertainment, Broadcast Bulletin 149, <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb149/>;  
Breach Finding on Bang Babes licensed by Bang Channels Limited, Broadcast Bulletin 151, <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb151/>;  
Breach Finding on Bang Babes, Broadcast Bulletin 152, <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb152/>;  
Breach Finding on Bang Babes, Broadcast Bulletin 153, <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb153/>;  
Breach Finding on Bang Babes, Broadcast Bulletin 157, <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb157/>;  
Breach Finding on Bang Babes, Broadcast Bulletin 163, <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb163/>;  
Breach Finding on Bang Babes, Broadcast Bulletin 164, <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb164/>; and  
Sanctions decision against Bang Channels Limited concerning its services Tease Me, Tease Me 2 and Tease Me 3, <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/bangchannels.pdf>.

Ofcom noted the discussion between the presenters contained highly sexual language and included descriptions of explicit sexual acts, for example “do you like me touching your clit like that”; “you’re the only woman that gets my cunt that wet”; taste it after its been up your arse”; “all that shit covered cock in my mouth”.

In Ofcom's opinion, in this particular case, a viewer could reasonably have perceived the actions of the presenters during the conversation as real e.g. When Presenter Two asked “*Do you like me touching your clit like that?*” She moved her hand towards the genital area of Presenter One.. Furthermore the language used, was of a very strong sexual nature and in Ofcom's view, combined with the imagery, was clearly ‘adult-sex’ material. Ofcom considers the primary purpose of broadcasting this material was sexual arousal. Given the programme’s content and purpose, and the conclusion the content constituted ‘adult-sex’ material, its broadcast, without mandatory restricted access, was therefore in breach of Rule 1.18 of the Code.

Ofcom then went on to consider whether the broadcast was also in breach of Rules 2.1 and 2.3 of the Code.

In light of Ofcom's view that the programme contained material that constituted ‘adult sex material’ and was therefore unsuitable for broadcast without mandatory restricted access, the broadcast was clearly capable of causing considerable offence.

Ofcom therefore examined the extent to which there were any particular editorial or contextual factors that might have limited the potential for offence. Ofcom noted that the programme was broadcast at 00:00, therefore after the watershed, and that viewers tend to expect stronger sexual material to be shown later at night. Ofcom also took account of the fact that the Elite channel is positioned in the ‘adult’ section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than would be expected to be included on other channels.

However, in this case, given the relatively prolonged and repeated scenes of a strong sexual nature; the inclusion of language that was provided for the purpose of sexual arousal; the time of broadcast and location of the channel, Ofcom considers it was not sufficient to justify the broadcast of the material. The language in combination with the actions of the presenters was so strongly sexual that it would have exceeded the likely expectation of the vast majority of the audience for a service without mandatory restriction. Ofcom concluded that the content was clearly not justified by the context and was in breach of generally accepted standards. The broadcast was therefore also in breach of Rules 2.1 and 2.3 of the Code.

*Elite Nights, Elite TV 2 & Elite TV 14 August 2010 22:00 to 22:14 (simulcast)*

Ofcom considered this broadcasts in respect of Rules 1.18, 2.1 and 2.3 of the Code.

In relation to Rule 1.18, Ofcom examined the content of the broadcast and considered that it contained material of a strong sexual nature. For example, during the broadcast the presenter was shown grasping her neck with one hand, simulating being choked. The presenter also adopted various sexual positions for prolonged periods of time, including: lying on her back with her legs spread wide open to camera; bending on all fours with her buttocks to camera and lying on her side with her legs wide open to camera. While in these positions the presenter: thrust her body as though miming sexual intercourse; mimed performing oral sex on a man; repeatedly massaged and licked her breasts and mimicked oral sex with a whip.

We noted in particular that approximately twelve minutes into the broadcast the presenter spoke directly to camera with a microphone:

*“Well guys I’ve got my big juicy tits out as you can see ... [stroking left breast]. Guys I want you to be as filthy as you can. I want to feel my pussy throbbing. I want you to make me so fucking turned on that I can’t keep my knickers on [touching genital area]. My pussy to be so wet and my lips to be so fucking swollen, that I’m ready for cock, because I’m a cock hungry little fucking slut. Imagine your tongue over these big tits [stroking breasts]. I love my tits getting sucked and licked and played with, whilst a nice big juicy cock is pumping me, full of spunk.”*

Ofcom considers the language used, was of a strong sexual nature and was provided for the purpose of sexual arousal. Having assessed the programme’s content and purpose, Ofcom considered that the material broadcast constituted 'adult-sex' material. Its broadcast, without mandatory restricted access, was therefore in breach of Rule 1.18 of the Code.

Ofcom then went on to consider whether the broadcast was also in breach of Rules 2.1 and 2.3 of the Code.

In light of Ofcom's view that the programme contained material that constituted 'adult sex material' and was therefore unsuitable for broadcast without mandatory restricted access, the broadcast was clearly capable of causing considerable offence.

Ofcom therefore examined the extent to which there were any particular editorial or contextual factors that might have limited the potential for offence. Ofcom noted that the programme was broadcast at 22:00, therefore after the watershed, and that viewers tend to expect stronger sexual material to be shown later at night. Ofcom also took account of the fact that the Elite TV 2 and Elite channels are positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than would be expected to be included on other channels.

However, in this case, given the relatively prolonged scenes of a very strong sexual nature and the inclusion of language of a strong sexual nature (provided for the purpose of sexual arousal), the time of broadcast and location of the channel was not sufficient to justify the broadcast of the material. The material shown was so strongly sexual that it would have exceeded the likely expectation of the vast majority of the audience. Ofcom concluded that the content was clearly not justified by the context and was in breach of generally accepted standards. The broadcast was also therefore in breach of Rules 2.1 and 2.3 of the Code.

Ofcom notes that the licensee offered its apologies and explained that the breach resulted from “an inexperienced producer”. However, we are particularly concerned about the strength of the material broadcast on this occasion. This breach resulted from some of the strongest and most explicit sexual language. Ofcom does not expect a recurrence and will consider the imposition of statutory sanction if repeated.

### **Breaches of Rules 1.18, 2.1 and 2.3**

## In Breach

### Bluebird

*Sport xxx Girls, 10 September 2010, 00:00 to 00:30*

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*Bluebird* was a programme that in mid-September 2010 was broadcast on the adult sex chat television service known as Sport xxx Girls, which is owned and operated by Satellite Entertainment Limited (“SEL” or “the Licensee”). The service is available freely without mandatory restricted access on Sky channel number 945 in the 'adult' section of the Sky electronic programme guide. The channel was broadcasting programmes after the 21:00 watershed based on interactive 'adult' sex chat services. Viewers were invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The female presenters dressed and behaved in a sexually provocative way while encouraging viewers to contact the PRS numbers.

Condition 11 of SEL’s licence states that the Licensee must make and then retain a recording of all its programmes for a period of 60 days from broadcast, and at Ofcom’s request must produce recordings “forthwith”. Ofcom has made clear that recordings “must be of a standard and in a format which allows Ofcom to view the material as broadcast.”

Ofcom received a complaint about alleged inappropriate adult content broadcast at around 00:00 on 10 September 2010. Ofcom requested a recording of material from the Licensee for that time and date in order to assess the complaint.

### Response

Between 10 September and 17 September 2010 Ofcom formally asked SEL on several occasions, and set various deadlines, to provide a recording of its output on the 10 September 2010 at 00:00. The Licensee failed to provide this recording. It questioned the validity of the complaint and “why Ofcom had decided not to allow the broadcaster to deal with the communicator [ie the complainant] directly”. It said that it was Ofcom’s duty “to give reasons for the exercise of its discretionary power to require material to be provided”. Since the Licensee was required to provide a copy of the recording “forthwith” on request, Ofcom asked the Licensee for formal comments on its compliance with Condition 11 of its licence. SEL did not provide any comments in response. Ofcom therefore proceeded to reach a decision.

### Decision

It is a condition of all broadcast licences that the licensee adopts procedures for the retention and production of recordings and provides these recordings to Ofcom “forthwith” if requested. Further, the recordings should be “as broadcast” (ie the same quality in terms of both sound and picture as when originally transmitted).

Ofcom formally asked SEL on several occasions to provide a recording of the programme on the 10 September 2010 so that Ofcom could make an assessment of the complaint. SEL failed to provide the recording and provided no valid reasons to justify this failure. This was therefore a clear breach of Condition 11 (Retention and production of recordings) of SEL’s licence to broadcast.

Contraventions of Condition 11 are serious matters because they mean that Ofcom is unable to assess whether a particular broadcast raises potential issues under the Code. This impedes Ofcom from carrying out its statutory duty to regulate television

and radio broadcasts. This is therefore a serious and significant breach of the broadcaster's licence and will be held on SEL's compliance record.

**Breach of Licence Condition 11 (retention and production of recordings)**

## In Breach

### Freeblue

*Live 960, 3 August 2010, 23:00 to 01:00 and 4 August 23:00 to 01:00*

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*Freeblue* is a programme on the adult sex chat television service available freely without mandatory restricted access on Sky channel number 960. This channel is situated in the 'adult' section of the Sky electronic programme ("EPG") and has the name Live 960 on the EPG, though it currently promotes a service on screen known as Bluebird TV. The licence for this service is owned and operated by Hoppr Entertainment ("Hoppr" or "the Licensee"). The channel broadcasts programmes after the 21:00 watershed based on interactive 'adult' sex chat services. Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers.

Condition 11 of Hoppr's licence states that the Licensee must make and then retain a recording of all its programmes for a period of 60 days from broadcast, and at Ofcom's request must produce recordings "forthwith". Ofcom has made clear that recordings "must be of a standard and in a format which allows Ofcom to view the material as broadcast."

Ofcom received a complaint about alleged inappropriate adult content broadcast at around 00:00 on 4 August 2010. The Licensee provided a recording of material from 4 August 2010 from 00:00 to 01:00. However, this recording was not of broadcast quality, had no sound and did not match the description of the complaint. Given that it was unclear from the complaint whether the programme was broadcast at midnight on the 3/4 August or midnight on the 4/5 August, Ofcom requested recordings of material from 3 August 23:00 to 01:00 and 4 August 23:00 to 01:00 in order to assess the complaint.

### Response

Between 27 August and 16 September 2010 Ofcom formally asked Hoppr on several occasions, and set various deadlines, to provide recordings of its output at the times and dates specified. In response, the Licensee failed to provide recordings of the programmes requested. The Licensee said that before providing any recordings it required Ofcom to provide it with "all documents, notes and memoranda concerning each element of Ofcom's decision making process". Since the Licensee was obliged to supply the recordings "forthwith" on request, Ofcom asked the Licensee for formal comments on its compliance with Condition 11 of its licence. Hoppr did not provide any comments in response. Ofcom therefore proceeded to reach a decision.

### Decision

It is a condition of all broadcast licences that the licensee adopts procedures for the retention and production of recordings and provides these recordings to Ofcom "forthwith" if requested. Further, the recordings should be "as broadcast" (ie the same quality in terms of both sound and picture as when originally transmitted).

Ofcom formally asked Hoppr on several occasions to provide recordings of the output at the times and dates specified so that Ofcom could view them and decide whether they raised any potential issues under the Code. The Licensee failed to provide the

recordings and provided no valid reasons to justify this failure. This was therefore a clear breach of Condition 11 (Retention and production of recordings) of Hoppr's licence to broadcast.

All contraventions of Condition 11 are serious matters because they mean that Ofcom is unable to assess whether a particular broadcast raises potential issues under the Code. This therefore impedes Ofcom from carrying out its statutory duty to regulate television and radio broadcasts.

Ofcom previously found the Licensee in breach of Condition 11 in October 2009.<sup>1</sup> This is therefore a second example of poor compliance by this Licensee within a relatively short period. The most recent and present contravention of Condition 11 of Hoppr's licence is serious and significant and will be held on the Licensee's compliance record.

### **Breach of Licence Condition 11 (retention and production of recordings)**

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<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb144/>

## In Breach

### Early Bird

*Tease Me TV (Freeview), 30 July 2010, 08:30 to 09:00;*  
*Tease Me TV (Freeview), 11 August 2010, 08:45 to 09:00;*  
*Tease Me TV (Freeview), 15 August 2010, 07:38 to 07:50;*  
*Tease Me TV (Freeview), 20 August 2010, 07:00 to 07:30*  
*Tease Me TV (Freeview), 23 August 2010, 08:00 to 08:20;*  
*Tease Me TV (Freeview), 29 August 2010, 08:10 to 08:30*

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### Introduction

Tease Me TV is a daytime chat channel available from 05:30 until 09:00 on the Freeview platform on channel number 98. The licence for the service Tease Me TV is held by Bang Media (London) Ltd ("Bang Media").

*Early Bird* is a televised daytime interactive chat programme broadcast without mandatory restricted access. Viewers are invited to call a chat line via premium rate telephony services ("PRS"). The presenters generally dress and behave in a flirtatious manner

#### *Early Bird, Tease Me TV (Freeview), 30 July 2010, 08:30 to 09:00*

Ofcom received a complaint from a viewer about the above broadcast. The complainant was concerned that the programme included a presenter "writhing around, simulating sex to entice phone calls at breakfast time."

Ofcom noted that the female presenter was wearing a pink material band partially covering her breasts, a pink pair of knickers with "call me" printed on them and one fishnet stocking. During the broadcast, the presenter adopted certain positions kneeling with her legs wide open; sitting with one leg beneath her; and lying on her front with her breasts to camera. While in these positions the presenter repeatedly moved and gyrated her hips in a sexually provocative way and bounced up and down mimicking sexual intercourse. The presenter was also shown jiggling her breasts, lightly spanking her buttocks and opening her mouth in a sexualised rather than flirtatious way.

#### *Early Bird, Tease Me TV (Freeview), 11 August 2010, 08:45 to 09:00*

Ofcom received a complaint from a viewer about this broadcast. The complainant was concerned that the programme included a presenter "with her hands by her knickers shaking her breasts".

Ofcom noted that the female presenter was wearing a see-through bra, nipple plasters, and a black thong. During the broadcast the presenter adopted certain positions both sitting and kneeling with her legs wide open, with her breasts to camera. While in these positions the presenter repeatedly moved and gyrated her hips in a sexually provocative way and bounced up and down mimicking sexual intercourse. The presenter was also shown jiggling her breasts and stroking herself in a sexualised rather than flirtatious way.

#### *Early Bird, Tease Me TV (Freeview), 15 August 2010, 07:38 to 07:50*

Ofcom received a complaint from a viewer about this broadcast. The complainant was concerned that the programme "was purely sexual and inappropriate for this time of morning".

Ofcom noted that the female presenter was wearing a white strip of material over her breasts, two white thongs and a pair of white sheer pop socks with ties around her calves. During the broadcast, the presenter adopted certain positions both sitting and kneeling with her legs wide open, with her breasts to camera. While in these positions the presenter repeatedly moved and gyrated her hips in a sexually provocative way and bounced up and down mimicking sexual intercourse. The presenter was also shown jiggling her breasts and stroking herself in a sexualised rather than flirtatious way. During this broadcast the presenter was also shown dancing in a sexually provocative manner.

*Early Bird, Tease Me TV (Freeview), 20 August 2010, 07:00 to 07:30*

Ofcom received a complaint expressing concern about seeing “sexually explicit” material which was scheduled inappropriately.

Ofcom viewed the material and noted the female presenter was wearing a skimpy leopard skin print bra and thong and fishnet stockings. Throughout the broadcast she adopted a sexualised position of lying on one side with her legs open whilst thrusting her hips gently forwards and backwards to mime sexual intercourse. While in this position she repeatedly stroked her upper thighs, pubic area and breasts in a sexualised manner as well as placing her hands between her legs several times.

*Early Bird, Tease Me TV (Freeview), 23 August 2010, 08:00 to 08:20*

Ofcom received a complaint from a complainant who expressed concern that the material showed the presenter adopting “sexually provocative positions, continuously writhing and touching herself”. The complainant considered this material inappropriate for the time of broadcast given that her 10 year old son was able to freely come across the content.

Ofcom noted the presenter was wearing a see through black fishnet top with white patches placed over her nipples and a tight fitting black thong. Throughout the broadcast the presenter adopted a sexualised position of sitting with her legs open to camera (albeit not close up) whilst shaking her breasts, gyrating her hips and repeatedly stroking her inner thighs and breasts. Whilst in this position the camera panned up and down her body showing close up images of her legs and upper thighs and the presenter opened her mouth and used her tongue in a sexualised manner.

*Early Bird, Tease Me TV (Freeview), 29 August 2010, 08:00 to 08:20*

Ofcom received a complaint expressing concern that the material was “obscene” and not appropriate for broadcast at this time of the morning.

Ofcom noted the presenter was wearing a skimpy black and red bra and thong, suspenders and black stockings. Throughout the broadcast the bra straps were lowered so the majority of the presenter’s breasts were displayed as she adopted two sexualised positions: firstly on all fours, with her legs apart and thrusting her buttocks vigorously to mime sexual intercourse; and secondly on her side with her legs apart to camera, thrusting her hips forwards and backwards, shaking her breasts and stroking her body.

Ofcom requested comments from Bang Media under Rule 1.3 (children must be protected from unsuitable material by appropriate scheduling) for the following broadcasts on a number of occasions:

- *Early Bird, Tease Me TV (Freeview), 30 July 2010, 08:30 to 09:00*
- *Early Bird, Tease Me TV (Freeview), 11 August 2010, 08:45 to 09:00*

- *Early Bird, Tease Me TV (Freeview), 15 August 2010, 07:38 to 07:50*
- *Early Bird, Tease Me TV (Freeview), 20 August 2010, 07:00 to 07:30*
- *Early Bird, Tease Me TV (Freeview), 23 August 2010, 08:00 to 08:20*
- *Early Bird, Tease Me TV (Freeview), 29 August 2010, 08:00 to 08:20*

## Response

With reference to the broadcasts on 30 July, 11 August, 15 August, 20 August, and 23 August 2010, Bang Media did not provide comments about the above detailed content. Ofcom therefore proceeded to reach a decision on this material in the absence of any formal response from the Licensee.

With reference to the broadcast on 29 August 2010 only, the broadcaster stated that it accepted that the time of broadcast was “likely to coincide with children preparing for school” and as such it regretted broadcasting material that might in any way have been unsuitable for children at this time.

However, they stressed that whilst the programme was clearly aimed at an adult audience and would not be considered suitable for children, the level of sexual imagery was mild and “no stronger than the level of imagery to which children are exposed to daily on mainstream TV channels and in print media”. Therefore Bang Media did not consider that recording a finding of a breach would be proportionate in this instance.

## Decision

Rule 1.3 makes clear that children should be protected by appropriate scheduling from material which is unsuitable for them. Appropriate scheduling is judged according to factors such as: the nature of the content; the likely number of children in the audience, taking into account such factors as school time; the start and finish time of the programme; the nature of the channel; and, the likely expectations of the audience for a particular channel or station at a particular time and a particular day. It should be noted that the watershed starts at 21:00 and material unsuitable for children should not, in general, be shown before 21:00 or after 05:30.

Ofcom has made clear in numerous previous published findings what sort of material is unsuitable to be included in daytime interactive chat programmes without mandatory restricted access<sup>1</sup>. In the context of daytime interactive chat programmes where the presenters generally dress and behave in a flirtatious matter for extended periods in order to solicit PRS calls, Ofcom has underlined that the presenters should

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<sup>1</sup> Earlybird, Tease Me TV, 3 June 2010, 05:45 and 08:00, Broadcast Bulletin 164 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb164/>; Earlybird, Tease Me TV, 30 January, 20 March, 27 April 2010 and Earlybird, Tease Me, 21 April 2010 – all Findings in Broadcast Bulletin 163 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb163/>; Tease Me: Earlybird, Tease Me TV (Freeview), 15 February 2010, 05:30 and Tease Me: Earlybird, Tease Me TV (Freeview), 25 January 2010, 07:15 – both Findings in Broadcast Bulletin 158 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb158/>; The Pad, Tease Me, 26 February, 11:45, The Pad, Tease Me 3, 27 February 2010, 11:45, Tease Me: Earlybird, Tease Me TV (Freeview) 26 January 2010, 07:15 - all in Broadcast Bulletin 157 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb157/>; The Pad Tease Me, 6 November 2009, 12:00 to 13:00 and 14:00 to 15:00, Broadcast Bulletin 152 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb152/>; Elite Days, Finding in Broadcast Bulletin 151 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb151/>;

not, for example, appear to mimic or simulate sexual acts or behave in an overtly sexual manner and clothing should be appropriate for the time of broadcast. These decisions were also summarised in a guidance letter sent by Ofcom to daytime and adult sex chat broadcasters in August 2009. Some of these findings involved Bang Media.

