

Ofcom Broadcast Bulletin

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Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives¹. Ofcom must include these standards in a code or codes. These are listed below. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act².

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

- a) [Ofcom’s Broadcasting Code](#) (“the Code”).
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
 - the prohibition on ‘political’ advertising;
 - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
 - ‘participation TV’ advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including ‘adult’ chat), ‘psychic’ readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and ‘message board’ material where these are broadcast as advertising³.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) rules and guidance for both [editorial content and advertising content on ODPS](#). Ofcom considers sanctions in relation to ODPS on referral by the Authority for Television On-Demand (“ATVOD”) or the Advertising Standards Authority (“ASA”), co-regulators of ODPS for editorial content and advertising respectively, or may do so as a concurrent regulator.

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

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

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

³ BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases.

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

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

Standards cases

In Breach

News

CHSTV, 12 February 2013, 22:00

Introduction

CHSTV is a free-to-air satellite general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for CHSTV is held by CHS.TV Limited ("CHSTV" or "the Licensee").

Two complainants alerted Ofcom to a news report about the protests then taking place in Bangladesh concerning the International Crimes Tribunal ("ICT")¹. The complainants considered the news broadcast was biased.

Ofcom reviewed the news item in question, which was broadcast in Bangla. Ofcom therefore commissioned an independent translation of the output. We noted that the report relating to events concerning the ICT in Bangladesh lasted approximately 17 minutes, and included coverage of the following:

- the on-going 'Shahbag' protests² taking place in Bangladesh. These had started on 5 February 2013 when the ICT had sentenced the politician Kader Molla³ to life imprisonment for war crimes. The protests also called for the execution of individuals found guilty by the ICT of war crimes. The Shahbag movement has subsequently called for the banning of the Jamaat Party in Bangladesh;
- separate protests by supporters of the Jamaat Party in response to the actions of the ICT, and its guilty verdict⁴ in relation to Kader Molla; and
- the reactions of representatives of: the Shahbag movement; the ruling Awami League⁵; and the opposition Bangladesh Nationalist Party⁶, in relation to the various protests and political disturbances going on in Bangladesh.

¹ The ICT was set up by the current Bangladeshi Government in 2010 to investigate alleged war crimes alleged to have taken place during the 1971 war in which Bangladesh obtained its independence from Pakistan.

² The Shahbag protests were so-called because they were associated with the Shahbag district of Bangladesh's capital, Dhaka.

³ Kader Molla is a leader of the main Islamist party in Bangladesh, Jamaat-e-Islami, also known as the Jamaat Party.

⁴ To date, the ICT has indicted 11 politicians of war crimes: nine members of the Jamaat Party and two members of the Bangladesh Nationalist Party.

⁵ The Awami League is the main party in the coalition governing Bangladesh.

⁶ The Bangladesh Nationalist Party is the largest opposition party in Bangladesh and is the main party in an opposition alliance, which includes the Jamaat Party.

We noted that during the news item, there were the following references to the Jamaat Party (taken from Ofcom's translation):

Reporter: *"Jamaat has started spreading violence, but the [Shahbag] movement says that non-violent protest is better than any protest".*

Reporter: *"[Protesters] want... to ban the politics of 'Jamaat-e-Islami'".*

Newsreader: *"Hasan-ul-Haque Inu [Bangladeshi Information Minister] says that, if we want to remove all the dangers from politics, we need to ban Jamaat as a political party".*

Newsreader: *"In order to sabotage the war-criminal tribunal [i.e. the ICT], Jamaat has been rioting throughout the city. In Dhaka city, 'Shibir' [the student wing of the Jamaat Party] starts their procession carrying sticks. They carry out random attacks".*

Newsreader: *"Jamaat-Shibir also started some random procession in different areas of Bangladesh. The passers-by were terrorized by the fight between police and Shibir activists".*

Newsreader: *"The parliamentary members of the ruling party [the Awami League] have requested Government to show respect to the Shahbag movement by passing a bill in favor of banning Jamaat as a political party in the parliament. They say that the youth wants a country free from terrorism and violence. They want Jamaat to be banned. Many members from the ruling party requested to ban all political activities by Jamaat. Jamaat has created chaos to sabotage the tribunal [i.e. the ICT], so [the Bangladesh Nationalist Party] needs to tear all links with Jamaat".*

Ofcom considered the material raised issues warranting investigation under Rule 5.1 of the Code, which states:

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

We therefore sought the Licensee's comments as to how this material complied with this rule.

Response

By way of background to the news item in this case, CHSTV referred to the “hugely emotional matter” of Bangladesh’s 1971 war of independence, and said that “history tells us that circa three million people were killed and several hundred thousand women were raped by the Pakistan Army and their collaborators. It is the leaders of these collaborators that are currently on trial” in the ICT.

The Licensee “vigorously” defended its editorial approach in this case and said that, in its view, it had complied with Rule 5.1 “to the best of our ability”, and that all it had done was to “broadcast the reality of the situation [on] the ground and what is currently happening in Bangladesh”. In this regard it cited an article⁷ published by The Guardian, which CHSTV said “gave a flavour of the sentiments running through the Bangladeshi community”. The Licensee said that the news report dealt with “very unusual circumstances in Bangladesh and [have] resulted in unusual, highly emotional news coverage”. CHSTV added that: interviews in the news item were “got directly from a Bangladesh television broadcaster, from whom we get footages on a regular basis”; and: “Currently in Bangladesh, there are no television channels giving any positive coverage of the [Jamaat] Party, several of whose leaders are currently on trial by the [ICT] of Bangladesh as alleged collaborators of the Pakistan Army during the liberation war of 1971”.

By way of mitigation, the Licensee said that: “As an ethnic channel we are already very under resourced in terms of revenue and time”. Although stating that it understood Ofcom has a duty to investigate any potential Code issues raised by “every single complaint”, CHSTV said that “we are representing the views of the vast majority of our viewers and we cannot be victimised because of two complaints”. The Licensee therefore requested that Ofcom not “waste both public resources and our very limited resources” in this matter.