The broadcasts detailed above all contained similar images which raised issues under the Code. All of the broadcasts were transmitted without restrictions, during the early morning, and featured female presenters wearing skimpy and revealing lingerie or clothing. In some examples (30 July, 15 August, 23 August & 29 August) the presenters wore clothing that offered minimal coverage of their breasts with just their nipples covered. The presenters were all shown acting in a sexualised manner – for example, by adopting various sexual positions for prolonged periods of time, such as: kneeling on all fours; lying on their front with their legs wide open; and lying on their side and back with her legs wide open (albeit away from camera or at a distance from the camera). While in these positions the presenters repeatedly thrust and/or gyrated their buttocks and pelvis as though miming sexual intercourse, shook their breasts to the camera and, in one example, the presenter lightly spanked her buttocks. In addition, throughout all broadcasts the presenters repeatedly stroked their bodies in a sexually provocative manner, including their breasts, buttocks and upper and inner thighs.

Ofcom therefore concluded that the content included in the broadcasts as described above had no editorial justification since the sole purpose was to elicit PRS calls. In Ofcom's view, the revealing clothing, and repeated actions and sexual positions of the presenters were intended to be sexually provocative in nature and the broadcast of such images was not suitable to promote daytime chat. In light of this behaviour, together with its lack of editorial justification, it was Ofcom's view that the material was clearly unsuitable for children.

Ofcom went on to consider whether this material was appropriately scheduled. Ofcom took into account that the material was broadcast during the early morning and during the school Summer holidays and therefore at a time when children may have been watching television and may have been unaccompanied by an adult. While Ofcom noted that the material was broadcast on a channel that is not located directly next to children's channels on the Freeview platform, there was the potential for children, should they be navigating through the Freeview electronic programme guide, to come across the channel unawares. Ofcom then considered the likely expectations of the audience for programmes broadcast at this time of day on a channel without mandatory restricted access. In its opinion, viewers would not expect to come across such material on this channel or any other unencrypted channel at this time.

Taking into account the factors above, Ofcom concluded that the content of the six broadcasts was clearly unsuitable for children and not appropriately scheduled so as to offer protection from it. Therefore the content breached Rule 1.3 of the Code.

On 29 July 2010 Ofcom fined Bang Media (London) Limited and Bang Channels Limited a total of £157,250 for serious and repeated breaches of the Code as regards the broadcast of programmes between June 2009 and November 2009, and for breaches of Licence Conditions. In addition, as a result of the serious and repeated nature of breaches recorded previously against Bang Channels Limited and Bang

Media (London) Ltd in Bulletins 157, 158, and 163, Bang Media has already been put on notice that these contraventions of the Code are being considered for a further statutory sanction.

### **Breaches of Rule 1.3**

## In Breach

### **Tafheem - al Masyal**

*Takbeer TV, 24 July 2010, 16:30 to 20:30, 25 July 2010 16:30 to 20:30 and 7 August 2010 14:30 to 16:30*

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#### **Introduction**

Takbeer TV broadcasts religious and general entertainment content mainly in Urdu, and is available on cable and satellite platforms. *Tafheem - al Masyal* is a daytime programme, during which viewers are invited to call in and put their questions to the guests. The licence for this channel is held by Channel S World Limited ("Channel S World" or "the Licensee").

Condition 11 of Takbeer TV's licence states that the Licensee must make and retain a recording of all its programmes for a period of 60 days from broadcast, and at Ofcom's request must produce a recording "forthwith". Ofcom has made clear that recordings "must be of a standard and in a format which allows Ofcom to view the material as broadcast."

Ofcom received one complaint about alleged abusive treatment towards Ahmadi Muslims regarding their religious beliefs, during all three broadcasts. Ahmadi Muslims are a comparatively small Islamic movement founded by Mirza Ghulam Ahmad Qaadyani that grew out of mainstream Islam in the nineteenth century, but whose followers believe themselves to be true Muslims. Followers of Mirza Ghulam Ahmad are known as Ahmadis or Qaadyanis or Ahmadiyya.

Ofcom requested a recording of the above material from Takbeer TV.

#### **Response**

Between 17 August and 8 September 2010 Ofcom asked the licensee on several occasions and set various deadlines to provide a recording of the programme. In correspondence Channel S World initially stated that it would assist Ofcom in investigating the complaint. The Licensee did not provide a recording. Ofcom therefore asked the Licensee for formal comments on its compliance with Condition 11 of its licence, and in particular the obligation to provide Ofcom with a copy of its output "forthwith" on request. Channel S World did not provide any comments in response.

#### **Decision**

The failure by Takbeer TV to supply the recording in this instance is a serious and significant breach of Condition 11 (Retention and production of recordings) of its licence to broadcast. This breach will be held on record. Ofcom will consider whether further regulatory action is appropriate if similar breaches occur.

#### **Breach of Licence Condition 11 (retention and production of recordings)**

## Advertising Scheduling cases

### In Breach

#### Advertising minutage

*STV, 10 September 2010, 23:00*

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##### Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”. This rule implements the requirements of the Audiovisual Media Services (AVMS) Directive.

STV informed Ofcom that during the 23:00 clock hour on 10 September 2010 STV transmitted 13 minutes and 42 seconds of advertising (one minute and 42 seconds more than is permitted).

Ofcom wrote to the broadcaster asking it to provide comments relating to the incident under Rule 4 of COSTA.

##### Response

STV acknowledged that a minutage overrun had occurred during its programme *STV Sports Centre*. The broadcaster said that it was disappointed that, despite having implemented systems and controls to prevent overloading its advertising minutage and having provided staff education in this area, clear instructions had not been actioned by its employees.

The broadcaster stated that its scheduling department had informed the *STV Sports Centre* production team of the specific advertising break pattern applicable to the show, but that the programme duration had been miscalculated by a member of the production team and the programme part duration was too short. This meant that the advertising break would commence earlier than instructed and could result in an advertising overrun.

STV explained that it has an escalation process in place to identify instances where the duration of programmes is incorrect and that the short duration of *STV Sports Centre* programme part had been identified in the editing suite. The broadcaster said that, although timings were passed to the same production team member, the individual took no action to remedy the situation which meant that the incident could not be corrected prior to transmission.

STV went on to say that it also receives a presentation document which identifies all break pattern restrictions throughout the day for use by STV's Transmission Controllers to manage transmission of programmes and commercials on STV. The broadcaster said that, on this occasion, the presentation document gave clear instructions to commence this commercial break after 23:00, but the transmission controller did not take any action to stop the commercial break commencing earlier than instructed resulting in too much advertising being broadcast between 22:00 and 23:00.

STV informed Ofcom that as restitution for the overrun, it had reduced the amount of advertising shown during the 22:00 clock hour on 29 September by one minute and

50 seconds. The broadcaster said it had made fundamental changes to the structure of the production team and had engaged a new senior producer to both monitor performance and ensure procedures are followed. STV said it had also introduced a training plan for relevant staff and notified all compliance and transmission colleagues that failure to adhere to the broadcaster's compliance procedures and instructions may lead to disciplinary action.

### **Decision**

Ofcom notes STV's existing procedures and its efforts to redress the compliance failure through the restitution of advertising minutage, the appointment of a senior producer and additional training of compliance personnel.

However, in this instance STV exceeded its peak hourly minutage. This follows other instances, including one on 27 December 2009 that was reported in the Broadcast Bulletin<sup>1</sup>.

While Ofcom welcomes the additional measures outlined by STV, we remain concerned that the procedures implemented on previous occasions failed to prevent additional overruns. We have therefore required STV to provide Ofcom with more detailed information about its compliance processes and the further training it has introduced.

### **Breach of Rule 4 of COSTA**

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<sup>1</sup> See Advertising minutage, STV, 27 December 2009, 17:00 in Broadcast Bulletin 157. <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb157/>.

## In Breach

### Advertising minutage

*Discovery channels: Animal Planet; Discovery Home and Health; Discovery Knowledge; Discovery Shed; Discovery Turbo; DMAX; and Investigation Discovery 26 to 28 June 2010, various times.*

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#### Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states that: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”. This rule implements the requirements of the Audiovisual Media Services (AVMS) Directive.

Discovery informed Ofcom that, between 26 and 28 June 2010, it had experienced a number of technical failures that resulted in emergency scheduling changes. These were likely to have caused break infringements during this period.

Ofcom’s routine monitoring of broadcasters’ compliance with COSTA identified subsequently that a number of Discovery’s channels appeared to have transmitted more than 12 minutes of advertising in an hour on 20 occasions between 26 and 28 June 2010, with overruns ranging from between eight seconds to two minutes and 30 seconds.

Ofcom wrote to the broadcaster asking it to provide comments relating to the incidents under Rule 4 of COSTA.

#### Response

The broadcaster acknowledged that minutage overruns had occurred. It explained that three unrelated technical incidents resulted in the interruption of the technical process that transfers content from the archive to the transmission system. This meant that it was unable to broadcast the usual scheduled content and was obliged to repeat content that was already available on the transmission system, pending the restoration of normal services.

Discovery said that, in the first instance, it was necessary to place programmes in the schedule manually. This resulted in breaks moving and, in turn, generated advertising overruns. Discovery stated that it then repeated blocks of programming from the morning schedule during evening transmission as this had less commercial impact and was less likely to cause content and minutage compliance issues. The broadcaster said that selecting repeat blocks of programming from prime time would have had more pronounced effects on overall advertising minutage.

To mitigate the risk of similar incidents in the future, the broadcaster said that it had taken immediate steps to reconfigure the affected server. It had since conducted a detailed analysis of the issues that occurred and has invested in additional server capacity at significant cost. Discovery explained that this allows for servers to be pre-loaded with content seven days in advance of transmission, instead of 24 hours in advance, to avoid “bottlenecks” which can overload server capacity.

Discovery also said that the channels made no commercial gain by exceeding the advertising minutage allowance during this period because the additional advertising

was not contracted and therefore no payment was collected. In addition, Discovery stated that it is in the process of reducing its advertising minutage to compensate for the advertising overruns that occurred on this occasion.

### **Decision**

Ofcom notes that Discovery alerted Ofcom to the transmission failures it had experienced between 26 and 28 June 2010. We welcome the technical measures Discovery has taken to limit the likelihood of similar incidents in the future. Ofcom also notes Discovery's commitment to reduce its advertising minutage to compensate for the overruns. However, given the substantive nature of many of the 20 overruns, we are recording a breach of Rule 4 of COSTA.

Ofcom will continue to monitor Animal Planet, Discovery Home and Health, Discovery Knowledge, Discovery Shed, Discovery Turbo, DMAX and Investigation Discovery and may consider further regulatory action if this problem recurs.

### **Breaches of Rule 4 of COSTA**

## In Breach

### Advertising minutage

*Food Network (Chellozone), 1 and 10 July 2010, various times*

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#### Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”. This rule implements the requirements of the Audiovisual Media Services (AVMS) Directive.

Ofcom’s routine monitoring of broadcasters’ compliance with COSTA noted that Food Network appeared to have transmitted more than 12 minutes of advertising in an hour on three occasions, once on 1 July and twice on 10 July 2010, with overruns ranging from 13 seconds to 28 seconds.

Ofcom wrote to the licensee for this service, Chellozone, asking it to provide comments relating to the incident under Rule 4 of COSTA.

#### Response

Chellozone apologised for the minutage overruns that had occurred. The licensee said that when late changes are made to programme timings, it is the role of the presentation scheduler to recalculate the minutage and reissue the transmission schedule. However, on this occasion, last minute changes were made to the schedule but there was not a scheduler available to recalculate the advertising timings, which resulted in an advertising overrun.

Chellozone admitted that the same issue caused overruns flagged by Ofcom on some of its other channels in early 2010, but said that it has been addressing the issue with both the scheduling software provider and its playout staff.

The licensee stated that, whilst working on a longer term solution for all Chellozone channels, it has introduced interim arrangements for those occasions a scheduler is absent. These involve the transmission controller recalculating timings manually in the event of last minute schedule changes. Chellozone said that when transmission controllers are unable to recalculate timings for the entire 24 hour period they are required to alert a standby scheduler who must then update the schedule remotely.

Chellozone stated that it has requested an additional safeguard from its playout provider to recalculate the schedule timings automatically in these circumstances until the next version of the transmission server used by Food Network is released in 2011, when such a calculator will come as standard. It has told Ofcom that it expects this safeguard to be available from early 2011.

Chellozone also said that it has arranged for programmes to be compiled, formatted and entered into the transmission system earlier, to provide more time to find or adjust incorrect timings and to reduce the number of last minute adjustments.

The licensee said that this process should be completed by October and that it would keep Ofcom informed of when systems changes are fully operational.

## **Decision**

Ofcom notes the changes that Chellozone reports it has made to its processes to identify timing issues earlier, its interim solution and its proposed long term fix for recalculating the scheduled minutage.

However we are concerned that, despite Chellozone's reassurances earlier in the year that it was addressing the flaws in its procedures, further COSTA infringements stemming from the same issue have occurred. Ofcom considers this to be a failure by the licensee to put in place adequate controls at that time to prevent additional breaches. Accordingly we are recording a breach of Rule 4 of the COSTA.

Ofcom has required that Chellozone provides monthly updates on its progress towards a software solution in advance of its 2011 server upgrade.

Ofcom will continue to monitor Chellozone's channels and may consider regulatory action if this problem recurs.

## **Breach of Rule 4 of COSTA**

## In Breach

### Breach findings table

*Code on the Scheduling of Television Advertising compliance reports*

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”. This rule implements the requirements of the Audiovisual Media Services (AVMS) Directive.

Licensed service(s)	Transmission date(s) and time(s) (if applicable)	Code and rule / licence condition	Summary finding
S4C	7 July 2010 15:00	COSTA Rule 4	S4C acknowledges that it transmitted one minute and 16 seconds more advertising than permitted. <b>Finding: Breach</b>
E! and The Style Network (Comcast)	20 July 2010 and 18 August 2010	COSTA Rule 4	The Licensee acknowledges that E! and The Style Network transmitted 20 seconds and 12 seconds more advertising respectively, than permitted. <b>Finding: Breach</b>
Sunrise TV	27 August 2010, 16:00 and 10 September 2010, 16:00	COSTA Rule 4	The Licensee acknowledges that Sunrise TV transmitted five seconds and one minute more advertising respectively, than permitted. <b>Finding: Breach</b>
Liverpool FC TV	29 August 2010 26:00	COSTA Rule 4	The Licensee acknowledges that Liverpool FC TV transmitted one minute and 12 seconds more advertising than permitted. <b>Finding: Breach</b>

## Resolved

### Resolved findings table

*Code on the Scheduling of Television Advertising compliance reports*

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes.”

Rule 12 of COSTA” states: “Where television advertising or teleshopping is inserted during programmes, television broadcasters must ensure that the integrity of the programme is not prejudiced, having regard to the nature and duration of the programme, and where natural breaks occur.”

Rule 17 of COSTA sets out the number of breaks permitted in programmes<sup>1</sup>.

Licensed service(s)	Transmission date(s) and time(s) (if applicable)	Code and rule / licence condition	Summary finding
NickToons  NickToons Replay	28 June 2010, 12:00 & 13:00 respectively  27 August 2010 15:00 & 16:00 and 17:00 & 18:00 respectively  6 September 2010 08:00 & 09:00 respectively	COSTA Rule 4	On 28 June NickToons and NickToons Replay each transmitted 44 seconds more advertising than allowed.  On 27 August each channel transmitted five seconds and 13 seconds more advertising than allowed, and on 6 September both channels transmitted 10 seconds more than allowed.  Ofcom has not previously found infringements by these services and notes the actions Nickelodeon reports it has taken to deal with both the technical problems and instances of the human error. <b>Finding: Resolved</b>
ITV3	18 July 2010 16:45	COSTA Rule 17	During <i>The Turn of the Screw</i> ITV3 transmitted one more advertising break than permitted.  Ofcom notes that this is the first time it has recorded a break pattern infringement on ITV3. Having regard to this and the steps ITV plc reports it has taken to improve its compliance with

<sup>1</sup> See <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tacode.pdf> for further details.

			COSTA, we consider the matter to be resolved. <b>Finding: Resolved</b>
FX	10 & 17 July 2010, 23:00	COSTA Rule 4	FX transmitted 11 seconds and 29 seconds more advertising than permitted. Ofcom notes this is FX's first minutage infringement. Having regard to this and the steps the licensee reports it has taken to address technical issues, we consider the matter resolved. <b>Finding: Resolved</b>
Watch	25 July 2010 06:00	COSTA Rule 17	During <i>Stig of the Dump</i> Watch transmitted two more advertising breaks than permitted.  Ofcom notes that this is the first time it has recorded a break pattern infringement by Watch. Having regard to this and the steps UKTV reports it has taken to improve its compliance with COSTA, we consider the matter resolved. <b>Finding: Resolved</b>
Discovery	30 August 2010 21:00  31 August 2010 18:00	COSTA Rule 17	During <i>Mythbusters Top 25 Special</i> Discovery transmitted one more advertising break than permitted.  Ofcom notes that this is the first time it has recorded a break pattern infringement on Discovery. Having taken into account the steps Discovery reports it has taken to improve its compliance with COSTA, we consider the matter to be resolved. <b>Finding: Resolved</b>
ITV1 Westcountry	25 August 2010	COSTA Rule 12	<i>The Westcountry Tonight Weather</i> on ITV1 Westcountry and HTV West was cut short by a nationally scheduled advertising break. This was caused by the regional programme exceeding its allotted runtime. Ofcom notes the steps ITV plc reports it has taken to address the human errors in the

			production process and considers this matter resolved. <b>Finding: Resolved</b>
Kerrang!	3 September 2010 25:00	COSTA Rule 4	Kerrang! transmitted 20 seconds more advertising than permitted.  Ofcom notes this is Kerrang!'s first minutage infringement. Having regard to this and the steps the licensee reports it has taken to address the failure, we consider the matter resolved. <b>Finding: Resolved</b>

## Broadcast Licence Condition Cases

### In Breach

#### Breach of Licence Condition

*L107 FM Ltd (L107 FM)*

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##### Introduction

L107 FM is a commercial radio station that has been licensed to broadcast to the North Lanarkshire area. Following the radio station change of control and as a result of complaints alleging a deviation from Format, Ofcom undertook a Content Sampling exercise in early August in order to confirm whether the licensee was complying with the Format requirements.

Ofcom has a statutory duty to ensure “a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests.” In local commercial radio Ofcom secures this by the use of Formats. Each station’s Format includes a description of the output which each licensee is required to provide, based on the promises originally made in its application to win the licence. Formats may be varied over time, but only with the approval of Ofcom.

Ofcom monitored the station’s output between Sunday 1 and Tuesday 3 August 2010<sup>1</sup>.

The report concluded that the licensed service had failed to fulfil its commitment to broadcast local news, as prescribed in news schedule of L107 FM’s Format, over the three days of listening. This had left the station outside Format. In particular local news stories were not broadcast during Sunday while at other times local news stories were broadcast without real change throughout the day, leaving local news delivery with no sense of update, urgency or commitment. The output of L107 FM was therefore in breach of licence.

Ofcom wrote to L107 FM Ltd which holds the commercial radio licence for North Lanarkshire for its view on how it was complying with Licence Condition 2(1) contained in Part 2 of the Schedule to the Licence. The relevant licence condition states that:

“The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period.” (Section 106(1) of the Broadcasting Act 1990).