In conclusion, CHSTV said that “to balance the news, we do take comments from representatives of the [Jamaat Party] in the UK and in mainland Europe and endeavour to cover any programs that they host, e.g. we have given extensive coverage of the activities of ‘Save Bangladesh’, which is an organization closely linked to” the Jamaat Party.

Decision

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

When applying the requirement to preserve due impartiality, Ofcom must take into account the broadcaster’s and audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. The right of freedom of expression encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. The broadcaster’s right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to preserve “due impartiality” on matters relating to political or industrial controversy or matters relating to current public policy.

⁷ See <http://www.guardian.co.uk/world/2013/feb/23/protest-death-penalty-bangladesh>

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

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

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

The obligation in Rule 5.1 to present news with due impartiality applies potentially to any issue covered in a news programme, and not just to matters of political or industrial controversy and matters relating to current public policy. In judging whether due impartiality has been preserved in any particular case, the Code makes clear that the term “due” means adequate or appropriate to the subject matter. Therefore “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of the argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

In assessing whether any particular news item has been reported with due impartiality, we take into account all relevant facts in the case, including: the substance of the story in question; the nature of the coverage; and whether there are varying viewpoints on a news story, and if so, how a particular viewpoint or viewpoints on a news item could be or are reflected within news programming.

In this case, Ofcom noted that in the news bulletin in question there was a lengthy (around 17 minutes) report on serious disturbances in Bangladesh which had been sparked by the decision of the ICT to impose a life sentence on a Jamaat Party leader, Kader Molla. In particular, the news report focused on the Shahbag protests, which had called for those found guilty of war crimes by the ICT to be executed and the Jamaat Party to be banned in Bangladesh.

We recognise that this item of news dealt with a story and issue of interest to the UK Bangladeshi community in particular. The news item related to the on-going demonstrations and political disturbances in Bangladesh arising from the activities of the ICT. It is important that broadcasters – in fulfilment of their and the audience’s right to freedom of expression – are able to report such stories to their viewers or listeners. This is particularly the case when news stories concern what might be a “hugely emotional matter” for a target audience, which is how CHSTV viewed the background to the news story in this case (i.e. Bangladesh’s 1971 war of independence). As indicated above, the Code does not in any way prohibit news programmes from including views that are critical of particular organisations, such as political parties, however that news must be reported with due accuracy and presented with due impartiality.

We considered that there were a number of statements which could be reasonably characterised as being critical of the Jamaat Party in this news item. For example, we noted that the news item included reference to: various calls, including from a Bangladeshi Government minister, to ban the Jamaat Party; and allegations of violence undertaken by members of the Jamaat Party members during demonstrations in Bangladesh. In particular, the news item reported that parliamentary members of the main ruling party, the Awami League had called on the Bangladeshi Government to move forward legislation to ban the Jamaat Party. At this point in the news item, it was also stated that: “*Jamaat has created chaos to sabotage the tribunal* [i.e. the ICT], so [the Bangladesh Nationalist Party] *needs to tear all links with Jamaat*”.

We noted that at no point did the report reflect the Jamaat Party’s viewpoint on the statements being made against it, nor did it even suggest that the Jamaat party had at any point been asked to comment. Given the critical and serious nature of the statements made about this party, we considered it was incumbent on the Licensee to ensure that the Jamaat Party’s viewpoint was presented in the news item to at least some extent to counter the universally critical or adverse statements made in the report about the Jamaat party, for example, calling for the banning of the party in Bangladesh.

In reaching a decision in this case, we have taken into account the Licensee’s various representations.

Firstly, CHSTV said it had “broadcast the reality of the situation [on] the ground and what is currently happening in Bangladesh” and that the news report dealt with “very unusual circumstances in Bangladesh and [have] resulted in unusual, highly emotional news coverage”. We noted that whilst the Licensee included a range of viewpoints (including those of the main Government party⁸ and the main opposition party⁹) on the demonstrations and political disturbances taking place in Bangladesh related to the ICT, it did not reflect the viewpoint of the Jamaat Party at all in this 17 minute long item. The Jamaat Party is an established opposition party (with elected members of the Bangladeshi Parliament) which is in an opposition alliance with the Bangladesh Nationalist Party; and was being heavily criticised within the news item. We therefore considered that CHSTV needed to reflect the views of the Jamaat party in the news bulletin to at least some extent; or at least indicate to viewers that the broadcaster had sought a comment from the Jamaat Party. In this regard, the Licensee cited an article¹⁰ published by The Guardian, which CHSTV said “gave a flavor of the sentiments running through the Bangladeshi community” as an implied justification of not reflecting the viewpoint of the Jamaat Party at all in this particular news item. However, we noted that this article, in fact, included a summary of the viewpoint of the Jamaat Party as follows:

“The Jamaat-e-Islami, whose activists have waged violent street agitations against the tribunal, says it is being scapegoated. Shafiqul Islam Masud, a party leader, said many people were blurring the difference between a political position and war crimes. ‘There are only about 50 people active in the party now who took any kind of a political position 42 years ago,’ he said. ‘It’s possible some of them did not want to secede from Pakistan, but that’s a far

⁸ The Awami League.

⁹ The Bangladesh Nationalist Party.

¹⁰ See footnote 5.

cry from war crimes. The party accepted the sovereignty of Bangladesh and is a registered political party, represented in parliament”.

Second, the Licensee said that it had obtained interviews in the news item “directly from a Bangladesh television broadcaster” and that “in Bangladesh, there are no television channels giving any positive coverage of the [Jamaat] Party”. However, just because no broadcasters in Bangladesh were according to the Licensee giving “any positive coverage” of the Jamaat Party did not, in our view, obviate the need for the Licensee to reflect the view of the Jamaat Party to at least some extent in response to: the various statement in the news bulletin calling for it to be banned in Bangladesh; allegations of violence by Jamaat Party members during demonstrations in Bangladesh which, it was stated in the news item, were intended to create “*chaos to sabotage the tribunal* [i.e. the ICT]”.