##### Response

Ofcom did not receive a representation from the named contact of L107 FM Ltd.

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<sup>1</sup> The full Content Sampling report may be found at:  
<http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/sampling/L107.pdf>.

## Decision

It is an important condition of the Format that licensees comply with the required number of bulletins and broadcast local news stories of an acceptable standard as outlined in Ofcom's local news guidelines:

<http://stakeholders.ofcom.org.uk/broadcasting/radio/localness/localness-guidelines>

In the light of L107 FM failing to satisfactorily deliver its Format, Ofcom is formally recording a breach of the L107 FM licence for 1, 2 and 3 August 2010. We will monitor the station again in the near future in order to ascertain whether the service is broadcasting in compliance with its Format. If not further regulatory action may be considered.

**Breach of Licence Condition 2(1) contained in Part 2 of the Schedule to the Lanarkshire (FM) commercial radio licence by L107 FM Ltd (broadcasting as L107 FM).**

## Fairness and Privacy Cases

### Upheld in Part

#### Complaint by Mr Chris Garner made on his own behalf and on behalf of Zebra Collection

*Inside Out (London), BBC1 London, 11 January 2010*

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**Summary:** Ofcom has not upheld this complaint by Mr Chris Garner and Zebra Collection (“Zebra”) of unfair treatment and unwarranted infringement of privacy in the programme as broadcast. It has upheld Zebra Collection’s complaint of unwarranted infringement of privacy in the making of the programme.

This programme included a report about a modelling agency, Zebra, in which it said that the agency was *“more interested in making a quick buck than helping their clients carve out a career on the catwalk”*.

The programme included interviews with a number of young women who had been approached by Zebra with offers of the possibility of modelling work, but who had not found work from the agency and felt cheated. The programme also included an interview with an anonymous former employee of Zebra who described her experiences as a casting agent there. The presenter said that the programme makers had approached a number of companies that Zebra had claimed to have worked with and that none of them had *“even heard”* of Zebra.

The presenter visited, gained entry to and filmed the inside and outside of Zebra’s office. The presenter asked to speak to Mr Garner, the owner of the agency, who was not present. The programme’s commentary said that the allegations had then been put to Mr Garner in writing and excerpts from his response were read out.

Mr Garner complained on behalf of Zebra that it was treated unfairly and that its privacy was unwarrantably infringed in the making of the programme. Mr Garner also complained that his privacy was unwarrantably infringed in the programme as broadcast.

In summary, Ofcom found:

- Although the programme clearly criticised Zebra’s practices, it did not go as far as to accuse the agency of having “no intention of finding its members work”.
- As the former employee’s account accorded with the testimonies of others, and in the absence of any evidence suggesting that she was untrustworthy, it was reasonable for the broadcaster to rely on her account. Zebra was therefore not unfairly portrayed.
- On balance, Mr Garner was given an appropriate and timely opportunity to respond and was able to provide a comprehensive and robust response to all allegations put to him.
- As there was insufficient evidence that Mr Garner would frustrate the investigation if approached openly and the programme makers did not attempt to contact Mr Garner to request an interview before the doorstepping of Zebra took place, the doorstepping was not justified (the programme makers had failed to

take the measures set out in Practice 8.11 of the Broadcasting Code) and was an unwarranted infringement of the agency's privacy.

- The brief broadcast of Mr Garner's home address, which was already in the public domain, was not an unwarranted infringement of his privacy.

## Introduction

On 11 January 2010, BBC1 London broadcast an edition of *Inside Out*, a regional magazine series that focuses on local stories. This edition included a report about a modelling agency called Zebra Collection ("Zebra"), which it said was "... *more interested in making a quick buck than helping their clients carve out a career on the catwalk*".

The programme included interviews with a number of young women who had been approached by Zebra and had offered them the possibility of modelling work. The agency asked the women to attend its photographic studio, The Light Rooms, to have a portfolio of photographs taken, which the young women had to pay for. The young women said in the programme that they had not found work from the agency and that they felt cheated.

The programme included an interview with an anonymous former employee of Zebra, who had worked as a casting agent and said that the agency was unprofessional as staff would put callers on hold for 10-15 minutes and would laugh about how some of the girls looked.

The programme makers also spoke to Veronica, a young woman who had recently been approached by Zebra. She was told to bring £100 with her to The Light Rooms to have her portfolio taken. A programme researcher accompanied Veronica with a hidden camera and filmed the visit. The member of staff asked her for £199 (for the copyright of the photos) and offered her a portfolio costing from £750.

The presenter said that the programme makers had approached a number of companies that Zebra claimed to have worked with, including L'Oreal, Toni & Guy, T-Mobile, H & M and Top Shop, and said that none of them had "*even heard*" of Zebra.

The programme makers visited and gained entry to Zebra's office at Elysium Gate and filmed inside and outside the premises. The presenter asked to speak to Mr Chris Garner, the owner of the agency, who was not present. The programme's commentary said that the allegations had then been put to Mr Garner in writing and excerpts from his response were read out.

Zebra was referred to throughout the programme, which included clear shots of the company's website and footage from the inside and outside of its offices and the inside of its photographic studio. Mr Garner did not appear in the programme, but he was referred to several times and his home address, detailed on a Companies House document, was shown.

Mr Garner complained on behalf of Zebra that it was treated unfairly and that its privacy was unwarrantably infringed in the making of the programme. Mr Garner also complained that his privacy was unwarrantably infringed in the programme as broadcast.

## The Complaint

In summary, Mr Garner complained on behalf of Zebra that it was treated unfairly in the programme as broadcast in that:

- a) It was unfairly portrayed because:
  - i) The programme wrongly and unfairly alleged that Zebra had no intention of finding its members work.
  - ii) The programme omitted information, which Mr Garner submitted to the programme makers prior to broadcast, that proved that the statement that the companies that Zebra claimed to have worked with had never heard of them, was untrue.
  - iii) The programme used an unreliable source (namely the person described as being a former employee) to make false claims, such as the claim that staff put people on hold for 10 to 15 minutes and made offensive comments about them whilst on hold.

In summary, Mr Garner complained that Zebra's privacy was unwarrantably infringed in the making of the programme in that:

- b) The programme makers unwarrantably obtained access and forcibly imposed themselves first into the building and then into the Elysium Gate office. They then proceeded to film the interior of the office and members of staff without consent, and even when specifically asked to desist their filming, they did not.

In summary, Mr Garner complained that his privacy was unwarrantably infringed in the programme as broadcast in that:

- c) It broadcast his home address unnecessarily and without his consent, in the context of the unfair portrayal of his company set out under head a).

As a result of these details being broadcast, Mr Garner said that he had been inundated with calls and emails from concerned family and friends, none of whom had anything to do with his business activities and who were deeply concerned for his safety.

## The BBC's case

The BBC responded first to Mr Garner's complaint that he was treated unfairly in the programme as broadcast.

- a) The BBC responded to the complaint that Mr Garner was portrayed unfairly as follows:
  - i) The BBC said that the programme did not allege that Zebra had "*no intention*" of finding its members work, but said that the company was "*more interested in making a quick buck than helping their clients carve out a career on the catwalk*". The BBC said that the programme reported that it was aware of almost 100 young women who had been "*spotted*" by Zebra staff in the street and told that they had "*the look*". The BBC said that they were assured that they could be found lucrative and glamorous work if they signed with Zebra. They were then persuaded to pay substantial fees to The Light Rooms, also owned by Mr Garner, for photographic portfolios which they were told they would need in order to be placed for work. The BBC said that the promised

work did not materialise. It said that four of the young women contacted by the programme agreed to be interviewed and gave first-hand testimony, which corroborated allegations made by many more. The BBC said that the complaints were substantiated by a former employee, who also described the working practices of the company. It said that after the programme was broadcast, the production team was contacted by a further fifteen young women who told similar stories. The BBC said that this was a compelling body of evidence, upon which the programme makers were entitled to rely, and that the programme fairly and accurately represented the business practices of Zebra.

- ii) As regards the complaint that the programme omitted information provided by Mr Garner, which proved that allegations that companies that Zebra claimed to work with had never heard of them was untrue, the BBC said that Mr Garner had provided little more than a list of random names and companies, without any references, testimonials or first-hand statements from any companies to the effect that they had worked with Zebra. This material did not constitute proof of Mr Garner's claims. The BBC said that the production team had contacted a number of companies with which Zebra had claimed to have worked and that, without exception, they told the programme that they did not work with Zebra and in many cases that they had never heard of the agency.
- iii) The BBC said it had no reason to doubt the credibility of the former employee, who it understood had left the agency of her own accord and was not, as suggested by Mr Garner, dismissed.

The BBC said that the witness' claim in the programme about the sales pitch used to entice young clients and about callers being left on hold for long periods was corroborated, in part at least, by evidence filmed when the production team visited Zebra's offices. Although opportunities for filming what was going on at the desks of individual employees was very limited, a study of the unedited footage showed at least one phone apparently being left on hold for a considerable length of time, and a notice pinned at the desk of an employee saying "*Get the girl excited*".

The BBC said that, after transmission of the programme, the production team was contacted by another former employee, also a casting agent, who provided further corroboration of the programme's allegations regarding Zebra's business practices.

The BBC also said that the attitude of staff towards potential models reported by the former employee was consistent with evidence of the exploitative fashion in which the company's employees dealt with the young women when they were trying to recruit them, as reported by the many young women who themselves spoke to the programme.

The BBC next responded to Mr Garner's complaint that Zebra's privacy was unwarrantably infringed in the making of the programme.

- b) The BBC said that the unedited footage of the programme makers' visit to the Elysium Gate office showed the visit in its entirety and showed clearly that they entered the office complex through a gate to the street which was ajar when they arrived. They entered the office block through the front door which was open, and they entered the offices of The Light Rooms through the front office door, which was also open.

The BBC said that when the crew entered the office they stated clearly that they were from the BBC and wished to speak to Mr Garner. It was quite apparent that the cameraman was filming and he was not asked to stop. The BBC said that it was immediately evident from paperwork on the desks that this was also the office of Zebra. The BBC said that an employee had asked the producer to “take a seat” while he went to find Mr Garner. The programme makers were shown into a separate, glass-walled office where they were asked to wait. They did so and the cameraman carried on filming openly through the glass partition and was not asked to stop. The BBC said that an employee did indicate at one point that the camera was too close to her, but carried on talking with the producer when she and the camera, which was still being used openly, moved further apart. The BBC said that when the programme makers were finally asked to leave, they did so without argument and that the whole visit was conducted with courtesy and calmly by the camera crew and producer and that there was no evidence of staff being harassed or traumatised at any point during the visit.

The BBC next responded to Mr Garner’s complaint that his privacy was unwarrantably infringed in the programme as broadcast.

- c) The BBC said that Mr Garner’s home address appeared on the Companies House registration document for The Light Rooms and that this was shown in the programme to demonstrate his association with that company, which conducted lucrative photographic shoots for Zebra. It said that his home address was incidental to the shot and appeared only fleetingly as the camera zoomed in to focus upon the information about his company directorship. The BBC said that as the camera moved in, Mr Garner’s home address disappeared from the shot.

The BBC said that, in any event, Mr Garner could have no reasonable expectation of privacy in respect of his home address when he had placed it in the public domain by recording it on publicly available company registration documents.

### **Mr Garner’s Comments**

With reference to the complaint of unfair treatment, Mr Garner made the following comments:

- a) As regards the complaint that Zebra was unfairly portrayed, Mr Garner said:
  - i) Zebra did not tell anyone that they had “the potential to obtain lucrative offers of work”, but made realistic offers based on people’s particular circumstances. Mr Garner said that the letter he received from the BBC following the programme makers’ visit to his office asked him to respond to the allegation that “Zebra have no intention of finding members work” and that this belief clearly informed both the programme and the agenda of the camera crew who attended his office. Mr Garner said that the reference to Zebra being “*more interested in making a quick buck than helping clients carve out a career on the catwalk*” was a thinly veiled suggestion that the agency was not interested in finding its members work. Mr Garner said that this, coupled with the BBC’s letter, made it clear that the programme was founded on this erroneous position. Mr Garner said that nobody “signed with” Zebra, which only represented freelance artists.

Mr Garner said that Zebra made the types of assignments on offer very clear: some might reasonably be described as “lucrative and glamorous”, but the

majority would not. The agency told all members to have realistic expectations and did not promise work. He said that the testimonies of four people in respect of a company that had over 400 members was not statistically significant enough to justify the inclusion of Zebra in the programme.

- ii) As regards the list of companies with which Zebra had worked, Mr Garner said that this was not “a list of random names and companies” and that a clear explanation of this document was provided in the correspondence sent to the BBC. The names on the list were clients for whom Zebra had provided talent or recruited. Mr Garner said that the companies contacted by the BBC were companies Mr Garner had worked with under the name Zebra Management, whereas the BBC emailed them referring to Zebra.
- iii) As regards the former employee, Mr Garner said that the BBC made no attempt to obtain any details that would have supported her credibility, such as a full employment contract or a P45, which would have been important in determining her legitimacy.

Mr Garner also said that the dates included on the emails from the BBC confirmed that the programme makers had been conducting research for at least five months before broadcast. The documentation Mr Garner received with the BBC’s allegations arrived at approximately 4.30pm on 6 January 2010 and requested a response by 2.30pm on 8 January 2010, so that he was given less than 48 hours to respond to a dossier that had taken the BBC nearly six months to compile. This was not an appropriate and timely opportunity for him to respond to the programme’s allegations.

As regards infringement of privacy in the making of the programme, Mr Garner made the following comments:

- b) Mr Garner said that his agency had the right to expect to have its privacy respected and that staff working in a secure environment should not have had to “ask someone to stop” after an infringement had already occurred. The programme makers did not “leave without argument” and again demanded to speak to Mr Garner, even though it was quite apparent he was not there. After they left the office premises, they loitered in the car park and gained more footage of staff on personal breaks, without their consent.

With reference to unwarranted infringement of privacy in the broadcast, Mr Garner made the following comments:

- c) Mr Garner said that his home address was provided to Companies House for specific purposes and that its inclusion in a programme that deeply tarnished his professional reputation and that of his company was not justified. As regards the BBC’s point that the footage of Mr Garner’s address was fleeting, Mr Garner said that the technology to “pause” a television programme was elementary and available to most people.

### **The BBC’s comments in response**

The BBC responded to the complaint of unfair treatment as follows:

- a) As regards the complaint that Zebra was unfairly portrayed, the BBC said that:

- i) In response to the complaint that programme suggested that Zebra had no intention of finding work for its members, the BBC said that it was not suggested that Zebra directly employed the young women it scouted, but that Zebra was offering to represent them in finding lucrative modelling work. The BBC said that the programme relied on the evidence provided by the young women featured in it and around 100 more whose accounts provided corroboration to justify the claim that they were promised lucrative and glamorous work, but that this was rarely forthcoming. None of the women recalled being warned to have “realistic expectations”. The BBC said that all the women interviewed believed that they were being promised work with third parties through Zebra.
- ii) The BBC said that when Mr Garner provided the programme makers with the list of companies with which he said Zebra had worked, the programme makers had contacted the companies a second time. None of them had had dealings with any company with the word “Zebra” in its name.

As regards opportunity to respond, the BBC said that aspects of the story had been under investigation for some months before transmission, but that members of the programme team were not engaged exclusively on it. The BBC said that Mr Garner was given a timely opportunity to respond. The programme makers attempted to speak to Mr Garner at his offices on Tuesday 5 January 2010 and it was made clear to his staff that they wished to speak to him. The programme makers provided a contact phone number and were assured that it would be passed to Mr Garner. By early afternoon the following day, as Mr Garner had not responded, the programme makers sent him the allegations by courier and email. Mr Garner responded later that afternoon, saying:

*“I have received your correspondence dates 6 January 2010 and will reply within the timescales provided. Please note I have emailed [insideout@bbc.co.uk](mailto:insideout@bbc.co.uk) prior to receiving your letter, please confirm you are in receipt of this”.*

The BBC said that Mr Garner had sent the BBC a lengthy statement early the following morning, 8 January 2010. Mr Garner did not indicate that he had insufficient time to respond. On the contrary, in his email of 6 January 2010 he made clear that he would be able to respond in the timescale provided.

- iii) The BBC said that the programme makers took all reasonable steps to confirm the credibility of the former employee who provided information about Zebra and who was promised anonymity. The programme makers already had many accounts from women who had been scouted by Zebra. These provided considerable detail about the approaches made to them, what they were told in follow-up telephone conversations, what happened when they went to The Light Rooms, what they were promised and what work they were eventually offered. These accounts informed the programme maker’s approach when they met the former employee. The BBC said that the programme makers were confident that the former employee’s account corroborated those they had already obtained. She had also been able to provide work emails which corroborated her account in a number of respects. The programme makers questioned her closely as to her motives but could detect no malice on her part towards the company.

The BBC responded as follows to Mr Garner's comments regarding unwarranted infringement of privacy in the making of the programme:

- b) In relation to the conduct of the film crew during the visit to Mr Garner's office, the BBC said that the recording of untransmitted footage spoke for itself.

The BBC acknowledged that the visit to Mr Garner's office premises constituted an attempted doorstep as there had been no prior request to Mr Garner for an interview, nor had the allegations been put to him prior to the visit. The BBC said that this approach was warranted, as Mr Garner's business practices led the programme makers to believe that if he were given advance notice of the investigation he would rename his company and move premises in order to thwart the investigation and that there would therefore be no other opportunity to put the allegations arising from the investigation to Mr Garner. The BBC said that there were two principal factors to be considered in assessing whether Mr Garner would respond to a request for an interview or whether he would try to thwart the investigation: firstly, the seriousness of the allegations being made and the high level of proof which underpinned them; and secondly, Mr Garner's record for conducting his business in a manner designed to avoid scrutiny.

The BBC said the programme makers took into account the fact that the address of the premises from which Mr Garner ran his business did not appear on any of its public literature or on its website. One of the addresses used had been vacated by Zebra some time before and the other was a business accommodation address. The BBC said that it was only aware of the address from which Zebra actually operated through the former employee who contributed to the programme. Even at this address, the display board at the foot of the stairs listed the company as "The Light Rooms (London) Ltd" rather than "Zebra Collection". The BBC said that, given the nature of the allegations, it was hard to escape the conclusion that subterfuge was being employed to conceal the true whereabouts of Zebra.

Having considered these factors, the programme makers concluded that Mr Garner was highly unlikely to respond to an offer to be interviewed for the programme and would, in all likelihood, change his company name and move offices if he became aware of the BBC's investigation. The programme makers therefore believed that a doorstep interview was warranted, and having gained the requisite consent from the BBC's Editorial Policy unit, made the unannounced visit to Mr Garner's office. The BBC said that this approach was further justified by later events, as, after the visit to the office, despite being given ample opportunity to provide an interview for inclusion in the programme, Mr Garner declined to do so. Then, after broadcast of the investigation, he changed the name of his company and moved offices.

The BBC said that, in view of Mr Garner's absence from the office when the programme team visited, their efforts to interview him could have given rise to nothing more than a potential infringement of his privacy. The BBC said that any infringement of Mr Garner's privacy was justified.

### **Mr Garner's further comments**

Mr Garner made the following further comments in relation to his complaint of unwarranted infringement of privacy in the making of the programme:

- b) Mr Garner said that the BBC's suggestion that, had the programme makers attempted to contact him before attending his offices, he would immediately have moved his entire business to other premises was absurd. He said that it would take many months to source, secure and move into new premises. He had been at Elysium Gate and his home for years and there was no evidence to suggest that he conducted himself in a clandestine or furtive fashion. Mr Garner said that if the programme makers had written to him with, for example, two weeks' notice of the broadcast, he would not have had the time to move offices.

Mr Garner said that the registered address and premises of The Light Rooms had not changed for many years. Although the BBC's investigation was into the Zebra, the programme makers were aware that they could have addressed a letter to him at The Light Rooms. They did not do so, nor did they address any documentation to the Zebra's listed address at Shaftesbury Avenue. Mr Garner said that, although his company stopped using the Shaftesbury Avenue premises in or around December 2009, post was still being passed on and he would have promptly received, and responded to, any requests.

Mr Garner said that he was given no opportunity to provide an interview, let alone an ample one.

Mr Garner said that he was forced to re-brand because of the BBC production, as any company who had been so extensively defamed on primetime national television would be. He said that he did not move offices, and that his company continued to operate from the Elysium Gate premises.

Mr Garner said that the programme makers' behaviour did "cause significant distress, annoyance or embarrassment", as was clear when a distressed member of staff asked them to leave or the police would be summoned.

Mr Garner said that the BBC's claim that the programme makers collected valuable information in relation to the handling of calls and the line to be taken with potential clients was completely fallacious. Firstly, the programme makers were in a sealed, sound-proof office, separate from the sales floor, for the entirety of their visit and secondly, the programme makers had just invaded his offices and deeply unnerved his staff, so that the likelihood therefore of any calls being handled in any normal, representative fashion, was extremely low.

## **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment and unwarranted infringement of privacy in, or in the making of, programmes included in such services.

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

In reaching its decision, Ofcom considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, a recording of the unedited footage of the programme makers' visit to Mr Garner's office, both parties' written submissions and their supporting materials.

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

### *Unfair treatment*

- a) Ofcom first considered the complaint that Zebra was unfairly portrayed.
- i) Ofcom considered the complaint that the programme wrongly and unfairly alleged that Zebra had no intention of finding its members work.

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

Ofcom first examined whether the programme made the allegation detailed in the complaint. Ofcom noted the following excerpts from the introduction to the item:

*"As scores of young women have discovered to their cost one of the capital's agencies is more interested in making a quick buck than helping their clients carve out a career on the catwalk."*

And:

*"Fashion is an exclusive business and very few models make it to the top of the industry. It's incredibly rare to be spotted on a London street and make it to the cat walk or the cover of a magazine. Yet one agency is cashing in on vulnerable young women and promising them just this."*

The programme then interviewed a number of young women who had been scouted by the agency, paid for portfolios to be done and not heard from the agency since.

Ofcom noted that the subject of the report was disgruntled women who had been approached by Zebra on the street and encouraged to attend a studio to have a portfolio of photographs taken. The women said that they were asked to pay substantial amounts of money for the portfolios, which would be necessary if they were to launch a modelling career. The women, having paid the money, said that they had not heard from Zebra since the shoot.

Ofcom noted that the programme concluded by stating:

*"Whilst Chris Garner maintains that the Zebra Collection continues to deliver results, for these girls their experience with the company has left them heavily in debt and with shattered dreams".*

Ofcom took the view that the programme did not allege that Zebra "had no intention" of finding women work but did suggest that the company had dishonestly represented the requirement for a portfolio to be shot in order to

launch a modelling career and that the company overstated the prospects of success to the consumer.

Ofcom therefore considered that the programme clearly cast aspersions on Zebra's practices based on the testimonies of a number of women's experiences. Ofcom did not consider, however, that the programme made the allegation that the agency had "no intention of finding its members work".

Ofcom therefore found no unfairness in this regard.

- ii) Ofcom then considered the complaint that the programme omitted information, which Mr Garner submitted to the programme makers prior to broadcast, that proved that the statement that the companies that Zebra claimed to have worked with had never heard of them, was untrue.

In considering this complaint, Ofcom took into account Practice 7.9 of the Code, as set out under decision head a) i) above.

In considering this complaint, Ofcom first noted that the programme stated that it had approached a number of companies that Zebra claimed to have worked with, including L'Oreal, Toni & Guy, T-Mobile, H & M and Top Shop, and said that none of them had "*even heard*" of Zebra.

Ofcom then went on to examine all of the correspondence submitted by Mr Garner to the BBC prior to the programme's broadcast and paid particular attention to his submission of 8 January 2010, some of which was read out in the programme. Ofcom noted that the supporting list that Mr Garner submitted was a list of names or correspondence addresses, but did not include any further information that would have indicated to a reader unfamiliar with it a relationship between Zebra and the companies or addresses listed - for example dates, or descriptions of employment or testimonies of those that had used Zebra. Ofcom therefore took the view that Mr Garner's submission could not have been considered as strong evidence that could have served to disprove the programme makers' allegations. It was therefore not unfair for the programme makers not to include the information provided in the programme as broadcast.

Ofcom noted that, in his third statement, Mr Garner said that he was not given enough time to formulate his response and that if he had, he would have been able to have provided proof. In this statement, Mr Garner submitted an email from a Toni & Guy hairdresser who said that she had used Zebra, as an example of the type of proof he could have provided if given more time to respond.

For the sake of completeness, and although the issue was not raised by Mr Garner in his initial complaint, Ofcom considered whether Mr Garner had been given an appropriate and timely opportunity to respond to the allegations put to him. In doing so, Ofcom had regard to Practice 7.11 of the Code which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom noted that the BBC first tried to contact Mr Garner on 5 January 2010 by visiting his Elysium Gate office, to find that he was not present (see decision head b) below regarding this visit). Ofcom noted that the BBC then

wrote to Mr Garner on 6 January 2010, setting out specific allegations that the programme intended to make and stating: "We would like to give you the opportunity to address these concerns. The report is due for transmission on BBC1 at 7.30pm on Monday 11 January 2010 and if you wish to participate then we would need to have received either a statement or record an interview by 2pm at the latest on Friday 8 January". Ofcom noted that on the same day Mr Garner replied by stating that, "I have received your correspondence dated 6 January 2010 and will reply within the timescales provided".

Ofcom noted that Mr Garner had then contacted the BBC on 8 January 2010 with a comprehensive response to the points put to him on 6 January 2010. Ofcom also noted that Mr Garner had written at the beginning of his response: "I would like to note that you have provided an extremely unrealistic timescale for me to provide a response of adequate comprehension and scope. Your letter dated 6 January 2010 gives me less than 48 hours to respond to all the points you raise. However, I will oblige by responding as fully as I am able given the mentioned restraints". He further wrote, in an email to the BBC informing them of his letter being couriered to them, "However, I have responded to all of your queries, and gone over and above the call of duty with an abundance of extra information on my company that you did not specifically request".

Ofcom noted the 48 hour response deadline; the number of serious allegations put to Mr Garner and that he articulated this concern to the programme makers when responding. On balance, Ofcom concluded that he was given an appropriate and timely opportunity to respond. Ofcom also noted that Mr Garner responded comprehensively to all the allegations and was able to address each point put to him.

- iii) Ofcom then considered the complaint that the programme used an unreliable source to make false claims, such as the claim that staff put people on hold for 10 to 15 minutes and made offensive comments about them whilst on hold.

In considering this complaint, Ofcom took into account Practice 7.9 of the Code, as set out under decision head a) i) above.

Ofcom noted that the former employee that participated in the programme gave her account of the working environment of Zebra. Ofcom noted the first excerpt of her account included in the programme:

*"My job was casting agent basically we had to phone people who had been scouted and book them into the Light Rooms. We were given a script to follow we had to start off with congratulations they got through and tell them how pretty they are and only mention about the portfolio towards the end. You're not allowed to mention the full price so you just tell them they only need to take £100. We say it's for the copyright of the photos".*

Ofcom took the view that the allegation made by the former employee was that the agency purposefully misrepresented the price of the portfolio, in that young women were told they only needed £100 when in actual fact the full cost of the portfolios was substantially more than that. Ofcom noted that immediately after this passage the programme included footage of an

interview with Veronica, who had recently been scouted by Zebra. Veronica visited The Light Rooms for a portfolio to be done with a researcher who was equipped with a hidden camera so she could film her visit. During her secretly filmed visit to The Light Rooms, Veronica indicated that she had been told to bring £100 with her and it was clear from the footage that the full cost of the portfolio was far more than this, as Veronica was told the student package was £795.

In Ofcom's view, the accounts given by Veronica and the former employee were consistent and corroborated each other on this point. It was therefore reasonable for the programme makers to rely on the former employee's testimony in this respect.

Ofcom then noted the second excerpt from the former employee's second interview:

*"The office is very unprofessional. They're normal everyday girls and people in the office would have a look at someone's picture and then laugh about how they look. They put people on hold for 10-15 minutes while they eat their lunch or have a chat."*

Ofcom noted that the programme did not put forward any other corroborative evidence in support of this testimony, but recognised that this could only have been achieved by finding another former employee. Ofcom considered that, given that the earlier part of her account had been corroborated by that given by Veronica, it was reasonable for the programme makers to take the view that she was a credible interviewee when discussing other issues relating to the agency as well.

Ofcom also took the view that the programme makers did not appear to have any evidence to suggest that the former employee was not trustworthy.

Ofcom therefore took the view that, because the former employee's account accorded with the testimonies of others and in the absence of any evidence suggesting that she was untrustworthy, it was reasonable for the broadcaster to rely on her account.

Ofcom therefore found no unfairness to Zebra in this regard.

### *Privacy*

- b) Ofcom then considered the complaint that Zebra's privacy was unwarrantably infringed in the making of the programme in that the programme makers forcibly imposed themselves into the company's office.

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

This is reflected in Rule 8.1 of the Code which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes, must be warranted. In considering complaints about the

unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted?

In considering this head of complaint, Ofcom took into account Practices 8.5, 8.9 and 8.11 of the Code. Practice 8.5 says that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Practice 8.9 states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme. Practice 8.11 says that doorstepping for factual programmes should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep. Ofcom considered that Practice 8.15 (which deals with surreptitious filming or recording, doorstepping or recorded 'wind-up' calls to obtain material for entertainment purposes) was not relevant as it does not apply to investigative programmes of this nature.

Doorstepping is the filming or recording of an interview or an attempted interview with someone without prior warning and is a legitimate means for programme makers to obtain interviews in certain circumstances. However, it should not take place unless a request for an interview has been refused, or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep. Ofcom therefore focussed on Practice 8.11 and whether or not the programme makers had been able to demonstrate that they had good reason to believe that their investigation would have been frustrated if they had openly approached Mr Garner or the company for an interview.

Ofcom noted that the programme makers made no attempt to request an interview openly with Mr Garner or his company and therefore they did not know whether such consent would be forthcoming. The BBC had not suggested that it was not possible for them to approach Mr Garner openly, but said that if they did, they would have risked frustrating their investigation by giving Mr Garner forewarning. Ofcom noted in particular the BBC's submission that Mr Garner had a record for conducting his business in a manner designed to avoid scrutiny, as well as its submission that the allegations were of a serious nature and supported by evidence.

Ofcom noted that the BBC held various addresses for Mr Garner's businesses and his home address. The BBC had Zebra's marketed address in Central London, used by Zebra in its public literature and on its website despite the company ceasing to use the premises in or around December 2009, and a business accommodation address. The programme makers were also informed by the former employee that Mr Garner himself operated from another address, namely the Elysium Gate premises. Ofcom understood that the BBC, wanting to speak to Mr Garner, decided to target this last address. Ofcom also noted that the visit took place on 5 January 2010 and that the programme was due to be broadcast on 11 January 2010. Ofcom took the view that the possibility of Mr Garner changing offices and company names within that timeframe was slight. It also noted that the BBC contacted Mr Garner on 6 January 2010, after the doorstep, and put their allegations to him in writing. Ofcom further noted that Mr Garner responded comprehensively and within the timescale given.

Ofcom noted that Zebra's Elysium Gate office address was not publicly marketed and did not invite public access (though clearly on the occasion of the BBC's visit the all points of entry were left open). Ofcom therefore took the view that the company could have legitimately expected their office would not have been entered by a television camera crew.

Ofcom further noted that the programme makers held an address for Zebra in Central London and a business accommodation address, as well as having been given the Elysium Gate address by the anonymous source and having Mr Garner's home address. Ofcom therefore took the view that the programme makers would have been readily able to request an interview.

As regards the possibility the investigation would have been frustrated, Ofcom considered what evidence the BBC used in concluding that Mr Garner was likely to employ subterfuge. Ofcom noted that Zebra operated in Central London and at their Elysium Gate office, and that it was only the former address that was publicised. It further noted the BBC's statement that of the publicised addresses, one was vacant and the other a business accommodation address and noted the programme makers' conclusion that it was unclear where Mr Garner operated his business. However, Ofcom took the view that the programme makers were clearly aware of his home address and still had the means of contacting him via telephone or email, as they did subsequent to the doorstep. Ofcom noted that the BBC said the board at the foot of the office displayed the name "The Light Rooms (London) Ltd" rather than "Zebra Collection" but considered that the BBC would only have become aware of this after taking the decision to doorstep and visit the site.

Ofcom accepted that this address network was not straightforward. However, it did not accept that this necessarily suggested that either Mr Garner or Zebra would have refused to provide an interview if approached. Ofcom further noted that the BBC submitted that Mr Garner had changed the name of his company and moved offices since the programme. Ofcom took the view that, whether or not this was the case, such action only occurred after the programme was transmitted and therefore could not be used to justify the programme makers' decision that Mr Garner might abscond if alerted to the investigation.

Ofcom took the view that, in the absence of the programme makers trying any alternative methods to contact Mr Garner and Zebra, despite having several at their disposal, there was not sufficient evidence against Mr Garner to suggest that he was so highly unlikely to respond to an offer to be interviewed, as to justify the doorstepping of Zebra's offices.

Ofcom therefore concluded that the programme makers had failed to take appropriate measures (such as those detailed in Practice 8.11) and had breached Rule 8.1 of the Code in the making of the programme.

- c) Finally, Ofcom considered the complaint that Mr Garner's privacy was unwarrantably infringed in the broadcast as a result of the broadcast of his home address without his consent, in the context of the unfair portrayal of his company.

In considering this head of complaint, Ofcom had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom first considered whether Mr Garner could have reasonably expected his home address to be kept private. Ofcom noted that his home address was placed in the public domain on a Companies House document and that its appearance in the programme was fleeting. In such circumstances where Mr Garner's home address is available to anybody searching the Companies House records, Ofcom took the view that Mr Garner had no expectation of privacy regarding the broadcast of his home address.

As Ofcom had concluded that Mr Garner did not have any legitimate expectation of privacy, it did not go on to consider whether or not the infringement was warranted.

Ofcom therefore found no unwarranted infringement of privacy in this regard.

**Accordingly, Ofcom has not upheld Mr Garner's and Zebra's complaint of unfair treatment and unwarranted infringement of privacy in the programme as broadcast. It has upheld Zebra's complaint of unwarranted infringement of privacy in the making of the programme.**

## Not Upheld

### Complaint by Dr Colin Dale

*Why Did You Kill My Dad?*, BBC2, 1 March 2010

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**Summary:** Ofcom has not upheld this complaint of unfair treatment, made by Dr Dale.

BBC 2 broadcast this programme, a self-authored film by documentary-maker Mr Julian Hendy, whose father had been fatally stabbed by a mentally unstable man in 2007. It included a news conference at which a report of an enquiry (the Holiday enquiry) into the homicide of a young woman by a man being treated for mental health problems was published. The author of the enquiry report was Dr Dale.

Dr Dale complained that he was treated unfairly.

In summary, Ofcom found that:

- Viewers would have understood that the enquiry and its findings was presented as a typical example of this type of report and the programme makers took reasonable steps with regard to the material facts relating to both how the findings of this report compared with others of its kind and which, if any, members of Ms Stevenson's family were contacted during the enquiry.
- It was not incumbent upon the programme makers to have offered Dr Dale personally an opportunity to respond to the criticism that "*the enquiry team didn't even talk to Ms Stevenson's closest family*" and he was not portrayed unfairly in the programme as broadcast.

### Introduction

On 1 March 2010, BBC2 broadcast the documentary programme *Why Did You Kill My Dad?* The programme was a self-authored film by documentary-maker Mr Julian Hendy, whose father had been fatally stabbed by a mentally unstable man in 2007. The programme considered the scale of killings by mentally ill people in Britain and the care and supervision of mentally ill people who had gone on to kill. It looked at this subject by examining a number of cases where a mentally unstable or ill person had killed either someone known to him or her or a stranger (one of these cases was that of Mr Hendy's father). The programme also considered the results of specific enquiries into the actions of particular NHS Mental Health Trusts in relation to several cases of killings by mentally ill people as well as a more over-arching enquiry which was attempting to draw a national picture of the issue and thereby find ways to improve the mental health system's approach to the care of mentally ill people who might pose a risk to either themselves or others. Viewers were informed that the general enquiry was called the National Confidential Enquiry and was being conducted by Professor Louis Appleby. It was referred to in the programme as "*the Manchester Enquiry*" at least once and the programme included several extracts from an interview with Professor Appleby.

One of the cases included in the programme was that of Ms Tina Stevenson, a pregnant woman who was fatally stabbed by Mr Benjamin Holiday in 2005. Mr Holiday was receiving treatment for mental health problems under the Humber Mental Health Trust ("the Trust") at the time of the incident. The programme included

footage of the panel involved in the enquiry into this incident (“the Holiday enquiry”) presenting its findings. Dr Colin Dale, who is the Chief Executive of a mental health consultancy called Caring Solutions (UK) Ltd. (“Caring Solutions”), was one of the members of this panel. The programme included images of Mr Julian Hendy making a comment about the findings of the enquiry and Dr Dale responding to it.

Prior to this section of the programme, images of Mr Julian Hendy were seen on screen and his voice was heard saying:

*“Evidence from the Manchester enquiry shows that at least one in five of all mental health homicides is preventable”.*

This comment was followed by an extract from the interview with Professor Appleby in which he said:

*“Now then the question is does a mental health service in one part of the country learn from an enquiry publication from a different part of the country? And I think the general feeling is that that learning often doesn’t happen. And the evidence is that if you look at the enquiry that happens the following year or a few years later in a different part of the country it often comes up with rather similar recommendations to the one that happened a few years ago, and that suggests that people don’t easily learn from individual enquiry reports, and sometimes, I have to say, it’s because the individual reports themselves are not very good.”.*

The last part of this extract was interspersed with images of the members of the enquiry panel in the Tina Stevenson case taking their seats.

Immediately prior to the section of the programme showing the panel members giving their findings, Mr Julian Hendy said:

*“So I wanted to see for myself just how good some enquiries are.”.*

Dr Colin Dale complained that he was treated unfairly in the programme as broadcast.

## **The Complaint**

### **Dr Dale’s case**

In summary, Dr Dale complained that he was treated unfairly in the programme as broadcast in that:

- a) He was portrayed unfairly in that:
  - i) The juxtaposition of the comments of both Professor Abley and Mr Hendy with the presentation of the findings of the enquiry into Ms Stevenson’s case unfairly implied that this was a poor-quality enquiry.
  - ii) The claim that Mr Hendy made in the programme that the enquiry team had not spoken to Ms Stevenson’s closest family was incorrect.

By way of background, Dr Dale said that Ms Stevenson had had five children all of whom were in foster care. He added that the enquiry team had spoken to the three youngest children in the presence of a representative from the local social services unit and that the team had not met with either Ms

Stevenson's two eldest children or her grandmother because Ms Stevenson had been estranged from each of them.

- b) It was unfair not to give him an opportunity to respond to the points made about this enquiry in the programme.

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

The BBC noted its belief that the programme gave a fair and accurate summary of the enquiry conducted on behalf of the Yorkshire and Humber NHS Strategic Health Authority by Caring Solutions, and said that any implied criticisms of the various agencies involved were justified by the evidence, before going on to respond to each head of Dr Dale's complaint.

In summary, the BBC responded to Dr Dale's complaint that he was unfairly treated as follows:

- a) i) The BBC responded to the complaint that Dr Dale was unfairly portrayed in that the juxtaposition of the comments of both Professor Appleby and Mr Hendy with the presentation of the findings of the enquiry into Ms Stevenson's case unfairly implied that it was a poor-quality enquiry.