Third, CHSTV said that: “As an ethnic channel we are already very under resourced in terms of revenue and time”. Ofcom acknowledges the particular challenges faced by small-scale broadcasters serving particular communities with limited revenues. However, it is a condition of holding an Ofcom licence that a broadcaster has adequate compliance processes in place to ensure compliance with the Code. The fact that there were only two complaints to Ofcom does not in any way limit Ofcom’s statutory duty to investigate potential issues under the Code raised by any complaints. Although the Licensee considered it was “representing the views of the vast majority” of its viewers in broadcasting this report, this was no justification for CHSTV failing to reflect at least to some extent the viewpoint of the Jamaat Party in the report. Just because a number of individuals, or the majority of the audience for a service, share the same viewpoint on a contentious issue this does not release the broadcaster from its obligation to reflect alternative viewpoints as necessary.

Fourth, the Licensee said that it: “takes comments from representatives of the [Jamaat Party] in the UK and in mainland Europe”; and has given “extensive coverage of the activities of ‘Save Bangladesh’, which is an organization closely linked to” the Jamaat Party. However, the Licensee did not provide evidence as to how it had reflected on air the viewpoint of the Jamaat Party in relation to this particular broadcast, and the various criticisms being made of this party.

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

Given the above, we concluded that, on balance and on the specific facts of this case, the news bulletin was not presented with due impartiality in respect of its failure to reflect, at least to some extent, the views of the Jamaat Party in relation to: the various calls to ban the Jamaat Party; allegations of violence by Jamaat Party members during demonstrations in Bangladesh; and the related allegation that the Jamaat Party was intending to create “*chaos to sabotage the tribunal* [i.e. the ICT]”. The news item was therefore in breach of Rule 5.1 of the Code.

Breach of Rule 5.1

In Breach

News

Channel i, 3 March 2013, 21:00 and 4 March 2013, 01:30

Introduction

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

A complainant alerted Ofcom to a news report about the protests then taking place in Bangladesh concerning the International Crimes Tribunal (“ICT”)¹. The complainant considered the news broadcast was biased.

Ofcom reviewed the news item in question, which was broadcast in Bangla. Ofcom therefore commissioned an independent translation of the output. We noted that the report relating to events concerning the ICT in Bangladesh lasted approximately 25 minutes, and included coverage of the following:

- the disturbances in Bangladesh following the sentencing to death by the ICT of the politician Delwar Hossain Sayeedi², on 28 February 2013. The report referred to members of the Jamaat Party³ protesting for several days against the ICT’s verdict on Delwar Hossain Sayeedi;
- the reactions of representatives of the on-going ‘Shahbag’ protests⁴ against the Jamaat Party protests taking place in Bangladesh. (The Shahbag protests had started on 5 February 2013 when the ICT had sentenced the Jamaat Party politician Kader Molla⁵ to life imprisonment for war crimes and called for the execution of individuals found guilty by the ICT of war crimes. The Shahbag movement has subsequently called for the banning of the Jamaat Party in Bangladesh); and
- the reactions of representatives of the ruling Awami League⁶ and other political parties to the fact that the opposition Bangladesh Nationalist Party⁷ was in alliance with the Jamaat Party.

¹ The ICT was set up by the current Bangladeshi Government in 2010 to investigate alleged war crimes alleged to have taken place during the 1971 war in which Bangladesh obtained its independence from Pakistan.

² Delwar Hossain Sayeedi is a leader of the main Islamist party in Bangladesh, Jamaat-e-Islami, also known as the Jamaat Party.

³ See footnote 2.

⁴ The Shahbag protests were so-called because they were associated with the Shahbag district of Bangladesh’s capital, Dhaka.

⁵ Kader Molla is also a leader of the Jamaat Party.

⁶ The Awami League is the main party in the coalition governing Bangladesh.

⁷ The Bangladesh Nationalist Party is the largest opposition party in Bangladesh and is the main party in an opposition alliance, which includes the Jamaat Party.

We noted that during the news item, there were the following references to the Jamaat Party and the Bangladesh Nationalist Party (taken from Ofcom's transcript):

Newsreader: *"Jamaat Shibir⁸ called for Jihad after spreading the rumour that the picture of [Delwar Hossain] Sayeedi was seen on the moon....Jamaat has been rioting in Bogura and they have attacked police with arms. The riot and the clash with police, has killed 10 people. The army was deployed to control the situation and later withdrew in the evening".*

Reporter: *"Jamaat Shibir carried out their riot. They destroyed a few Awami league offices. A few people died in different places and around 50 people were injured including police officers".*

Reporter: *"Imran H Sarker, organiser of Shahbag movement... condemned the activities of Jamaat Shibir, warned them that they had to face trial and condemned the intellectuals who appeared on TV talk-shows and misguide the Bengalis and misinterpret the Bengali Liberation War".*

Newsreader: *"The leaders of great alliance [the ruling coalition] said that the Jamaat is seeking revenge for their defeat in 1971 under the leadership of [the Bangladesh Nationalist Party]. They condemned the alliance between [the Bangladesh Nationalist Party] and Jamaat".*

Reporter: *"The leader of the Worker's Party requests the Prime minister to call for unity to ban Jamaat Shibir".*

Rashed Khan Menon (leader of the Workers' Party):
"Already some forces are in place to fight them [i.e. Jamaat Shibir]. To encourage this spontaneous protest and to strengthen the unity of the nation, we need to bring all the parties together".

Abdul Mannan (Awami League Parliamentarian):
"She [i.e. Khaleda Kia⁹] is acting as a pilot of a pilotless boat. She has united [the Bangladesh Nationalist Party] and Jamaat together".

⁸ Jamaat Shibir is the student wing of the Jamaat Party.

⁹ Khaleda Zia is the leader of the Bangladesh Nationalist Party.

Shuronjit Sen Gupta (Awami League Parliamentarian):
"Why there is no safety, we need to ask them [i.e. the opposition parties] this question".

Reporter: *"Moin Uddin Khan Badal (leader of the Bangladeshi Socialist Party) accused Khaleda Zia of ignorance".*

Tofael Ahmmed (Awami League Parliamentarian):
"I condemn Khaleda Zia for she does not know the definition of genocide and she did not see genocide. In 1971 the anti-liberation force attacked police and today Jamaat Shibir [the Bangladesh nationalist Party] are also attacking police".

Ofcom considered the material raised issues warranting investigation under Rule 5.1 of the Code, which states:

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

We therefore sought the Licensee's comments as to how this material complied with this rule.

Response

By way of background, Prime Bangla said that for the "past few months, political and security situation in Bangladesh is very volatile and sensitive due to some fundamental organisation trying to put some hard-line views to public domain and to spread hate and extremism in the country". In addition, the Licensee said that it has broadcast "what the current situation was on the ground" in Bangladesh. However, it added that it did not "broadcast anything intentionally...to support the ruling government or any other political party".

Prime Bangla said that it has permission to re-broadcast "the original transmission of Channel i Bangladesh back in UK", and that "[a]s a UK based channel, we purely depend on the content we receive from Bangladesh Channel i".

With regard to its approach to due impartiality, the Licensee said that: it does not "take sides" and "always remain neutral and fair"; "We do all our best to make sure we broadcast on a non-bias way"; and, "our news always represents equal opportunity to all legitimate political parties and organisations who are peace loving and working good for the country and people in Bangladesh and worldwide".

In conclusion, Prime Bangla stated its belief that in this case "news content was broadcast...fairly" However, the Licensee added that it "fully understood the Ofcom concern" and added that "in future, we will take extra care "in ensuring that news content is "more balanced".

Decision

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

When applying the requirement to preserve due impartiality, Ofcom must take into account the broadcaster's and audience's right to freedom of expression. Article 10 of the European Convention on Human Rights provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without undue interference by public authority. The broadcaster's right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to preserve "due impartiality" on matters relating to political or industrial controversy or matters relating to current public policy.

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

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

Rule 5.1 of the Code states that: "News, in whatever form, must be reported with due accuracy and presented with due impartiality".

The obligation in Rule 5.1 to present news with due impartiality applies potentially to any issue covered in a news programme, and not just to matters of political or industrial controversy and matters relating to current public policy. In judging whether due impartiality has been preserved in any particular case, the Code makes clear that the term "due" means adequate or appropriate to the subject matter. Therefore "due impartiality" does not mean an equal division of time has to be given to every view, or that every argument and every facet of the argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

In assessing whether any particular news item has been reported with due impartiality, we take into account all relevant facts in the case, including: the substance of the story in question; the nature of the coverage; and whether there are varying viewpoints on a news story, and if so, how a particular viewpoint or viewpoints on a news item could be or are reflected within news programming.

In this case, Ofcom noted that in the news bulletin in question there was a lengthy (around 25 minutes) report on serious disturbances in Bangladesh which had been sparked by the decision of the ICT to impose a death sentence on a Jamaat Party leader, Delwar Hossain Sayeedi. In particular, the news report focussed on the reactions of representatives of the ruling Awami League and other political parties to the fact that the opposition Bangladesh Nationalist Party was in alliance with the Jamaat Party.

We recognise that this item of news dealt with a story and issue of interest to the UK Bangladeshi community in particular. The news item related to the on-going demonstrations and political disturbances in Bangladesh arising from the activities of the ICT. It is important that broadcasters – taking account of their and the audience's right to freedom of expression – are able to report such stories to their viewers or listeners. This is particularly the case when news stories concern what might be of interest to a target audience. As indicated above, the Code does not in any way prohibit news programmes from including views which are critical of particular organisations, such as political parties, however that news must be reported with due accuracy and presented with due impartiality.

We considered that there were a number of statements which could be reasonably characterised as being critical of the Bangladesh Nationalist Party and Jamaat Party in this news item. For example, we noted that the news item included reference to: criticisms of demonstrations reported as being carried out by members of the Jamaat party; calls for the banning of the youth wing of the Jamaat Party; and criticisms of the alliance between the Bangladesh Nationalist Party and Jamaat Party. For example, the news item stated that a representative of the Shahbag movement "*condemned the activities of Jamaat Shibir*", and the leader of the Workers' Party had called for the banning of Jamaat Shabir (the youth wing of the Jamaat Party). In addition, representatives of various political parties, including the leading ruling party, the Awami League, were featured in the programme criticising the opposition alliance between the Bangladesh Nationalist party and the Jamaat Party, and in particular the leader of the Bangladesh Nationalist Party, Khaleda Zia.

We noted that at no point did the report reflect the viewpoint of either the Bangladesh Nationalist Party or the Jamaat Party on the statements being made against these parties, nor did it even suggest that the Bangladesh Nationalist Party or Jamaat party had at any point been asked to comment. Given the critical and serious nature of the statements made about these parties, we considered it was incumbent on the Licensee to ensure that the viewpoint of the Bangladesh Nationalist Party and/or the Jamaat Party was presented in the news item to at least some extent to counter the universally critical or adverse statements made in the report about these parties (for example, calling for the banning of the youth wing of the Jamaat Party in Bangladesh, and criticising the leader of the Bangladesh Nationalist Party, Khaleda Zia).

In reaching a decision in this case, we have taken into account the Licensee's various representations.

Firstly, we noted that Prime Bangla pointed to the background to this programme, namely what it described as a "fundamental organisation trying to put some hard-line views to public domain and to spread hate and extremism in the country". In this context, the Licensee said that it had broadcast "what the current situation was on the ground" in Bangladesh. We noted that while Prime Bangla included a range of

viewpoints (including those of the main Government party¹⁰ and other political parties) on the political disturbances taking place in Bangladesh related to the ICT, it did not reflect the viewpoint of the Bangladesh Nationalist Party or the Jamaat Party at all in this 25 minute long item. We have had regard to the facts that the Bangladesh Nationalist Party is the main opposition party in Bangladesh, and the Jamaat Party is an established opposition party (with elected members in the Bangladeshi Parliament) which is in an opposition alliance with the Bangladesh Nationalist Party. Furthermore, we noted both these parties were heavily criticised within the news item. We therefore considered that the Licensee needed to reflect the views of the Bangladesh Nationalist Party and the Jamaat party in the news bulletin to at least some extent, or at least indicate to viewers that the broadcaster had sought a comment from these two parties.