The broadcaster first set out the context in which it said the programme examined the nature of individual enquiries and reports. Specifically, it noted that both experts in the mental health system and the families of victims of homicides by the mentally ill have raised concerns that common and recurring problems are frequently identified by such enquiries but that there is a consistent failure to implement meaningful recommendations or learn from previous mistakes. The BBC noted that the programme interviewed Professor Louis Appleby, the National Director for Mental Health in England and Head of the National Confidential Enquiry into Suicide and Homicide by People with Mental Illness ("the Manchester Enquiry"), and said that he told the programme that the system was seriously flawed. The broadcaster quoted from two extracts of the interview with Professor Appleby which were included in the programme to illustrate this point. It also noted that over the course of publishing five national reports about homicides by people with mental illness since 1996 the Manchester Enquiry had made a series of recommendations for how mental health services might be improved for all patients and had found that at least one in five of all such homicides could be prevented if services were improved.

The BBC said the programme highlighted both the positive and negative aspects of four reports into homicides in the Avon and Wiltshire area and independent enquiries into two other homicides elsewhere but that a review of these independent enquiries showed that all the reports identified the same common problems with the care of mental health patients. Notably, problems with: record keeping; listening to families and carers, dealing with drug abuse and managing risk appropriately. The broadcaster noted that it was in light of these observations that the presenter, Mr Hendy, attended the news conference at which the findings of an independent enquiry, the Holiday enquiry, were being published and introduced the footage of this section of the programme by saying: *"So I wanted to see for myself just how good some enquiries are"*.

The BBC made the following observations in relation to the Holiday enquiry:

- the programme found that the Holiday enquiry identified many of the same failings recognised in previous enquiries;
- there were significant contributions to the enquiry from the Director of Patient Care at Yorkshire and Humber NHS Strategic Health Authority (“the SHA”), the Chief Executive of NHS Hull and the Chief Executive of the Humber Mental Health Trust (“the Trust”), as well as Dr Dale;
- these contributors accepted that there were eleven significant failings and missed opportunities in the care and treatment of Mr Holiday including failures with record keeping, risk assessment and talking to the family; but,
- they endorsed the conclusions of the enquiry in the report written by Caring Solutions.

Notably, the conclusions that:

- the actions of Mr Holiday were neither predictable nor preventable;
- no one was to blame;
- no one would be held responsible for the failings identified; and
- lessons had been learned.

The broadcaster said that it believed that this response [to a homicide by a mentally ill person] was a typical example of the repeated failure of mental health trusts to act on previous recommendations which had prompted the concerns of Professor Appleby and others. In light of this it argued that the fundamental point which viewers would have taken from this section of the programme was that independent enquiries and reports do not deliver lasting and meaningful change, not least because a succession of enquiries declaring that lessons had been learnt had not prevented the later recurrence of the same basic faults they identified.

The BBC also said that it did not believe that viewers would have concluded that the authors of the report were being singled out for particular criticism. In addition, it noted that neither Dr Dale nor Caring Solutions were named and that only a very small number of viewers with specialist knowledge would have been aware that Caring Solutions carries out such enquiries or was responsible for this particular report. The broadcaster argued that therefore the programme was not unfair to Dr Dale or Caring Solutions.

Having made these arguments the BBC went on to say that if Ofcom disagreed with it and considered that some viewers may have been given the impression that the Holiday enquiry was an example of the kind of report which Professor Appleby had described as “*not very good*” it believed that this impression is supported by the facts.

It said that while the programme makers only highlighted the lack of contact with Ms Stevenson’s close family during the enquiry in the programme, they were aware of a number of other failings in the report. It then noted that independent enquiries of this sort should follow the relevant Department of Health official guidance (“the DoH guidance”) and NHS National Patient Safety Agency good practice guidance (“the NPSA guidance”) and that at its initial meeting on 27 June 2008 the Holiday enquiry had explicitly stated that it would follow the latter of these “as far as possible”.

The BBC then argued that the evidence gathered by the programme makers showed that the Holiday enquiry, conducted by Caring Solutions, failed to meet the official guidance and best practice in several key areas.

#### *Timing of the enquiry*

The BBC said that the DoH guidance says the start of an investigation “should take place as soon as possible after the adverse event” but that the Holiday enquiry panel held its first meeting over three and a half years after Ms Stevenson’s death and more than two years after both the completion of the internal investigation and the conviction of Mr Holiday. It added that in response to a query from the programme makers the SHA had said that it “agree[d] that there was a significant delay in commissioning the enquiry” and had “reviewed the process to ensure that these cases are dealt with in a much more timely manner in the future”.

#### *Handling of the victim’s family*

The BBC said that the NPSA guidance says the first steps in commissioning such an enquiry should include: “informing the victim, perpetrator, carers and families about the investigative process and how they can be involved [and] arranging for them to meet the SHA and then the investigation team if wanted”. It added that there was separate guidance specifically confirming the importance of informing those most affected which said that in such cases “the needs of those affected should be of primary concern to the trust, the SHA and those undertaking any investigation” [and that] “any contact should be undertaken in a respectful, dignified and compassionate manner, and in a spirit of openness”.

The BBC said that Caring Solutions did not contact Mr Mahde Saleh (Ms Stevenson’s partner and the father of her unborn children) or her next of kin, namely Mrs Margaret Toms (her grandmother) and her two eldest children at any stage during the process.

It then noted that the NPSA guidance says that a meeting should be held with the victim and [or] their family to explain the investigation process and how they will be able to participate in it and that prior to publication of the report adequate time should be given to “ensure the report is shared with interested parties [which] would usually include the perpetrator, the victim and their respective families”.

The broadcaster said that it appeared that no meeting was held with Ms Stevenson’s family or her partner to explain the investigative process and that [in his complaint] Dr Dale had indicated that the enquiry team had met with her three youngest children “and discussed with them the findings of [its] enquiry”. It argued that in saying this Dr Dale had acknowledged that the team only contacted these members of Ms Stevenson’s family after the report had been completed and that this appeared to contradict his statement (given at the news conference for the publication of the report but not included in the programme) that “there has been contact with the family and they have been kept involved with all the events that we’ve been involved in”.

In addition, the BBC said that in contrast to the guidance recommendations on report writing the Holiday enquiry report contained no description of how any members of Ms Stevenson’s family were engaged in the process or support was given to them following her death.

### *Consultation with staff involved in Mr Holiday's care*

The BBC said that the NPSA guidance says that "a root cause analysis" (which is necessary in such an enquiry so "organisations can learn and put remedial action in place") should include interviews to find out what happened and how and why it happened. It then noted that despite Mr Holiday's history of mental ill health the Holiday enquiry held formal interviews with only five people, only three of whom had actually been involved in his case and dealt with him personally.

### *Errors of fact*

The BBC said that the final report contains some factual errors and noted three:

- Mr Holiday's educational record is incorrect (Paragraph 8.4).
  - The date given for Mr Holiday's transfer to a psychiatric unit is incorrect (Paragraph 8.9). The date was 11 September 2001, not 11 August.
  - Paragraph 15.1.8 refers to a Department of Health document issued in 2007 called 'Best Practice in Managing Risk'. The document quoted is in fact from a report by the Royal College of Psychiatrists published in June 2008.
- a) ii) The BBC responded to the complaint that Dr Dale was unfairly portrayed in that the claim that Mr Hendy made in the programme that the enquiry team had not spoken to Ms Stevenson's closest family was incorrect.

It reiterated that Dr Dale had confirmed in his complaint that the enquiry only spoke to Ms Stevenson's three youngest children and observed that this was not noted in the report. The broadcaster also said that the enquiry did not contact any other member of Ms Stevenson's family and that it was on this basis that the programme had included the following claim: *"But the enquiry team didn't even talk to Tina Stevenson's closest family"*.

The broadcaster said that it believed that viewers would have understood the phrase *"closest family"* to refer to those with whom Ms Stevenson had the longest and most personal relationships. It added that in this case that would include her partner and the father of her unborn twins (Mr Saleh), the grandmother who had brought her up from her birth (Mrs Toms) and her two eldest children.

In addition, the BBC noted that this line of script was delivered over a still photo of Mr Saleh which, "it argued", would have led viewers to conclude that he was among those who might be considered as closest family. The broadcaster then described the close links between Ms Stevenson and both Mr Saleh and Mrs Toms.

It noted that the Police interviewed Mr Saleh during the investigation into Ms Stevenson's death and described their relationship in positive terms. The BBC also noted that Mrs Toms was asked to formally identify Ms Stevenson's body and argued that it was incorrect to say (as Dr Dale had in his complaint) that they were estranged at the time of her death because in 2004 (following a period of estrangement) Ms Stevenson got back in contact with her grandmother and her two eldest children (who were being brought up by Mrs Toms). The BBC provided a copy of a letter from Mrs Toms in which she confirmed that the enquiry team had not contacted her and that she had only learned about the publication of the report when her granddaughter saw a news report about the enquiry on television.

The BBC also noted that the Police had allowed the enquiry team full access to all of its files which included details of the contact police officers had had with Mr Saleh and Mrs Toms. It added that at Mr Holiday's trial the judge had read out victim impact statements from Mr Saleh, Mrs Toms and Mrs Stevenson's two eldest children.

The broadcaster concluded by arguing that in light of these details it considered that the programme was accurate in saying that *"the enquiry team didn't even talk to Tina Stevenson's closest family"* and that therefore it was not unfair to Dr Dale or Caring Solutions.

- b) The BBC responded to the complaint that it was unfair not to give Dr Dale an opportunity to respond to the points made about the enquiry in the programme.

It argued that the key issue examined in the programme was the failure of the system to successfully implement the findings of successive independent enquiries, rather than the way in which such enquiries are conducted. The BBC said that the programme showed that the response to the findings of the Holiday enquiry was another example of this flaw in the system. It argued that therefore it was reasonable for the programme to indicate that, despite the intentions of those involved, there appeared to be a strong likelihood that the same problems would keep occurring and further tragedies would result.

The BBC also said that the programme included only one specific criticism of the conduct of the enquiry (the lack of contact with Ms Stevenson's family) and that, as it had already explained, the programme maker had evidence to support this claim.

It added that it did not consider that it was necessary to offer Dr Dale an opportunity to respond to this claim because in its view the majority of viewers would have been unaware of who he was or his authorship of the enquiry report and would not have assumed that this criticism was aimed at Dr Dale or Caring Solutions. (In this context the broadcaster noted both Dr Dale's contribution to the programme and the fact that neither he nor his company was named). The BBC said that the only people who might have identified Dr Dale and associated him with the report were those who already knew him and knew that his company was involved in independent investigations into the care of the mentally ill.

While the BBC argued that the inclusion of this claim about the report in the programme did not raise a specific right of reply on Dr Dale's part, it noted that the programme makers did seek to confirm which members of Ms Stevenson's family were contacted during the enquiry by contacting NHS Hull (which contacted the SHA, which in turn contacted Dr Dale about this matter) to no avail.

Lastly, the BBC said that, in its view, if this one element of criticism had been put to Dr Dale, it is clear from his comments to Ofcom that, his response would have been inaccurate and misleading and the programme would have been obliged to explain to the audience that Dr Dale's belief that Ms Stevenson was estranged from her grandmother and two eldest children was mistaken.

### **Dr Dale's comments on the BBC's statement**

Dr Dale responded to the BBC's statement by means of a covering letter with short rebuttals to the over-arching arguments the BBC had made in regard to each of the

three heads of complaint and an annotated copy of the BBC's statement with comments setting out his position on various aspects of that statement.

He first expressed his view that the BBC did not have access to sufficient information about the Holiday case – many of the documents regarding which were confidential – to claim, as it had in its statement, that any implied criticisms of the various agencies involved in the Holiday enquiry (including Caring Solutions) were justified by evidence. He then commented on the BBC's response to each head of the complaint.

Those that specifically relate to the entertained heads of complaint are summarised below.

*Unfair portrayal - Juxtaposition comments by Prof. Appleby/Mr Hendy with presentation of enquiry findings*

- a) i) Dr Dale said that the BBC was not qualified to assert that the enquiry report was of poor quality. He also said that it had not conducted a comparison with other reports and the reasons the broadcaster had supplied for its view of the enquiry "were not substantial".

Dr Dale said that in contrast to the BBC's position that independent enquiries do not deliver lasting and meaningful change the recommendations of the Holiday enquiry were implemented and the Trust's status was upgraded to 'Excellent' after inspection by its regulatory body, the Care Quality Commission ("the CQC") which commented on its improved investigation and handling of incidents.

Dr Dale said that the very small number of viewers with specialist knowledge who, as the BBC noted in its statement, would have been aware that Caring Solutions carried out such enquiries and/or that it was responsible for this particular enquiry are the people likely to consider tenders for such work from Caring Solutions.

Dr Dale said that Mr Hendy wasn't qualified to judge the quality of the Holiday enquiry and posed the following questions: Had Mr Hendy analysed the sixty or so reports published each year to the extent that he was able to say that this one was poor in comparison and had Prof. Appleby described this particular report as "not very good"?

Dr Dale said that the timing of the enquiry was not under Caring Solutions control and, implying that it was, was misleading.

In response to the BBC's claim that Caring Solutions failed to observe the relevant guidelines regarding contact with Ms Stevenson's family Dr Dale described Caring Solutions' position at the time of the enquiry in the following way:

- it had confidential information from social services about Ms Stevenson's family which it was not appropriate to publish due to the distress it would have caused to them;
- it did not know the whereabouts of Mr Saleh;
- it was informed that the Police did not know Mr Saleh's location either;
- Ms Stevenson had not been married to Mr Saleh;
- the Police had [initially] arrested Mr Saleh on suspicion of Ms Stevenson's murder;

- Ms Stevenson had not wished to be involved with her grandmother, Mrs Toms, and her two eldest daughters in the period before her death.

Dr Dale responded to the BBC's comment that the Holiday enquiry interviewed only five people about Mr Holiday (only three of whom had had direct contact with him). Dr Dale said that there was no need to re-interview staff who knew Mr Holiday because the enquiry team had statements from them and the internal investigation report and had spoken to staff who nursed him on three different units. He added that the team's purpose was not to re-run the internal investigation but to comment upon it and that the three people it spoke to had been key to Mr Holiday's care and assessment.

In response to the BBC's comment that Mr Holiday's educational record (within the report) was incorrect Dr Dale noted that this information came from records taken while Mr Holiday was in a secure hospital and that he and his mother had seen the draft report and not asked for it to be corrected.

*Unfair portrayal – Criticism that enquiry team had not spoken to Ms Stevenson's closest family incorrect*

- a) ii) Dr Dale said that the BBC's acknowledged in its statement that the enquiry team did speak to Ms Stevenson's three youngest children with whom she was still in contact [at the time of her death] and that the programme makers knew this prior to the broadcast. He reiterated that the confidential information available to the enquiry made it clear that Ms Stevenson was estranged from her grandmother and two eldest children and that the whereabouts of her partner with whom she had not resided were unknown. Dr Dale also said that the three children the enquiry spoke to were clearly Ms Stevenson's "*closest family*".

In response to the BBC's statement that there was no reference to the enquiry's meeting with Ms Stevenson's three youngest children within the report, Dr Dale said that the meeting took place after the final report had been signed off by the SHA and therefore could not be referenced within it.

Dr Dale contested the BBC's claim that on the basis that the audience would have understood "*closest family*" to mean those with whom Ms Stevenson had had the longest and most personal relationships this would include Mr Saleh, Mrs Toms and her two eldest children. He added that Ms Stevenson had run away from home and when in residential care had refused to go home during holidays and weekends for reasons he could not divulge.

Dr Dale noted that the description of Mr Saleh given during Mr Holiday's trial came from a social worker who had been involved with Ms Stevenson and felt that she "must make a positive comment about this troubled person".

In response to the BBC's comment that victim impact statements were made by Mr Saleh, Mrs Toms and Ms Stevenson's two eldest daughters, Dr Dale noted that her three youngest children did not make such statements.

Dr Dale said that in contrast to the BBC's claim the enquiry team did not seek to establish whether or not Ms Stevenson had been estranged from part of her family, it had sought to do so through discussions with the Department for Social Services.

Dr Dale repeated his position that Ms Stevenson's three youngest children were her closest family at the time of her death.

*No opportunity to respond*

- b) Dr Dale said that he considered the BBC had dismissed his complaint that it was unfair that the programme makers did not offer him an opportunity to respond.

Dr Dale also asked why, if, as the BBC said, the heart of the programme was the failure of the system to successfully implement enquiry findings rather than the way such enquiries were conducted, it had focused on this particular report.

Dr Dale contested the BBC's position that the programme had shown that the response to the findings of the Holiday enquiry was another example of the flawed system and that therefore there appeared to be a strong likelihood that the same problems would keep occurring, again noting that after the report was published the CQC had audited the Trust and upgraded its status.

Dr Dale responded to the BBC's comment that while it believed there was nothing in the programme that required the programme makers to have given Dr Dale or Caring Solutions an opportunity to respond they had gone to considerable lengths to establish which members of Ms Stevenson's family Dr Dale had contacted.

He confirmed that the response given to the programme makers by NHS Yorkshire and Humberside which said that it was not appropriate to disclose information about Ms Stevenson's family which is confidential to the family members involved reflected Caring Solutions position.

**The BBC's response to Dr Dale's comments**

The BBC first noted that the programme makers reviewed several hundred independent enquiry reports and studied the national guidelines and best practice for the conduct and writing of such reports. It added that while doing so it identified a repeated failure in these reports to: apportion responsibility for errors or to make meaningful recommendations for change. As a result they concluded that many reports were poorly researched, frequently accepted the views of those responsible for the patient care at face value and often ignored the views of victims' families.

The broadcaster said that the programme featured a number of enquiry reports to illustrate the problem, including the Holiday enquiry report, but did not focus upon this particular report. It reiterated that neither Dr Dale nor Caring Solutions were mentioned in the programme and that although Dr Dale was shown as one member of the panel at a news conference, nothing in the programme identified him as the writer of the report. It also reiterated that the programme mentioned only one of the many shortcomings of the report, namely the decision not to contact Ms Stevenson's closest family, which it said was a clear breach of the official guidelines. It then pointed again to the ways in which it considered Dr Dale had not met the guidelines with respect to meeting Ms Stevenson's younger children.

The BBC's response to comments by Dr Dale that specifically relate to the entertained heads of complaint are summarised below.

*Unfair portrayal - Juxtaposition comments by Prof. Appleby/Mr Hendy with presentation of enquiry findings*

- a) i) The broadcaster said that it did not know what information was contained in the confidential documents about the Holiday case to which Dr Dale had referred but argued that Dr Dale had taken the views given to him about Ms Stevenson at face value and made no attempt to independently establish the truth of what he was told. It also noted that the information given to the programme makers by Ms Stevenson's partner, her grandmother and two eldest daughters ("her London-based family") and Humberside Police contradicted that provided by Dr Dale.

The BBC also argued that whatever views Ms Stevenson may have expressed to her social worker (regarding her relationship with her family) before her death had no bearing on Dr Dale's obligation to consider her family's views in carrying out the investigation.

The broadcaster said that Dr Dale's apparent suggestion that the CQC had upgraded the status of The Trust for quality of service to "Excellent" as a result of his report was incorrect and as evidence the BBC noted that:

- the most recent CQC report pre-dated the publication of the Holiday report;
- it did not show an improvement in the Trust's status but rather remained on the same level (Excellent) it had been given in the previous year; and
- it was the Trust itself and not the CQC which commented on the improved investigation and handling of incidents.

In response to Dr Dale's concern that he was identifiable to people likely to consider tenders from Caring Solutions, the BBC reiterated its view that the programme was making a general criticism of enquiry reports rather than a specific one of the Holiday enquiry and report and again noted that neither Dr Dale nor Caring Solutions were identified as authors of the report or having responsibility for its conduct.

In response to Dr Dale's assertion that Mr Hendy wasn't qualified to judge the quality of the Holiday enquiry, the BBC noted the very considerable amount of research he had done prior to the programme and his years of experience as an investigative journalist. It also noted that his conclusions were echoed by leading figures in mental health care (and provided comments to this affect from five such figures).