Second, Prime Bangla said that as a UK based channel it “purely depend[s] on the content we receive from Bangladesh Channel i”. However, just because the Licensee received its news content from its parent channel in Bangladesh did not, in our view, obviate the need for Prime Bangla to reflect the view of the Bangladesh Nationalist Party and/or the Jamaat Party to at least some extent in response to the various critical or adverse statements made in the report about these parties (for example, calling for the banning of the youth wing of the Jamaat Party in Bangladesh, and criticising the leader of the Bangladesh Nationalist Party, Khaleda Zia). All licensees must ensure that the content they broadcast – whatever the source – complies with the Code. Ofcom was concerned that the Licensee in this case appeared to be re-broadcasting news content from an overseas channel to which it was linked without appearing to have adequate compliance processes in place to ensure this happened.

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

In reaching our decision, we noted Prime Bangla’s statements that: it did not “broadcast anything intentionally...to support the ruling government or any other political party”; it does not “take sides” and “always remain neutral and fair”; “We do all our best to make sure we broadcast on a non-bias way”; “our news always represents equal opportunity to all legitimate political parties and organisations who are peace loving and working good for the country and people in Bangladesh and worldwide”; it “fully understood the Ofcom concern”; and in future, it would take extra care “in ensuring that news content is “more balanced”. However, given the above, we concluded that, on balance and on the specific facts of this case, the news bulletin was not presented with due impartiality in respect of its failure to reflect to at least some extent the views of the Bangladesh Nationalist Party and the Jamaat Party in relation to the various criticisms made against these parties in the programme. The item was therefore in breach of Rule 5.1 of the Code.

Breach of Rule 5.1

¹⁰ The Awami League.

In Breach

Neal Atkinson

Wish FM, 28 February 2013, 06:00

Introduction

Wish FM is a local commercial station broadcasting in the Wigan area. The licence for this service is held by Talksport Ltd (“Talksport” or “the Licensee”).

A complainant alerted Ofcom to an item on the show called “Loser Line”. In this sequence listeners were encouraged to give a person who had asked for their phone number (but with whom they wanted no further contact) a mobile telephone number linked to the radio station and pretend it was their own number. The aim was then for the person who had asked for the number to call and leave a message which might then be broadcast at a later date.

On assessing the material Ofcom noted the following jingle during the programme:

“For the dates you don’t want, don’t give out your number, give out our number: [telephone number].”

The presenter also made frequent references to listeners giving out the phone number, and to messages already received on the number:

“When you can, make a note of it [i.e. the promoted Wish FM mobile phone number], get it in your phone...if you are going out to have a bit of a messy time over the weekend, take it with you, pretend that it’s yours. The last couple of days we’ve had some strange people, we had this woman on...”

“...we had her on the other day, and we had this guy, doing a bit of a serenading job.”

“...if you think they’re strange, wait till you hear the one from yesterday.”

“If you’re going out at the weekend, take this number out, have some fun with it, pretend that it’s yours, [telephone number]...just go online anytime you can, wishfm.net, click on the Breakfast page, all the details are there. It’s a real mobile - just pretend that it’s yours.”

“We got this yesterday, have a listen, see what you think...”

“I’ve got to say, we’ve just had some weird, weird people on, well ever since it started, just before Christmas, but they seem to be getting stranger...”

“It’s a real mobile, and you just use it like it’s your mobile...”

Clips of some messages were played on air.

When providing a recording of the material, the Licensee provided some unsolicited comments (see further below). These explained that the clips of the messages were in fact all archive material at least six years old, and that none of the messages that were broadcast had been left by genuine callers.

Ofcom therefore considered the material raised issues warranting investigation under Rule 2.2 of the Code, which states:

“Factual programmes or items or portrayals of factual matters must not materially mislead the audience.”

We therefore sought the Licensee’s comments as to how this material complied with this rule.

Response

The Licensee said that all “wind-up” or prank calls had been suspended on its radio stations from mid-December 2012, and a decision made to revise its existing policy document “On-Air Interaction with members of the Public”. Since receiving details of the current complaint from Ofcom, the “Loser Line” item had been taken off air and would not be broadcast on Wish FM in the future. The Licensee explained how this feature had been approved for broadcast in February 2013 despite this suspension.

The presenter had run the “Loser Line” item when he worked at Juice FM between 2004 and 2006. When he joined Wish FM in November 2012 he discussed resurrecting the feature with a senior manager at the station, to whom he explained that he intended to use “made-up messages” from the Juice FM archive.

The senior manager was aware of the suspension of hoax calls on its stations in December 2012, but did not consider that the “Loser Line” item was affected because he thought hoax calls were made from radio stations to members of the public only and not the other way around. The Licensee said that he also felt comfortable with the item because a feature with a “similar mechanic” ran on a BBC radio station for seven years without complaint.

The Licensee confirmed that all the clips of messages broadcast on Wish FM in February 2013 were actually archive recordings which had been made between 2004 and 2006 in the Juice FM studios, using friends, family and colleagues who had been told what to say. No clips of messages used on Wish FM were from genuine callers to the number. The Wish FM senior manager said he allowed the messages to be played out because none of the audio used was from members of the public. If the presenter had wished to broadcast a message from a genuine caller, the senior manager said the presenter would have needed permission to broadcast beforehand from the caller but, according to the Licensee, “none of the genuine messages were good enough to be broadcast”.

The Licensee confirmed that since receiving the complaint from Ofcom it has distributed to staff the updated policy document, “On-Air Interaction with members of the Public”. This underlined that going forward all features involving participation by members of the public must be given prior written approval by relevant members of the Licensee’s senior management. This revised policy is being supported by a comprehensive schedule of training and briefing sessions.

The Licensee said there was “no doubt that the Loser Line fell below the standards expected and demanded” for the following reasons:

- The Wish FM audience was “totally misled” into believing that “faked audio made up in a studio” was in fact a genuine phone message from a member of the public;

- The faked audio was six years old and was created for use in another radio station and yet it was presented as being received at Wish FM the day before;
- Wish FM listeners were “encouraged to deceive prospective dates” by giving them the number of the Wish FM Loser Line and pretending it was the listener’s private mobile number; and
- Members of the public were deceived into leaving a message on the radio station’s answering machine, believing it to be a private mobile number.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure standards objectives, including “that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of...harmful material.”

This objective is reflected in Section Two of the Code. Rule 2.2 requires broadcasters to ensure that the portrayal of factual matters does not materially mislead audiences. Ofcom’s Guidance on this rule states that: “it is possible that actual or potential harm and/or offence may be the result of misleading material in relation to the representation of factual issues. This rule is therefore designed to deal with content that **materially misleads the audience so as to cause harm or offence** [emphasis in original].” The potential harm might be for example in the form of financial loss or a breach of audience trust.

In this case, Ofcom was concerned that the programme: repeatedly promoted the mobile number for the “Loser Line”; invited listeners to pass on the number and encourage others to use it; and, gave the impression, through use of what were actually archive clips, of having received very recent calls to the phone line, thereby giving the expectation to listeners that calls recorded on the line might soon be used on air. In particular, we noted the following:

“For the dates you don’t want, don’t give out your number, give out our number: [telephone number].”

“When you can, make a note of it, get it in your phone...if you are going out to have a bit of a messy time over the weekend, take it with you, pretend that it’s yours”.

“If you’re going out at the weekend, take this number out, have some fun with it, pretend that it’s yours, [telephone number]...just go online anytime you can, wishfm.net, click on the Breakfast page, all the details are there. It’s a real mobile - just pretend that it’s yours.”

“It’s a real mobile, and you just use it like it’s your mobile...”

We noted these calls to action, the clips of messages that were broadcast being presented as having been recorded on the line’s voicemail, and the comments quoted above. Ofcom considered that listeners were deliberately misled into believing the clips of messages that were broadcast were genuine messages that had been left shortly before transmission.

Calling the mobile number stated on air would not have generated any revenue for the station and therefore Ofcom did not consider that the broadcaster sought to profit from the line. However, presenting the archive audio as genuine messages from members of the public resulted in a breach of listeners' trust in Wish FM. Ofcom considers audience trust to be a fundamental principle in broadcasting.

Ofcom has previously highlighted the importance of broadcasters' protection of audience trust in relation to calls to action in pre-recorded radio programming. See for example:

- *Saturday Early Breakfast* (on Dream 100 FM) – issues 103 (25 February 2008)¹ and 115 (11 August 2008)² of Ofcom's Broadcast Bulletin;
- *Overnight Hit Mix* (on Your Radio, West Dunbartonshire...) and *Saturday Night Warm-Up* (on NMG stations, Northern Ireland) – issue 127 of Ofcom's Broadcast Bulletin (9 February 2009)³;
- *The Classic 9 at 9* (on Radio Hartlepool) – issue 142 of Ofcom's Broadcast Bulletin (28 September 2009)⁴.

In issue 127 of Ofcom's Broadcast Bulletin (9 February 2009), Ofcom issued a note to broadcasters⁵ on this issue underlining the great care licensees must take in this area to avoid the risk of "a fundamental breach of trust between a broadcaster and its audience."

We note the Licensee's immediate acknowledgement to Ofcom that this item "fell below the standards expected", and the measures taken as a result to improve compliance in this area in the future.

Nevertheless, this programme content breached listeners' trust causing them to be materially misled. Ofcom is therefore recording a breach of Rule 2.2.

Breach of Rule 2.2

¹ Available to view at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb103/issue103.pdf>

² Available to view at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb115/issue115.pdf>

³ Available to view at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb127/issue127.pdf>

⁴ Available to view at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb142/issue142.pdf>

⁵ Available to view at: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb127/issue127.pdf> (page 17)

In Breach

Sponsorship of ITV Mystery Dramas by Viking River Cruises

ITV, 2 January 2013 to present, various dates and times

Introduction

Viking River Cruises has sponsored ITV Mystery Dramas on ITV since 2 January 2013. The sponsorship credits appear around *Midsomer Murders*, *Rosemary & Thyme*, *Columbo*, *Broadchurch*, *Murder She Wrote*, *Scott & Bailey* and various Agatha Christie dramas such as *Sparkling Cyanide* and *Marple*.

During routine monitoring, Ofcom noted the following sponsorship credits:

Credit 1:

Image: A shot of a Viking river cruise boat on a river followed by a shot of two people sitting in a lounge on board a cruise boat.

Voiceover: “There’s no mystery to finding a great river cruise. Viking River Cruises sponsors Mystery Dramas”.¹

On-screen text: “VIKING River Cruises SPONSORS Mystery Dramas on ITV” accompanied by sponsor’s logo and “www.vikingrivercruises.co.uk”.²

Credit 2:

Image: People dining on a Viking river cruise boat.

Voiceover: “Dining is no mystery on our great river cruises. Viking River Cruises sponsors Mystery Dramas”.

On-screen text: “VIKING River Cruises SPONSORS Mystery Dramas on ITV” accompanied by sponsor’s logo and “www.vikingrivercruises.co.uk”.

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

Rule 9.22: “Sponsorship credits must be distinct from advertising. In particular ...

- (a) Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may

¹ Emphasis was placed on the word “great” in the voiceover in all of the credits referred to in this Finding.

² The website address was in considerably smaller sized text than the sponsorship association message in all of the credits referred to in this Finding.

include explicit reference to the sponsor's products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement."

We therefore asked ITV Broadcasting Limited ("ITV" or "the Licensee") for its comments as to how the content complied with Rule 9.22(a).

Response

ITV said that it considered that the focus of each credit was on the sponsorship arrangement. It said that all the credits contained both a verbal and visual sponsorship message to identify the sponsor and make explicit the link between the programme and the sponsor. Further, the graphic for the sponsorship message was of a similar size and style to that of the sponsor, while the sponsor's contact details were of a proportionate size and type.

ITV said that the credits featured images of the sponsor's cruise vessels in various river locations, in order to identify the particular product/service that was sponsoring the Mystery Dramas programming strand. The Licensee submitted that the straplines "*There's no mystery*" and "*Dining is no mystery*" served to reinforce a thematic link between the sponsor and the content being sponsored as the use of the word "*mystery*" "correlate[s] thematically with the sponsored content, and reference the typical denouement of a mystery drama."