The BBC said that it drew attention to the timing of the enquiry to illustrate one of the many areas where it failed to meet the guidelines and thereby support its contention that this was an example of one of the kind of enquiries which Prof Appleby had described as "*not very good*". It added that Dr Dale had mistaken the general criticism of these enquiries as a particular criticism of him and his company.

With regard to the issue of whether Dr Dale observed the relevant guidelines regarding contact with Ms Stevenson's family (notably that the needs of those affected should be of primary concern to the trust, the SHA and those undertaking any investigation) the BBC said:

- despite knowing of the intimate relationship Mr Saleh had had with Ms Stevenson Dr Dale failed to contact him because he did not know his whereabouts;
- the programme-makers managed to locate him without difficulty;

- Caring Solutions' enquiry did not start until more than two years after Mr Saleh's innocence in the matter of Ms Stevenson's murder had been established and therefore his arrest at the time was not relevant to whether he should have been contacted during the enquiry; and,
- regardless of the quality of the relationship between the victim and her family, the guidelines gave Dr Dale no warrant for the exclusion of her partner, grandmother and older children from the enquiry proceedings.

The BBC argued that in order to conduct an independent enquiry it was necessary for Dr Dale to have questioned people involved in Mr Holiday's care directly rather than have relied on their previous statements. It added that in its view the interviews that Dr Dale did conduct with nursing staff involved in Mr Holiday's care were inadequate in that, as the report indicates: they only dealt with staffing issues and not Mr Holiday's care or treatment; Dr Dale took the information given to him by the nursing staff at face value; and, Dr Dale only spoke to three people involved in Mr Holiday's care, whereas other independent enquiries routinely interview between 20 and 50 people involved in a perpetrator's care.

The BBC noted that Dr Dale did not contest the fact that Mr Holiday's educational record (within the report) was incorrect and argued that the reason he gave (that the information came from the records of one of Mr Holiday's social workers) highlighted the danger of failing to carry out independent checks. The BBC said that it was not surprising that, as Dr Dale had indicated, neither Mr Holiday nor his mother corrected the error because, as she had told the programme makers, she was only talked through, rather than given a copy of, the report before its publication. The BBC added that even if she and her son had seen the draft report responsibility for any errors within it rested with its author.

*Unfair portrayal – Criticism that enquiry team had not spoken to Ms Stevenson's closest family incorrect*

- a) ii) The BBC said that the fact that Dr Dale had relied on what it believed to be erroneous information indicating that Ms Stevenson was estranged from part of her family illustrated that he did not see any requirement to conduct his own independent investigation into the circumstances of the tragedy. The broadcaster also repeated its view that the guidelines required Dr Dale to give Ms Stevenson's family an opportunity to participate in/have regular involvement with the enquiry (regardless of the quality of their relationship with her) and questioned if a single meeting with Ms Stevenson's three youngest children fulfilled this requirement.

The BBC argued that the fact that Ms Stevenson's three youngest children were met with after the draft report had been signed off showed that Dr Dale did not meet the requirements regarding the involvement of the victim's family throughout the process.

The BBC reiterated its view that Dr Dale's position regarding the degree of closeness between Ms Stevenson and her partner, grandmother and two eldest children was based on second-hand information and that regardless he had had an obligation to inform them of his investigation.

The BBC said that Dr Dale's comment that the description of Mr Saleh given during Mr Holiday's trial came from a social worker who had been involved with Ms Stevenson and felt that she "must make a positive comment about this

troubled person”, appeared to indicate that he believed the social worker in question had knowingly given a false statement to the Police during a murder investigation. It then noted that Dr Dale provided no evidence to support this claim and that the summary of evidence used in the trial of Mr Holiday (and previously provided to Ofcom by the BBC) included several descriptions of the close relationship between Mr Saleh and Ms Stevenson.

The BBC said that the fact that, as Dr Dale had noted, Ms Stevenson’s three youngest children did not make statements during Mr Holiday’s trial was irrelevant and the point it was making was that the fact that Ms Stevenson’s partner, grandmother and two eldest children made such statements illustrated that they were her “*closest family*”.

#### *No opportunity to respond*

- b) In response to Dr Dale’s position that the programme had focused on the Holiday report, the BBC repeated its view that the Holiday enquiry report was presented as an example of the kind of enquiries which have consistently failed to present meaningful recommendations to prevent future tragedies or name those responsible for what went wrong. It added that the Holiday report was used because it was published during the production of the programme, it was only one of several which the programme examined and that the programme makers had no preconceived ideas about it prior to its publication as illustrated by the fact that they only received a copy of it thirty minutes before its publication.

#### **Decision**

Ofcom’s statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment and unwarranted infringement of privacy in, or in the making of, programmes included in such services.

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

In reaching its decision on Dr Dale’s complaint, Ofcom considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and a transcript and both parties’ written submissions.

In Ofcom’s view the complaint at heads a) i) and ii) (that Dr Dale was unfairly portrayed due to the juxtaposition of certain comments and due to the criticism in the programme that the enquiry team had not spoken to Ms Stevenson’s closest family) and head b) (that Dr Dale was unfairly not given an opportunity to respond to the points made about this enquiry in the programme) were linked in that they concerned the quality of the enquiry Dr Dale and his company, Caring Solutions, had produced. It therefore considered these heads of complaint together.

In considering this complaint Ofcom took account of Rule 7.1 of the Ofcom Broadcasting Code (“the Code”), which provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also considered Practice 7.9 and Practice 7.11 of the Code. The first of these provides that, before broadcasting a factual programme, broadcasters should take reasonable

care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation. The second provides that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom noted that its role was to establish whether in relation to comments made in the programme about the enquiry (including the claim that the enquiry team had not contacted Ms Stevenson's closest family) the programme makers took reasonable care in relation to material facts, and whether the statements made constituted serious allegations of wrongdoing and if so whether it was incumbent upon the broadcaster to offer Dr Dale an opportunity to respond in order to avoid unfairness.

Ofcom considered the relevant section of the programme, in which the presenter, Mr Hendy, was shown attending a news conference during which the report of the independent enquiry into Ms Stevenson's murder by Mr Holiday (the Holiday enquiry) was published. It noted that prior to this section of the programme the presenter, Mr Hendy, said that *"evidence from the Manchester enquiry<sup>1</sup> shows that at least one in five of all mental health homicides is preventable"*. Ofcom also noted that Professor Appleby was then shown talking about whether mental health services in one part of the country learn from independent enquiry reports into such cases published in other parts of the country. He said:

*"Now the question is does a mental health service in one part of the country learn from an enquiry publication from a different part of the country. I think the general feeling is that that learning often doesn't happen, and the evidence is that if you look at the enquiry that happens in the following year, or a few years later in a different part of the country, it often comes up with rather similar recommendations to the one that happened a few years ago and that suggests that people don't easily learn from, from individual enquiry reports. And sometimes I have to say it's because the individual reports themselves are not very good."*

Immediately after this the presenter said:

*"So I wanted to see for myself just how good some enquiries are"*.

The programme then showed the news conference at which the Holiday enquiry report was published. A panel of six people was seen presenting the report. Four of these people (one of whom was Dr Dale) were shown speaking about the findings of the enquiry. None of the people on the panel was named.

The programme established the background to the Holiday enquiry, i.e. Mr Hendy explained that Ms Stevenson was fatally stabbed by Mr Holiday who had been receiving treatment from the Humber Mental Health Teaching Trust at the time, and noted that *"four years later Humber Mental health Trust issued their enquiry report"*.

Mr Hendy said that *"there were lots of expressions of sympathy... ..but the enquiry team didn't even talk to Tina Stevenson's closest family"*.

Dr Dale was shown speaking about the treatment of Mr Holiday. He said:

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<sup>1</sup> The programme had previously explained that the Manchester Enquiry was a national Government enquiry into Suicide and Homicide by people with mental health problems which was headed by Professor Appleby, then the National Director for Mental Health in England.

*"We felt that he needed to be treated more assertively, more robustly than was the case. And I think we listed in the region of ten or eleven factors which we felt contributed to that root cause of under treatment in relation to Benjamin [Mr Holiday] and they all played their part if you like in the events which finally unfolded."*

Mr Hendy then addressed the following comment to Dr Dale:

*"So we've got failures with notes, failures with risk assessments, failures in talking to the family and failure to appreciate his violence"; and*

Dr Dale responded:

*"Those were all comments that we said at the time. I think there tends to be a combination or a culmination of sort of events, and tends to be more systematic failure rather than actual individual failures. And the things you cited were all what we called contributory factors. We said that there was a mixture of failures that contributed to that under treatment of Benjamin".*

After this Mr Hendy said:

*"Yet curiously it found the homicide was neither preventable nor predictable".*

He also made two further comments:

*"And certainly nobody was to blame, or was going to be held responsible for the systemic failings"; and*

*"And they were all satisfied that lessons had been learned and there was little likelihood this could ever happen again".*

All three of these comments were interspersed with comments made by three other panel members to illustrate the points Mr Hendy made.

Ofcom recognised that the BBC argued that the programme was concerned with the quality of independent enquiries into homicides committed by people with a history of mental ill health in general rather than the Holiday enquiry report specifically.

Ofcom also recognised that in addition to the Holiday case the programme looked at several other cases where a mentally ill person had committed a homicide and that in each case it noted that there had been problems with the care of that person and that the families of the victims were either not contacted at all by the relevant mental health authority or were very dissatisfied with the level of contact and information which they received.

In addition, Ofcom observed that the programme included a number of mental health experts speaking about the care of the mentally ill and that two of them raised concerns about a reluctance among mental health professionals to accept that violence is associated with serious mental illness. It also observed that Professor Appleby spoke about lessons *"everybody should be aware of"* and noted that there were common themes across the enquiry reports published in this country which often reflected *"fairly basic aspects of clinical care ... adequate care planning in the community ... the assessment in [the] management of risk and ... passing on information between agencies"*.

Finally, Ofcom observed that the programme included Mr Hendy's comparison of his father's case with others in Avon and Wiltshire and that he noted that all of the four other enquiries conducted in this area had found similar problems to those which were found in the care of the man who killed his father. Namely: *"problems with record keeping; problems with listening to families and carers; problems with dealing with drug abuse; problems with getting all the agencies to work together effectively; and, a failure to assess and manage the risk"*.

In light of the above observations, Ofcom considered that the programme set out the view that NHS Trust's were failing to learn from previous experiences despite the carrying out independent enquires; that this failure was evident from the fact that these enquiries continued to find the same types of failures in the care of mentally ill people who had committed homicide; and, that sometimes the reports themselves were not very good.

Given this context, it was Ofcom's opinion that viewers would have understood the programme to have indicated that the Holiday enquiry report was a typical example of one of these independent enquiry reports in that:

- its findings showed that many of the common errors previously noted in such reports had occurred in the care of Mr Holiday prior to his murdering Ms Stevenson (*"failures with notes, failures with risk assessments, failures in talking to the family and failure to appreciate his violence"*); and yet
- the enquiry had unaccountably found:
  - Ms Stevenson's homicide to be neither predictable nor preventable;
  - that no-one was to blame for the failures in the care of Mr Holiday that had lead to this incident; and
  - that lessons had been learnt.

Ofcom noted that the programme's implication that the Holiday enquiry report was a typical example of this type of report was based on both an examination of a wide range of other such reports and the testimony of mental health experts. It also noted that one of these experts was Professor Appleby who, at the time, was the head of an ongoing national enquiry which reviewed cases of homicide and suicide by people with mental health problems and recommended changes to improve the care of the mentally ill based on its findings.

In light of the research carried out by the programme makers and the fact that, as the programme made clear, the programme makers had sought the views of several people with relevant expertise, Ofcom concluded that no unfairness resulted to Dr Dale from the programme's representation of the Holiday enquiry report as a typical example of this type of report.

While Ofcom considered that the programme presented the Holiday enquiry report as a typical example of this kind of report, it noted that, in addition to identifying the findings of the Holiday enquiry report that were similar to those of many other such reports, Mr Hendy also said that *"the enquiry team didn't even talk to Tina Stevenson's closest family"*.

Ofcom observed that this comment related specifically to the Holiday enquiry. It also observed that, as the BBC noted in its submissions, national guidelines indicated that the families of victims should be kept informed and enabled to contribute at all stages during enquiries of this nature. Ofcom recognised that this information about the national guidelines was not included in the programme. However, it considered that

the fact that Mr Hendy had said that “*the enquiry team **didn’t even talk to Tina Stevenson’s closest family***” [Ofcom’s emphasis] clearly implied that this was a criticism of the way in which the enquiry was conducted.

In light of these observations Ofcom considered that viewers would have understood this comment to have been an allegation of incompetence on the part of the Holiday enquiry in particular rather than one of several ways in which this enquiry and its findings were typical of its kind. Ofcom therefore went on to assess whether it was incumbent upon the programme makers to have offered Dr Dale an opportunity to respond to this specific allegation.

Ofcom noted that Dr Dale and his company Caring Solutions appeared to have gathered much of the material which appeared in the report. It also noted that Caring Solutions conducted a number of interviews with people involved in Mr Holiday’s care and was responsible for writing the report document. However, Ofcom also noted that, as the BBC observed in its response, the Director of Patient Care at the local Strategic Health Authority (“the SHA”) and the Chief Executive of the local Mental Health Trust (“the Trust”) also contributed to the enquiry. In addition, Ofcom noted that it was the SHA which commissioned the enquiry and which, as Dr Dale observed, was responsible for approving the final draft of the enquiry report. Lastly, it noted that Dr Dale appeared at the press conference with a panel of five other people and that while he was shown speaking about its findings so too were three other people on this panel.

Moreover, given that, like the other people on this panel, Dr Dale was not named in the programme, Ofcom believes that no one who did not already know Dr Dale well and know that his business had been asked to conduct the Holiday enquiry would have linked this specific criticism to Dr Dale personally.

In light of the above, Ofcom concluded that if it was incumbent upon the broadcaster to have offered an opportunity to respond to the criticism that the enquiry team “*didn’t even talk to Tina Stevenson’s closest family*” there were a number of individuals or representatives of organisations who could have provided such a response including people working for the SHA or the Trust.

In this context, Ofcom noted that after filming the press conference at which the Holiday report was published the programme makers emailed the local NHS Trust (which had invited the programme makers to attend the press conference, the same Trust which was responsible for the care of Mr Holiday and which had contributed to the enquiry) to raise several points about the enquiry. One of these points concerned contact with Ms Stevenson’s family. Specifically, the programme maker wrote: “Mr [sic] Dale stated that there had been contact with the Stevenson family and that they had been kept involved. We are aware that Miss Stevenson’s family circumstances were diverse and wondered who in the family it might be that Mr Dale has been speaking to about the enquiry”.

Ofcom also noted that a second email, sent to the Trust three days later on 10 May 2009, explained that: “in a national newspaper on Friday the boyfriend of Tina Stevenson (and the father of her unborn twins) said that he was completely unprepared for the publication of the independent enquiry last week. Indeed the newspaper states that he knew nothing about it”. The programme maker then asked if this was the case and noted her surprise if this was so.

Ofcom observed that the Trust contacted the SHA in order to seek answers to the points raised by the programme maker and that in turn the SHA contacted Dr Dale.

It also observed that in response to the first point regarding which members of Ms Stevenson's family were contacted during the enquiry the SHA, via the Trust, informed the programme makers that:

"It is not appropriate to disclose this information, which is confidential to the family members involved".

Ofcom then noted that in response to the follow-up point about Mr Saleh, the SHA (again via the Trust) said:

"We recognise the importance of keeping those affected by the enquiry informed. We make every effort to contact such individuals where contact details are available."

Ofcom therefore concluded that the programme makers offered the Trust an opportunity to clarify what if any contact the enquiry team had with Ms Stevenson's family and/or her partner and that, after consulting with both the SHA and Dr Dale, the response that the Trust provided to the programme makers gave no material clarification regarding these matters.

In addition, Ofcom observed that the programme makers took several other steps to establish the facts in relation to this matter. Notably, they studied the enquiry report for references to any contacts with Ms Stevenson's family or partner during the enquiry and found none and, they contacted Mrs Margaret Toms (Ms Stevenson's grandmother and the person who had looked after her when she was a child). Ofcom noted that Mrs Tom's wrote a letter to the programme makers (a copy of which was provided by the BBC) in which she said that she and Ms Stevenson's two eldest children (who lived with her) only became aware of the enquiry report when its publication was featured on a television news programme.

Given the following factors:

- that the enquiry report made no mention of any contact with Ms Stevenson's family;
- that Mrs Toms provided testimony stating that neither she nor Ms Stevenson's two eldest children were contacted; and
- that when given an opportunity the SHA responsible for the enquiry (which had in its turn contacted Dr Dale) neither provided any information to the programme makers regarding which members of Ms Stevenson's family, if any, were contacted nor questioned the veracity of the newspaper report which claimed that Mr Saleh had not been contacted during the enquiry.

Ofcom concluded that the programme makers took reasonable steps to establish to what extent, if any members of Ms Stevenson's family were contacted during the enquiry.

In light of its conclusions that viewers would have understood that the Holiday report was presented as a typical example of this type of report and that the programme makers took reasonable steps with regard to the material facts relating to both how the findings of this report compared with others of its kind and which, if any, members of Ms Stevenson's family were contacted during the enquiry, Ofcom found that it was not incumbent upon the programme makers to have offered Dr Dale personally an

opportunity to respond and that he was not portrayed unfairly in the programme as broadcast.

**Accordingly Ofcom has not upheld Dr Dale's complaint of unfair treatment.**

## Not Upheld

### **Complaint by Mr Dean Jewell made on his own behalf and on behalf of Mrs Toni Jewell and Miss Terri Jewell**

*ITV News, ITV1, 4 and 5 January 2010*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy.

On 4 and 5 January 2010, *ITV News* reported on allegations that members of one family were responsible for a series of incidents of anti-social behaviour in a particular neighbourhood in Doncaster. The reports focused on Mr Dean Jewell, his wife Mrs Toni Jewell, and his daughter, Miss Terri Jewell who had been given Anti-Social Behaviour Orders (“ASBOs”) for incidents that had occurred in their neighbourhood. Mr Jewell, who was interviewed for the programmes, disputed the allegations that had been levelled at him and his family. Footage of Mr Jewell, Mrs Jewell and Miss Jewell, some of it recorded surreptitiously, was included in the programmes.

Mr Jewell complained on his own behalf and on behalf of Mrs Jewell and Miss Jewell that they were unfairly treated and that their privacy was unwarrantably infringed in both the making and broadcast of the programmes.

In summary, Ofcom found that:

#### Unfair treatment

- The broadcaster had taken reasonable care to ensure that the programmes did not present, disregard or omit material facts in a way that was unfair to Mr Jewell and his family.
- Mr Jewell was given an appropriate and timely opportunity to respond to the allegations and to give his family’s side to the story. Ofcom therefore found no unfairness to Mr Jewell or his family in this regard.
- Mr Jewell’s response to the allegations about anti-social behaviour, although edited, reflected his position in relation to the allegations made about him and his family in the programme in a manner that was not unfair to them.

#### Privacy

- The public interest in investigating the allegations of anti-social behaviour against the Jewell family outweighed their legitimate expectation of privacy in relation to the surreptitiously recorded footage obtained in the making of the programmes and their subsequent broadcast.
- In relation to the filming of this footage, Ofcom did not consider that Mr Jewell or Miss Jewell had a legitimate expectation of privacy in relation to the broadcast of the footage of their interview. There was therefore no unwarranted infringement of Mr Jewell’s privacy in the programme as broadcast.

- Mr Jewell did not have a legitimate expectation of privacy in relation to the disclosure of his occupation. There was therefore no unwarranted infringement of Mr Jewell's privacy in the programme as broadcast.

## Introduction

On 4 and 5 January 2010, ITV1 broadcast four editions of its 18:30 and 22:00 hours evening news programme, *ITV News*. Each broadcast featured a news report entitled *"The Truth About ASBOs"*<sup>1</sup>. The report was presented as a series over two days and focused on two sisters, Mrs Anita Reckless and Mrs Ginette Mullins and their respective families, who lived in the same street in Doncaster and who had written to the programme about their experiences of living as neighbours to *"an ASBO family"*. The programme makers set up CCTV cameras in and around the sisters' respective houses to film any incidents that occurred over a three week period.