ITV stated that the information conveyed about the sponsor's product/service did not go beyond a brief description of the generic attributes of the service e.g. "dining", and contained no advertising claims capable of objective substantiation, calls to action or pricing information. The Licensee accepted that the reference to "dining" was not of itself necessary to identify the sponsorship arrangement or the sponsor's product/service, but it argued that the voiceover "*Dining is no mystery on our great river cruises*" made no objective claims for this aspect of the sponsor's product/service.

ITV submitted that references to "*great river cruises*" in the credits referred in the geographical sense to the status of these rivers as major waterways. The Licensee stated that the use of the word "*great*", even if it was taken to refer positively to the product/service, did not, in its view, constitute a claim capable of objective substantiation, or a call to action.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with". The rules in Section Nine of the Code, among others, reflect this objective.

The EU Audiovisual Media Services Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, or encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself and references to the sponsor's products, services or trade marks should be for the sole purpose of helping identify the sponsor and/or the sponsorship arrangement.

Ofcom acknowledged that, in accordance with Ofcom's published guidance³, ITV had sought, through the use of the word "*mystery*", to identify the sponsorship arrangement by creating a thematic link between the sponsor and the Mystery Dramas programming strand.

However, simply because a sponsorship credit has, or could be argued to have, a thematic link to the programme(s) it is sponsoring, does not necessarily prevent it from also containing information that amounts to an advertising message or claims about the sponsor or its products.

In the case of the credit which contained the voiceover "*There's no mystery to finding a great river cruise*", Ofcom's view was that the phrase served to highlight the ease of seeking out a river cruise, and was not dissimilar to a call to action, which is not permitted in a sponsorship credit.

Further, Ofcom considered that viewers would be likely to consider "*There's no mystery to finding a great river cruise*", and "*Dining is no mystery on our great river cruises*" to be promotional statements about the attributes of the sponsor's cruises.

Ofcom did not consider that the phrase "*great river cruises*" would be interpreted by viewers as a reference to the status of the rivers. Due to the intonation of the voiceover, which placed emphasis on the word "*great*", Ofcom considered that the phrase would be understood to refer to the quality of the sponsor's cruises.

Ofcom noted ITV's argument, even if this was the case, the use of the word "*great*" did not constitute a claim capable of objective substantiation. However, it is important to note that even a word or phrase which is not a claim capable of objective substantiation can still amount to an advertising message and therefore result in credits breaching Rule 9.22(a).

Ofcom therefore considered that the voiceovers in these credits constituted advertising messages, in breach of Rule 9.22(a).

Breaches of Rule 9.22(a)

³ See footnote 3.

In Breach

Sponsorship of Crufts 2013 by Adaptil

More4, 7 to 10 March 2013, 18:30

Introduction

Adaptil is a diffuser which can be plugged into a power point, similar to a plug-in air freshener. The diffuser releases a synthetic pheromone¹ (similar to the natural pheromone released by a mother dog to her puppies), which is designed to have a calming effect on puppies.

Adaptil sponsored Channel 4's coverage of *Crufts 2013*. Crufts is an event held annually in the UK, including a dog show element which was televised by Channel 4.

During routine monitoring, Ofcom noted the following sponsorship credits:

Opening credit

This 15 second credit consisted of a woman sitting on the floor of her living room stroking a puppy. In the background was an Adaptil plug-in in a power point, with no visible branding.

On-screen text stated that the woman was *"Carolyn Menteith Puppy Training Expert"*.

She said: *"For a puppy, the world can seem like a daunting place. Adaptil can help her develop into a well-adjusted adult dog"*.

The concluding shot was a close-up of the Adaptil diffuser plugged into a power point. This was accompanied by the sponsor's logo and strapline *"The secret to happy dogs"*, the sponsorship message *"Sponsors Crufts on 4"*, and the voiceover *"Adaptil, proud sponsor of Crufts on 4"*.

Closing credit

This 10 second credit consisted of a woman sitting on the bottom step of her stairs stroking a puppy. In the background was an Adaptil plug-in in a power point, with no visible branding.

On-screen text stated that the woman was *"Carolyn Menteith Puppy Training Expert"*.

She said: *"A puppy's got a lot to learn in her new home. Adaptil can help her settle in"*.

The concluding shot was a close-up of the Adaptil diffuser plugged into a power point. This was accompanied by the sponsor's logo and strapline *"The secret to happy dogs"*, the sponsorship message *"Sponsors Crufts on 4"*, and the voiceover *"Adaptil, proud sponsor of Crufts on 4"*.

Ofcom considered that both these credits raised issues warranting investigation under the following Code rule:

¹ Chemical signal.

Rule 9.22: “Sponsorship credits must be distinct from advertising. In particular:...

- (a) Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.”

We therefore asked Channel Four Broadcasting Corporation (“Channel 4” or “the Licensee”) for its comments as to how the content complied with Rule 9.22(a).

Response

Channel 4 explained that the sponsorship credits were designed specifically for *Crufts 2013* and therefore it had endeavoured to create credits with a thematic link to the event and the television coverage of it. The Licensee submitted that “at the core of the Crufts event, and therefore the coverage of it, is the role of canine experts across a wide range of breeds and specialisms, including in particular dog training”. Channel 4 said that with this in mind it decided to base the credits on a dog training expert.

Channel 4 submitted that as the purpose of the sponsor’s product is not apparent from its name or appearance, the credits included a descriptive reference to the sponsor’s product for the sole purpose of identifying it, i.e. “*Adaptil can help her develop into a well-adjusted adult dog*” and “*Adaptil can help her settle in*”. The Licensee said that articulation of this description by the dog training expert was simply intended to reinforce the thematic link between the credits and the nature of the Crufts event and television coverage. Channel 4 argued that without these references, it would not have been apparent to any viewer what the product is and would have lessened the link between the sponsor and the programme.

Channel 4 stated that image of the sponsor’s product in the background of the credits contained no branding. Channel 4 said that it considered that there was nothing in either of the credits which could be construed as advertising. The Licensee considered the lines, “*For a puppy, the world can seem like a daunting place*” and “*A puppy’s got a lot to learn in her new home*” to be “general references to the challenges faced by puppies and in addition, provided a link to the programme being sponsored...which was the coverage of the Crufts event where dogs go through a variety of challenges and therefore are required to be obedient, well-trained dogs”.