The first report broadcast on 4 January 2010 began by recounting allegations of abuse and damage to property that Mrs Reckless and Mrs Mullins said that they had suffered during the time they had lived in the cul-de-sac. The commentary stated:

*"The sisters blame their unhappiness on the Jewell family who live in the cul-de-sac. They've four ASBOs between them. It's from their house that the sisters say they are relentlessly tormented."*

The report showed CCTV recorded footage of unidentified persons throwing objects at the sisters' houses and calling them offensive names. The report concluded by stating that *"On tomorrow's programme, we confront the family who have been harassing the sisters"* and a brief excerpt was shown of Mr Dean Jewell being interviewed by a reporter.

The second report broadcast on 5 January 2010 began by showing a picture of Mr Jewell accompanied by the commentary *"Contempt from a family blamed for a campaign of abuse and the authorities powerless to stop them"*. During the report, secretly filmed footage was shown of Mr Jewell and other members of his family coming out of their house. The commentary introduced each family member with an accompanying still image taken from the secretly recorded footage. It stated:

*"This is Dean Jewell. The 45-year old works as a BT Technician, but he's been issued with a two year ASBO for tormenting people in his neighbourhood. He is married to Toni Jewell, a 41-year old cleaner. Like her husband, she too has a two year ASBO and has been ordered not to cause alarm and distress to any other person. The couple's 19-year old daughter, Terri, has an ASBO as well and has been sent to prison for robbing a neighbour. Another member of the family also has one of the orders [ASBO] but can't be named for legal reasons".*

A summary of the details relating to each of the three named members of the Jewell family also appeared in a caption over their respective still images.

Mr Jewell was then shown being confronted by a reporter who put to him the allegations made by the sisters about his family's behaviour. Mr Jewell responded by saying that he and his family were the victims and that they had got their ASBOs for *"sticking up for our kids"*. In response to the reporter's questions about allegations of

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<sup>1</sup> Anti-Social Behaviour Orders (ASBOs) are court orders which contain conditions that prohibit an offender from specific anti-social acts or entering into defined areas.

name-calling, Mr Jewell said that it was “*rubbish*” and “*what’s in a name?*”. The reporter was then shown asking Miss Terri Jewell what she had to say about the allegations to which she replied “*what do you want me to say?*”. This part of the report came to an end with the reporter asking Mr Jewell how he felt being the head of a family in which most of its members have an ASBO to which he replied “*it’s annoying*”.

The item then went on to interview the Chief Constable of South Yorkshire Police about anti-social behaviour generally and how the police and authorities tackle such problem in the community.

Mr Jewell complained to Ofcom on his own behalf and on behalf of Mrs Jewell (his wife) and Miss Jewell (his daughter) that they had been treated unfairly and that their privacy was unwarrantably infringed in both the making and broadcast of the programme.

## **The Complaint**

### **Mr Jewell’s case**

#### *Unfair treatment*

In summary, Mr Jewell complained that he, his wife and his daughter were treated unfairly in the programme as broadcast in that:

- a) They were portrayed unfairly in that the people shown in the programme causing damage and being anti-social were not members of the Jewell family.
- b) The programme makers would not give them an opportunity to respond to the allegations and give their side to what was happening.

In summary, Mr Jewell complained on his own behalf that he was treated unfairly in the programme as broadcast in that:

- c) All his comments were edited unfairly.

#### *Privacy*

In summary, Mr Jewell complained that his privacy and that of his wife and his daughter was unwarrantably infringed in the making of the programme in that:

- d) They were secretly filmed without their knowledge.

In summary, Mr Jewell complained that his privacy and that of his wife and his daughter was unwarrantably infringed in the programme as broadcast in that:

- e) They were not told that the footage taken of them would be shown on national television.

In summary, Mr Jewell complained on his own behalf that his privacy was unwarrantably infringed in the programme as broadcast in that:

- f) Mr Jewell’s occupation was disclosed in the programme.

## ITV's case

### *Unfair treatment*

In summary, ITV responded to Mr Jewell's complaint of unfair treatment as follows:

- a) In response to the complaint that the Jewell family were portrayed unfairly, ITV said that identification is one difficulty which frequently arises in instances of anti-social behaviour. It said that perpetrators of anti-social behaviour often wear hooded tops and strike at night so that they cannot be identified, at least not to the standard of a criminal prosecution.

In this particular case, ITV reported that the Mullins and Reckless families, who know their neighbours well, had said that they were certain that members of the Jewell family and their associates were responsible for every single one of the episodes that occurred while the programme makers were filming. ITV said that it understood from the Mullins and Reckless families it was a young member of the Jewell family who, whilst subject to the term of an ASBO, was seen in the item calling Mrs Mullins names. The families told ITV that it was young relatives of the Jewell family who were seen in the item calling both Mrs Reckless and Mrs Mullins "*fat slags*" from the Jewell family's front garden. The footage included in the programme which showed a brick being thrown and the aggressive gate slamming both, it was believed, featured a boyfriend of Miss Jewell.

ITV said that there was 'significant' evidence that the Jewell family had caused very 'significant' anti-social behaviour in their neighbourhood over a 'significant' period of time. This, it said, was evidenced by:

- the four ASBOs against four different people in the Jewell family household;
- the criminal conviction of Miss Jewell for a robbery at knifepoint;
- the testimony of the Mullins and Reckless families;
- the film footage of a number of incidents carried out by them or by individuals linked to their property, including supportive CCTV shown to the programme makers by the Mullins family which was not used in the programme;
- the testimony of neighbours who confirmed the fact that the Jewell family were responsible for regular anti-social behaviour; and
- the Chief Constable of South Yorkshire Police, when interviewed in December 2009, confirmed there had been 111 complaints of anti-social behaviour in this area.

ITV said that the Jewell family and their associates conducted themselves in an anti-social manner towards the Mullins and Reckless families as well as other people living locally. ITV said that the news reports did portray the Jewell family as having behaved anti-socially, but that was not unfair to them.

- b) In response to Mr Jewell's complaint that he and his family were not given an opportunity to respond to the allegations, ITV said that on 28 December 2009, Mr Jewell was approached by the programme makers for his comments on the allegations made against him and his family. It was clear to the programme makers that he did not at that stage wish to be interviewed. ITV said that, sometime later, Mr Jewell decided that he would speak to the reporter and a fairly lengthy interview was undertaken. It said that Mr Jewell was told what the intended report was to be about and the reporter took him through the allegations that had been made against his family. ITV said that Mr Jewell spoke on his own

behalf and on behalf of his family. During this interview, Mr Jewell was accompanied by his son, his daughter Terri Jewell and her boyfriend. Mrs Jewell had refused to speak to the reporter and had told him to return the next day. However, ITV said that when the reporter returned, Mrs Jewell still would not speak to him.

ITV said that the Jewell family not only were given an opportunity to respond to the allegations against them, but that they did so and their response was included in the programme.

- c) In response to Mr Jewell's complaint that his comments were edited unfairly, ITV said that the report reflected fairly the relevant 'gist' of what he said.

ITV said that the interview with Mr Jewell was a lengthy one and that it was clear that it could not have been shown in full in a news item such as this. However, ITV said that there was nothing of material significance in Mr Jewell's comments that should have been included in the report but that was not. It said that it seemed clear that Mr Jewell did not comprehend the seriousness of the distress that he and his family had been causing and he sought to underplay it.

### *Privacy*

- d) In response to the complaint that Mr Jewell, his wife and his daughter were secretly filmed without their knowledge, ITV said that the secret filming of the area outside the Mullins and Reckless families' houses did not amount to an unwarranted infringement of the Jewell family's privacy.

ITV said that the Jewell family's previous record of anti-social behaviour provided 'plenty of prima facie evidence' to justify the programme makers' covert filming in this case. It was not a "fishing expedition". ITV said that there was evidence that the story was in the public interest as despite ASBOs having been made against the Jewell family their anti-social behaviour and that of their associates continued. It also said that there were reasonable grounds to believe that further material evidence could be obtained as the behaviour was evidently continuing, and it was necessary to the credibility and authenticity of the programme as open filming would not have been appropriate in these circumstances.

- e) In response to Mr Jewell's complaint that he, his wife and his daughter were not told that footage taken of them would be broadcast, ITV said that Mr Jewell had known that he was being interviewed by a reporter for ITV and the purpose of the interview. During his interview, the fact that Mr Jewell's family's anti-social behaviour had been filmed was discussed and it appeared that Mr Jewell was very annoyed that the Mullins family had set up a CCTV system outside their house specifically to record the anti-social behaviour to which they were subjected.
- f) In response to Mr Jewell's complaint that his privacy was unwarrantably infringed in that his occupation was disclosed in the programme, ITV said that this information was not private information. Furthermore, it said that Mr Jewell's managers, and presumably others he met in the course of his employment, would know him as a BT employee whether or not this was stated in the report. ITV said that during the interview, Mr Jewell stated in any event that he had discussed "the situation" with his line manager in any event. ITV also stated that it was common place in any news report to give a person's occupation – it would be a departure

from ordinary principles of reporting if a person's occupation were deemed to be private.

## Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment and unwarranted infringement of privacy in, or in the making of, programmes included in such services.

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

In reaching its decision, Ofcom considered all the relevant material provided by both parties. This included recordings of the programmes as broadcast, a recording of the unedited footage of Mr Jewell's interview, a transcript of both the programmes and the unedited footage and written submissions and supporting material from both parties. In its considerations, Ofcom also took account of its Broadcasting Code ("the Code").

### *Unfair treatment*

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

- a) Ofcom first considered the complaint that Mr Jewell, his wife and his daughter were portrayed unfairly in the programme in that the people shown causing damage and being anti-social were not members of the Jewell family.

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

Ofcom first considered the nature of the footage in the broadcasts and the context in which it was used. It noted that a series of incidents captured on CCTV cameras set up on and around the homes of the Mullins and Reckless families, was included in both the reports broadcast on 4 and 5 January 2010. One sequence of footage showed a hooded figure throwing objects at a house, while another sequence showed a similarly hooded figure throwing what appeared to be a brick. Also, Ofcom noted that the programme included CCTV footage of children outside the Jewell family house calling Mrs Mullins and Mrs Reckless offensive names and footage of a young man slamming open a front garden gate and behaving in an abusive and threatening manner.

Ofcom recognised that it was difficult to ascertain the identity of the perpetrators of the behaviour captured on the CCTV footage and it was not Ofcom's role to determine whether or not those featured in the footage were members or associates of the Jewell family. Ofcom's role was to determine whether or not, in

broadcasting the CCTV footage in the context of a report on the alleged anti-social behaviour by the Jewell family, the broadcaster took reasonable care to satisfy itself that it did not present, disregard or omit material facts in a way that was unfair to Mr Jewell and his family.

The Code recognises the importance of freedom of expression and the need to allow broadcasters the freedom to broadcast matters of a genuine public interest. However, in presenting significant allegations, reasonable care must be taken not to do so in a way that does not cause unfairness to individuals or organisations. In this particular case, Ofcom recognised that it was in the public interest for the broadcaster to examine the allegations such as those covered in the reports, but that this needed to be consistent with the Code.

Ofcom noted that the programmes presented the allegations of anti-social behaviour by members of the Jewell family throughout both news reports and that the programme makers had relied on various sources of information (set out in detail in ITV's response above) which they believed corroborated the allegations about the Jewell family and justified the use of the CCTV footage.

In the circumstances, Ofcom considered that it was legitimate for the programme makers to include the CCTV footage in the context of a report on anti-social behaviour and that it was reasonable for the programme makers to rely on the information, including the testimony of the Mullins and Reckless families, that the incidents of anti-social behaviour conducted in the street were perpetrated by members of the Jewell family or their associates.

Taking into account all of the factors referred to above, Ofcom considered that the broadcaster had taken reasonable care to ensure that the programmes did not present, disregard or omit material facts in a way that was unfair to Mr Jewell and his family.

- b) Ofcom then considered Mr Jewell's complaint that the programme makers would not give him or his family an opportunity to respond and give their side of what was happening.

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

Ofcom considered that the programme had made serious allegations about Mr Jewell and members of his family that they were responsible for a number of incidents of anti-social behaviour towards particular families in his neighbourhood. Therefore, Ofcom considered that an "appropriate and timely" opportunity to respond to the allegations should normally be given.

Ofcom noted that on 28 December 2009, the programme makers conducted a filmed interview with Mr Jewell (and members of his family) outside his house. Initially, Mr Jewell had told the programme makers that he did not wish to be interviewed, but later that same day he agreed to speak to the reporter. During this interview, Ofcom noted that the reporter explained to Mr Jewell the purpose of his visit and the nature of the report that the programme makers were making. It also noted that during the interview, which went on for almost an hour, the reporter put the allegations to Mr Jewell about anti-social behaviour that had

been levelled at his family. Ofcom noted that Mr Jewell responded to the reporter's questions regarding the allegations and gave his version of events.

Ofcom also noted that Miss Jewell was asked by the reporter if she had anything to say, to which she replied "*what do you want me to say?*". It noted that the reporter had attempted to interview Mrs Jewell but she refused to speak with him.

Ofcom recognised that the programme makers did not contact Mr Jewell or members of his family by telephone or letter prior to approaching him outside his house on 28 December 2009. However, having watched the unedited footage of the interview and read the transcript, Ofcom considered that the programme makers made it clear to Mr Jewell who they were and why they wanted to speak to him. It also considered that the allegations about anti-social behaviour levelled at the Jewell family were fully put to Mr Jewell and that he responded, willingly, to those allegations.

Taking the factors referred to above into account, Ofcom was satisfied Mr Jewell was given an appropriate and timely opportunity to respond to the allegations and to give his family's side to the story. Ofcom therefore found no unfairness to Mr Jewell or his family in this regard.

- c) Ofcom considered Mr Jewell's complaint that his comments were edited unfairly.

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

Ofcom noted the edited footage of Mr Jewell's interview included in the programme broadcast on 5 January 2010:

- Reporter: *"Excuse me Mr Jewell. Mr Jewell we are from ITV News, I wanted to talk to you about anti-social behaviour."*
- Mr Jewell: *"We've got the ASBOs for the simple reason, we stuck up for our kids when they were putting in petty allegations in saying..."*
- Reporter: *"So you are saying you are the victim?"*
- Mr Jewell: *"Yes we are the victim."*
- Reporter: *"Members of the family are saying, fatty this, fat slag, things like that."*
- Mr Jewell: *"Total and utter rubbish."*
- Reporter: *"How would that make you feel if every time you left your house you were called something like that?"*
- Mr Jewell: *"What's in a name?"*
- Reporter: *"What's in a name! If every time you left the house you were insulted like that how do you think you would feel?"*
- Mr Jewell: *"I grew up in school getting names called at me."*

- Reporter: *"That doesn't make it right."*
- Mr Jewell: *"I know it doesn't make it right but at the end of the day..."*
- Reporter: *"What are you going to do to make sure that this doesn't happen from members of your family?"*
- Reporter: *"Terri, what do you have to say?"*
- Terri Jewell: *"What do you want me to say?"*
- Reporter: *"How does it feel to be at the head of a family where most people have got ASBOs?"*
- Mr Jewell: *"Not [inaudible]... it's annoying."*

Ofcom also watched the unedited footage of Mr Jewell's interview with the reporter and read a transcript of it. Ofcom noted that in response to the reporter's question:

*"How does it feel to be at the head of a family where most people have got ASBOs?"*

Mr Jewell said:

*"Not [inaudible] ... It's annoying that small minded petty people like that..."*

Ofcom recognises that programme makers can quite legitimately select and edit material from interview footage for inclusion in a programme. This is an editorial decision and it would be, in Ofcom's view, unreasonable for an individual to expect a broadcaster to cede editorial control or to include footage of their contribution in full. Broadcasters must, however, ensure that where it is appropriate to represent the views of a contributor to a programme that it is done in a fair manner.

In this case, Mr Jewell's contribution (taken from an interview that lasted for almost an hour) was edited and summarised as set out above. Ofcom considered that, although the programme makers chose not to present Mr Jewell's comments in their entirety, the comments that were included in the programme set out his and his family's position and attitude towards the allegations of anti-social behaviour. Ofcom considered that viewers would have been left in no doubt that Mr Jewell disputed the allegations about him and his family and that he believed that they were the victims.

Ofcom considered that the editing of Mr Jewell's response to the reporter's question about what it felt like being the head of a family where most people have got ASBOs from *"It's annoying that small-minded petty people like that"* to just *"It's annoying"* had the potential to mislead viewers and be unfair to him. However, Ofcom considered that given the context in which the comment was used in the programme, namely at the end of Mr Jewell's disputation of the allegations about him and his family and that viewers would have been able to form their own opinion of Mr Jewell and his attitude towards the allegations.

Taking all of the factors referred to above into account, Ofcom was satisfied that Mr Jewell's edited response to the allegations about anti-social behaviour

reflected his position in relation to the allegations made about him and his family and was not unfair. Ofcom therefore found no unfairness to Mr Jewell in this regard.

### *Privacy*

Ofcom went on to consider the heads of Mr Jewell's complaint which related to the unwarranted infringement of his privacy and that of his wife and his daughter in either the making or broadcast of the programme.

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

This is reflected in how Ofcom applies Rule 8.1 of the Code, which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes, must be warranted. Ofcom had regard to Rule 8.1 when reaching its decisions on the individual heads of complaint detailed below.

- d) Ofcom went on to consider Mr Jewell's complaint that he and his family's privacy was unwarrantably infringed in the making of the programme in that they were secretly filmed without their knowledge.

In considering whether or not Mr Jewell and his family's privacy was unwarrantably infringed in the making of the programme, Ofcom first considered whether or not they had a legitimate expectation of privacy in the circumstances that the footage for the programme had been obtained.

Ofcom had regard to Practice 8.9 of the Code which states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme. It also had regard to Practice 8.13 of the Code which states that surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if: there is prima facie evidence of a story in the public interest; and there are reasonable grounds to suspect that further material evidence could be obtained; and it is necessary to the credibility and authenticity of the programme.

Ofcom noted that prior to filming the programme makers had received a complaint from Mrs Mullins and Mrs Reckless that a particular family in their neighbourhood was engaged in repeated anti-social behaviour which was, allegedly, making their lives a misery. Ofcom noted that the programme makers had gathered first-hand testimony from the Mullins and Reckless families and other neighbours that the Jewell family were responsible for the anti-social behaviour in the area and that members of the Jewell family had ASBOs against them. Ofcom also noted that while the programme makers were filming, incidents were taking place in the area that they reasonably believed to be caused by the Jewell family and their associates.

Taking into account the information obtained by the programme makers prior to filming Mr Jewell and members of his family surreptitiously, Ofcom was satisfied that there was a prima facie evidence of a story in the public interest. Ofcom considered that a story about the anti-social behaviour of one particular family

whose members had four ASBOs between them and the effect their behaviour had on their neighbours was clearly in the public interest. Ofcom also considered that the programme makers had reasonable grounds to suspect that further evidence could be obtained, on the basis of the material already gathered by them.

Ofcom was satisfied that the surreptitious nature of the filming was necessary for the authenticity and credibility of the story. In Ofcom's view, by alerting Mr Jewell and members of his family to the investigation into the allegations of anti-social behaviour in advance, the programme makers would have been unable to gain an accurate picture of the level of anti-social behaviour targeted at the Mullins and Reckless families. In these circumstances, Ofcom found that the surreptitious nature of the filming in was appropriate and proportionate in this case.

Having considered that it was appropriate for the programme makers to surreptitiously film Mr Jewell and members of his family in the circumstances, Ofcom assessed specifically whether or not they had a legitimate expectation of privacy in the particular circumstances that they were filmed.

Ofcom recognises that there can be circumstances where an individual can legitimately expect privacy even in a public place. People under investigation and their immediate family and friends retain the right to a private life, although private behaviour can raise issues of legitimate public interest. While Ofcom accepted that the obtaining of material by surreptitious means was appropriate and proportionate in this case, it took the view that the surreptitious filming by its very nature rendered it intrusive into the private lives of Mr Jewell and his family. In these circumstances, Ofcom considered that Mr Jewell, Mrs Jewell and Miss Jewell had a legitimate expectation of privacy.

Ofcom then went on to consider the broadcaster's competing right to freedom of expression and the public interest in investigating allegations of anti-social behaviour and the impact it has on the lives of those it is directed against. It also took into account the audience's right to receive information and ideas without unnecessary interference.

In the particular circumstances of this case, Ofcom considered that the surreptitious nature of the filming was appropriate and proportionate and that the investigation into the allegations of anti-social behaviour was clearly a matter of public interest and could not have succeeded without surreptitious filming by the programme makers. Furthermore, Ofcom is of the view that it would be undesirable for programme makers to be unduly constrained in circumstances such as this where it would be unlikely that they would be able to obtain the material if the subjects of the investigation had known that filming for a news programme was taking place. In these circumstances, Ofcom considers that what is important is that the broadcaster takes steps to ensure that the subsequent broadcast of material filmed in such circumstances does not result in an unwarranted infringement of privacy. This issue is dealt with in the Decision at head e) below.

Having taken into account all the factors above, Ofcom considered that the broadcaster's right to freedom of expression and the public interest in investigating the allegations of anti-social behaviour against the Jewell family outweighed their legitimate expectation of privacy in relation to the surreptitiously recorded footage obtained in the making of the programmes.

Ofcom therefore found that there was no unwarranted infringement of the Jewell family's privacy in the making of the programmes.

- e) Ofcom considered the complaint that Mr Jewell's privacy and that of his wife and daughter was unwarrantably infringed in the broadcast of the programmes in that they were not told that footage of them would be shown on national television.

In considering whether or not there had been an unwarranted infringement of privacy in the broadcast of the programmes, Ofcom first considered if they had a legitimate expectation that footage of them would not be included in the broadcast programmes without their consent.

Ofcom had regard to Practice 8.6 which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement is warranted.

Ofcom noted the nature of the footage of Mr Jewell, Mrs Jewell and Miss Jewell that was included in the programmes as broadcast. Ofcom noted that the programmes included surreptitiously recorded footage of the Jewell family coming out of their home and footage of Mrs Jewell putting a key into her front door. The programmes also included footage of Mr Jewell and Miss Jewell being interviewed by the programme makers in the street. The programmes also included still images of Mr Jewell, Mrs Jewell and Miss Jewell that had been taken from footage recorded by the programme makers over the duration of their investigation.

In relation to the surreptitiously recorded footage of the Jewell family broadcast in the programmes, as already noted in head e) of the Decision above, Ofcom considered that the Jewell family had a legitimate expectation of privacy.

Ofcom then considered the broadcaster's competing right to freedom of expression and the public interest in investigating allegations of anti-social behaviour and the impact it has on the lives of those it is directed against. It considered that there was a significant public interest justification in including the footage of the Jewell family in these programmes that investigated serious allegations of anti-social behaviour against them. On balance, and in the particular circumstances of this case, Ofcom found that the public interest in investigating the allegations of anti-social behaviour and identifying those who it was reasonably believed were responsible for the behaviour outweighed the legitimate expectation of privacy that Mr Jewell, his wife and his daughter had in relation to the broadcast of the surreptitiously recorded footage.

In relation to the footage of Mr Jewell and Miss Jewell that was taken from the filmed interview that was conducted in the street, Ofcom noted that the filming took place in public and in full view of Mr Jewell and Miss Jewell. It also noted that the programme makers made it clear to Mr Jewell (and Miss Jewell who was present through most of the interview) that they were from "ITV News" and wanted to talk to him about allegations of anti-social behaviour. Ofcom also noted from the unedited footage of the interview with Mr Jewell, the programme makers made it clear to him that filming had been taking place and that they had footage relating to incidents of anti-social behaviour. Ofcom considered that although Mr Jewell and his family may not have liked being approached and interviewed about the allegations of anti-social behaviour levelled against them, it was clear that the interview was filmed openly and that Mr Jewell and Miss Jewell were aware that they were being filmed by programme makers for "ITV News" and that

it was more than likely that the footage filmed would be used in a subsequent broadcast. In these circumstances, and in the absence of any special factors in relation to the filming of this footage, Ofcom did not consider that that Mr Jewell or Miss Jewell had a legitimate expectation of privacy in relation to the broadcast of it. It was not therefore necessary for Ofcom to consider whether any intrusion into Mr Jewell and his family's private life was warranted in respect of the broadcast of to this footage.

Ofcom therefore found that there was no unwarranted infringement of Mr Jewell's privacy or that of Mrs Jewell and Miss Jewell in the programmes as broadcast and has not upheld the complaint in this respect.

- f) Ofcom considered the complaint that Mr Jewell's privacy was unwarrantably infringed in the programme broadcast on 5 January 2010 in that his occupation was disclosed without his consent.

In considering this element of the complaint, Ofcom also had regard to Practice 8.6 already set out in head e) of the Decision above.

Ofcom noted that the programme's reporter referred to Mr Jewell's occupation as "*BT Technician*" when introducing him and the basic terms of his ASBO. It also appeared in caption form alongside a photograph of Mr Jewell, his name and his age.

Ofcom recognised that there may well be circumstances in which the disclosure of information relating to an individual's occupation may be understood to be sensitive and may therefore attract an expectation of privacy. However, in the circumstances of this particular case, Ofcom considered that the reference to Mr Jewell's occupation did not reveal any information that could be reasonably deemed personal or sensitive in nature. Ofcom noted that Mr Jewell and his family were named throughout the programme, his face was shown and the town in which he lived was referred to.

Ofcom concluded that in the absence of any special factors relating to the disclosure in the programme of Mr Jewell's occupation as "*BT Technician*" in the broadcast of the programme, Mr Jewell did not have a legitimate expectation of privacy in relation to the disclosure. It was not therefore necessary for it to consider whether any intrusion into Mr Jewell's private life in this respect was warranted. Ofcom therefore found that there was no unwarranted infringement of Mr Jewell's privacy in the programme as broadcast in this respect and has not upheld this aspect of his complaint.

**Accordingly, Ofcom has not upheld Mr Jewell's complaints made on his own behalf and on behalf of Mrs Jewell and Miss Jewell of unfair treatment or unwarranted infringement of privacy in both the making and broadcast of the programme.**

## Other Programmes Not in Breach

Up to 18 October 2010

Programme	Transmission Date	Broadcaster	Categories	Number of complaints
118 118's sponsorship of ITV Movies	n/a	ITV2	Violence and dangerous behaviour	1
118 118's sponsorship of ITV Movies	27/09/2010	ITV4	Violence and dangerous behaviour	1
118 118's sponsorship of ITV Movies	01/10/2010	ITV4	Disability discrimination/offence	2
5 Live Breakfast	20/09/2010	BBC Radio 5 Live	Sexual material	1
8 Out of 10 Cats	15/10/2010	Channel 4	Religious/Beliefs discrimination/offence	1
A Girls Guide to 21st Century Sex	22/09/2010	Fiver	Sexual material	1
Advertising minutage	07/09/2010	Living TV	COSTA	1
Alan Carr: Chatty Man	05/09/2010	Channel 4	Generally accepted standards	1
An Idiot Abroad	03/10/2010	Sky1	Generally accepted standards	1
Argumental	28/09/2010	Dave	Generally accepted standards	1
Aviva's sponsorship of Downton Abbey	10/10/2010	ITV1	Generally accepted standards	3
Bear Grylls: Born Survivor	10/05/2010	Discovery	Animal welfare	1
Britain's Best Dish	10/09/2010	ITV1	Race discrimination/offence	1
Call Collymore	03/10/2010	Talksport	Generally accepted standards	30
Casualty	02/10/2010	BBC 1	Sexual material	1
Celebrity Juice (trailer)	22/09/2010	ITV2	Generally accepted standards	1
Celebrity Juice (trailer)	23/09/2010	ITV2	Sexual material	1
Celebrity Juice (trailer)	08/10/2010	ITV2	Generally accepted standards	1
Celebrity Juice (trailer)	07/10/2010	ITV2	Generally accepted standards	1
Coach Trip	06/10/2010	Channel 4	Scheduling	1
Coronation Street	08/10/2010	ITV1	Generally accepted standards	2
Coronation Street	08/10/2010	ITV1	Disability discrimination/offence	1
Coronation Street	11/10/2010	ITV1	Generally accepted standards	1
Countdown	14/10/2010	Channel 4	Race discrimination/offence	1
Countryfile	03/10/2010	BBC 1	Animal welfare	1
Cowboy Builders	10/10/2010	Five	Race discrimination/offence	1
Cowboy Builders	13/10/2010	Five	Due impartiality/bias	1
Cowboy Builders	06/10/2010	Five	Race discrimination/offence	5
Dark Blue (trailer)	13/10/2010	Five	Scheduling	1

Davina McCall: A Comedy Roast	15/10/2010	Channel 4	Generally accepted standards	5
Daybreak	21/09/2010	ITV1	Due accuracy	1
DCI Banks: Aftermath	03/10/2010	ITV1	Violence and dangerous behaviour	1
DCI Banks: Aftermath	03/10/2010	ITV1	Generally accepted standards	1
Deal or No Deal	14/10/2010	Channel 4	Generally accepted standards	1
Download Top 20	21/07/2010	Viva	COSTA	1
Downton Abbey	03/10/2010	ITV1	Generally accepted standards	1
Downton Abbey	03/10/2010	ITV1	Nudity	1
E4 promo	n/a	E4	Generally accepted standards	1
E4 Promo	07/10/2010	E4+1	Violence and dangerous behaviour	1
E4 promo	13/10/2010	E4+1	Advertising content	1
Early Bird	18/07/2010	Tease Me TV (Freeview)	Sexual material	1
EastEnders	03/10/2010	BBC 1	Violence and dangerous behaviour	1
EastEnders	30/09/2010	BBC 1	Violence and dangerous behaviour	1
EastEnders	05/10/2010	BBC 1	Generally accepted standards	1
EastEnders	11/10/2010	BBC 1	Generally accepted standards	1
EastEnders	15/10/2010	BBC 1	Offensive language	1
EastEnders	30/09/2010	BBC 1	Violence and dangerous behaviour	1
EastEnders	05/10/2010	BBC 1	Race discrimination/offence	4
Emmerdale	06/10/2010	ITV1	Generally accepted standards	1
Emmerdale	11/10/2010	ITV1	Drugs, smoking, solvents or alcohol	1
Emmerdale	13/10/2010	ITV1	Drugs, smoking, solvents or alcohol	1
Emmerdale	06/10/2010	ITV1	Generally accepted standards	2
Evening Report	13/10/2010	Sky Sports News	Generally accepted standards	1
First Light	14/09/2010	BBC 2	Offensive language	1
Frank Skinner	08/10/2010	Channel 4	Generally accepted standards	1
Fringe (trailer)	10/10/2010	Sky1	Materially misleading	1
From Here to Maternity	25/09/2010	Discovery Home & Health	Materially misleading	1
Harry and Paul	05/10/2010	BBC 2	Generally accepted standards	1
Harry and Paul	12/10/2010	BBC 2	Offensive language	3
Harry and Paul	12/10/2010	BBC 2	Generally accepted standards	3
Harry and Paul	05/10/2010	BBC 2	Generally accepted standards	1

Hell's Kitchen USA	07/10/2010	ITV2	Offensive language	1
Hollyoaks	14/10/2010	Channel 4	Generally accepted standards	1
Horrible Histories	01/10/2010	BBC 1	Violence and dangerous behaviour	2
Hyundai's sponsorship of Five Movies	26/09/2010	Five	Nudity	1
ITV News	05/10/2010	ITV1	Generally accepted standards	1
Jamie's 30 Minute Meals (trailer)	07/10/2010	Channel 4	Materially misleading	7
Jeremy Vine	30/09/2010	BBC Radio 2	Sexual material	1
Ken Bruce	21/09/2010	BBC Radio 2	Generally accepted standards	1
Killing Mum & Dad	14/09/2010	Sky3	Materially misleading	2
Ladette to Lady	05/10/2010	ITV1	Sexual orientation discrimination/offence	1
Live Test Cricket	03/10/2010	Sky Sports 3 / Sky Sports HD	Outside of remit / other	1
Live World Grand Prix Darts	07/10/2010	Sky Sports 1	Offensive language	1
Looking for Eric	10/10/2010	Channel 4	Offensive language	1
Love at Sunset promotion	30/09/2010	Southend Radio 105.1FM	Materially misleading	1
Man Versus Food	17/09/2010	Good Food	Generally accepted standards	1
Michael McIntyre's Comedy Roadshow	02/10/2010	BBC 1	Sexual material	1
Michael McIntyre's Comedy Roadshow	09/10/2010	BBC 1	Generally accepted standards	1
Midsomer Murders	12/10/2010	ITV1	Offensive language	3
Midsomer Murders	11/10/2010	ITV1	Offensive language	2
My Family's Crazy Gap Year	09/10/2010	Channel 4	Religious/Beliefs discrimination/offence	1
Newcastle United v Stoke City	26/09/2010	Sky Sports 1	Race discrimination/offence	1
News	25/09/2010	BBC News Channel	Offensive language	1
News	04/10/2010	BBC Radio 2	Generally accepted standards	1
Nick Ferrari	01/10/2010	LBC 97.3FM	Race discrimination/offence	1
NS&I sponsorship credit	15/09/2010	Classic FM	Materially misleading	1
Old Speckled Hen's sponsorship of Primetime	n/a	Dave	Drugs, smoking, solvents or alcohol	1
Paul O'Grady Live	08/10/2010	ITV1	Generally accepted standards	1
QI	08/10/2010	BBC 1	Offensive language	1
QI	15/10/2010	BBC 1	Disability discrimination/offence	1
QI XL	09/10/2010	BBC 2	Gender discrimination/offence	1
Ramsay's Best Restaurant	12/10/2010	Channel 4	Generally accepted standards	1
Rihanna and Eminem "Love the Way You Lie"	15/09/2010	4Music	Violence and dangerous behaviour	1
River Cottage Every Day	07/10/2010	Channel 4	Offensive language	2

Sarah Jane Adventures (trailer)	11/10/2010	BBC 2	Scheduling	1
Secret Dealers	06/10/2010	ITV1	Competitions	1
Simon Mayo	23/09/2010	BBC Radio 2	Generally accepted standards	1
Sky 3D promotion	05/10/2010	Sky 3	Materially misleading	1
Sky News	15/10/2010	Sky News	Violence and dangerous behaviour	1
Sky News Tonight	10/10/2010	Sky News	Race discrimination/offence	1
Sky Sports Promo	03/10/2010	Sky Sports 1	Materially misleading	1
Station ident	n/a	Gold Radio	Materially misleading	1
Strictly Come Dancing	09/10/2010	BBC 1	Generally accepted standards	1
Strictly Come Dancing	16/10/2010	BBC 1	Age discrimination/offence	1
Sunday Morning Live	03/10/2010	BBC 1	Generally accepted standards	1
Talk Sport	15/10/2010	Talk Sport	Due accuracy	1
The Alan Titchmarsh Show	06/10/2010	ITV1	Scheduling	4
The Alan Titchmarsh Show	06/10/2010	ITV1	Sexual material	2
The Alan Titchmarsh Show	07/10/2010	ITV1	Scheduling	1
The Album Chart Show with Tesco Entertainment	25/09/2010	Channel 4	Offensive language	1
The Apprentice	06/10/2010	BBC 1	Race discrimination/offence	1
The Apprentice: You're Fired!	06/10/2010	BBC 2	Offensive language	1
The Counterfeiters	20/09/2010	BBC 4	Generally accepted standards	1
The Daily Politics	13/10/2010	BBC 2	Generally accepted standards	1
The Inbetweeners	01/10/2010	Channel 4	Offensive language	1
The Inbetweeners	04/10/2010	E4	Generally accepted standards	1
The Jeremy Kyle Show	06/10/2010	ITV1	Outside of remit / other	1
The Jeremy Kyle Show	07/10/2010	ITV1	Generally accepted standards	1
The Man Who Moves Buildings	22/07/2010	Five	Race discrimination/offence	1
The News Quiz	08/10/2010	BBC Radio 4	Offensive language	1
The Official Chart with Reggie Yates	03/10/2010	BBC Radio 1	Outside of remit / other	1
The Sex Education Show: Am I Normal?	05/07/2010	Channel 4	Generally accepted standards	1
The Sex Education Show: Am I Normal?	05/07/2010	Channel 4	Sexual material	15
The Sex Education Show: Am I Normal?	06/07/2010	Channel 4	Sexual material	9
The Sex Education Show: Am I Normal?	07/07/2010	Channel 4	Sexual material	4
The Sex Education Show: Am I Normal?	08/07/2010	Channel 4	Sexual material	3
The Sex Education Show: Am I Normal? (trailer)	27/06/2010	Channel 4	Sexual material	1
The Sex Education Show: Am I Normal? (trailer)	29/06/2010	Channel 4	Sexual material	1

The Sex Education Show: Am I Normal? (trailer)	01/07/2010	Channel 4	Sexual material	6
The Sex Education Show: Am I Normal? (trailer)	02/07/2010	Channel 4	Sexual material	3
The Sex Education Show: Am I Normal? (trailer)	03/07/2010	Channel 4	Sexual material	5
The Sex Education Show: Am I Normal? (trailer)	04/07/2010	Channel 4	Sexual material	7
The Sex Education Show: Am I Normal? (trailer)	05/07/2010	Channel 4	Sexual material	6
The Sex Education Show: Am I Normal? (trailer)	06/07/2010	Channel 4	Sexual material	6
The Sex Education Show: Am I Normal? (trailer)	07/07/2010	Channel 4	Sexual material	2
The Sex Education Show: Am I Normal? (trailer)	06/07/2010	E4	Sexual material	1
The Trouble with the Pope	13/09/2010	Channel 4	Religious/Beliefs discrimination/offence	1
The Weakest Link	15/10/2010	BBC 1	Generally accepted standards	1
The Wright Stuff	14/10/2010	Five	Sexual orientation discrimination/offence	3
The X Factor	10/10/2010	ITV1	Religious/Beliefs discrimination/offence	1
The X Factor	02/10/2010	ITV1	Violence and dangerous behaviour	1
The X Factor	09/10/2010	ITV1	COSTA	1
The X Factor	09/10/2010	ITV1	Generally accepted standards	17
The X Factor	10/10/2010	ITV1	Generally accepted standards	2
The X Factor	09/10/2010	ITV1	Sexual material	1
The X Factor	09/10/2010	ITV1	Age discrimination/offence	1
This is England '86	04/10/2010	Channel 4	Generally accepted standards	1
This Morning	08/09/2010	ITV1	Generally accepted standards	1
This Morning	05/10/2010	ITV1	Generally accepted standards	1
This Morning	07/10/2010	ITV1	Due impartiality/bias	1
This Morning	12/10/2010	ITV1	Sexual orientation discrimination/offence	1
This Morning	12/10/2010	ITV1	Sexual material	7
Thought For The Day	01/10/2010	BBC Radio 4	Generally accepted standards	1
Today Programme	05/10/2010	BBC Radio 4	Generally accepted standards	1
Unknown	26/09/2010	Bristol Community FM (Bristol)	Offensive language	1
V (trailer)	13/09/2010	Challenge TV	Generally accepted standards	1
Walk on the Wild Side	16/10/2010	BBC 1	Generally accepted standards	1
Wedding House	05/10/2010	Channel 4	Generally accepted standards	1
Wedding House	12/10/2010	Channel 4	Sexual material	1

What Katie Did Next	05/10/2010	ITV2	Generally accepted standards	1
Who Wants to be a Millionaire?	05/10/2010	ITV1	Generally accepted standards	1
WWE Smackdown	05/10/2010	Sky Sports 3	Animal welfare	1