Channel 4 said that it considered the line “*Adaptil can help her settle in*” to be a legitimate means of identifying in broad terms what the sponsor’s product is. The Licensee submitted that there was no elaboration as to how Adaptil could help a dog “*settle in*” or what attributes Adaptil has which could convey to viewers any beneficial features or ingredients present in the product. Further, there was no suggestion that Adaptil was the “only” or “best” product available. Channel 4 said that the strapline, “*The secret to happy dogs*” was a statement which could not be substantiated and was clearly “puff”.

Channel 4 stated that on-screen sponsorship message “*Sponsors Crufts on 4*”, was displayed prominently for four seconds at the end of each credit and that this

message was reinforced by the voiceover “*Adaptil, proud sponsor of Crufts on 4*” which occurred at the same time.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. The rules in Section Nine of the Code, among others, reflect this objective.

The EU Audiovisual Media Services Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, or encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself and references to the sponsor’s products, services or trade marks should be for the sole purpose of helping identify the sponsor and/or the sponsorship arrangement.

As made clear in Rule 9.22(a), sponsorship credits “may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement”.

In this case, Ofcom acknowledged that because the purpose of the sponsor’s product was not clear from its name or appearance, it was legitimate in this instance to provide a brief description of the product to identify it to the audience. However, Ofcom considered that the way in which the credits did this went beyond what would be required to identify the sponsor and its product. In particular, Ofcom judged that the statements, “*For a puppy, the world can seem like a daunting place. Adaptil can help her develop into a well-adjusted adult dog*”, and “*A puppy’s got a lot to learn in her new home. Adaptil can help her settle in*” served to promote the benefits of the product. This was compounded by the fact that these statements were made by the “Puppy Training Expert”, giving expert endorsement to the product.

Ofcom acknowledged that, in accordance with Ofcom’s published guidance², Channel 4 had attempted to create a thematic link between the sponsor and the programme. However, simply because a sponsorship credit has, or could be argued to have, a thematic link to the programme(s) it is sponsoring, does not necessarily prevent it from also amounting to an advertising message or claim about the sponsor or its products. In this case, despite the thematic link, Ofcom considered the statements featured in both credits, as detailed above, to promote the positive attributes of the sponsor’s product.

Breaches of Rule 9.22(a)

² <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

In Breach

Journey to Masjid Al-Aqsa

ATN Bangla, 21 January 2013, 19:00

Introduction

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

This programme, which lasted approximately five hours and 45 minutes, featured a presenter, and two guests, one of whom was Mawlānā Farid Ahmed Khan¹. During the programme the presenter and the guests discussed a pilgrimage tour to Masjid Al-Aqsa (a mosque which is the third holiest site in Islam) in Jerusalem. Viewers were also invited to call in to ask questions about the tour or to talk about their experiences of having already been on the tour.

A viewer was concerned that the programme was promoting the package tour.

Ofcom commissioned a translation of some of the content. Below are examples of the discussion which occurred during the programme.

Presenter: *"So this year, you are going on 31st March and you will come back on 15th April. So what is the cost of the package for an adult?"*

FK: *"...we have designed this package like a holiday. You can gain religious benefit along with the pleasure of a holiday.... So we have targeted the historical places.... You will get to see Jerusalem".*

Presenter: *"...If an adult wants to take this package how much will it cost him and what are the facilities you are going to provide?"*

FK: *"Firstly, the package will cost £1550 for an adult and all through the visit we will provide a four star deluxe hotel. Visiting Jordan and Jerusalem will be included in the package. We will stay at Masjid Al-Aqsa for four days and Amman for two days. For those six days breakfast will be provided. Visa cost, tickets, border cost et cetera will be included in the package".*

Presenter: *"What about lunch and dinner?"*

FK: *"They will buy their own, because everybody has a different preference. There will be restaurants within walking distance and there will be restaurants in the hotel they will be staying in".*

Presenter: *"Do you think it will be a hassle for the guests to buy their own food?"*

FK: *"The hotel will be very high standard. They will get all sorts of facilities".*

¹ Mawlānā alternatively spelt Maulana is a title preceding the name of respected Muslim religious leaders.

- Presenter: *"Is it expensive?"*
- FK: *"No, not compared to what is available on the market".*
- Presenter: *"...So it will cost an adult £1550".*
- FK: *"The tour is huge. We will leave on 31st March. On 1st April there will be a sightseeing tour. It we in Amman [FK goes on to describe the tour]".*
- Presenter: *"If a husband and wife want to go, how much will that cost?"*
- FK: *"There is no concession in our package. It is the same for any number of people going together. If only a husband and wife want a separate room then the cost of separate will be added on top of overall price".*
- Presenter: *"Is there a concession for a family with children?"*
- FK: *"Yes. If the child is under twelve then it will cost £100 less. And if the child is under two then he/she can go for £300. If the child is under twelve and he/she does not need a separate bed, then it will cost £850."*

- Caller: *"I went to the trip to Masjid Al-Aqsa two years ago.... I thank Imam [Farid Khan] that he organised for us to visit Masjid Al-Aqsa. We had a fantastic time.... We were taken care of very well..."*

- Caller: *"I would like to know if there is a facility for women in this package. My 19 year old son and I would like to go. How much will it cost? What are the places we are going to visit? How do I contact you?"*
- FK: *"Yes, women and children can go. For the last three, four year we are taking women and children. And the package will cost £1550 each. For two adults it will cost £3100. You will go to four countries: Jordan; Palestine; Israel; Mecca; and Medina. Our contact number is on the screen. You can write that down or you can give us your contact details".*
- Presenter: *"Sister, there are some numbers on the screen. Both of [them] are Mawlānā Farid Khan's and there is an email address as well. You can contact him by his mobile number, email address or his home telephone number and do the booking".*

For the majority of the programme, a large strap appeared across the bottom of the screen containing the following text:

*"JOURNEY TO MASJID AL-AQSA 2013. Studio Line: [telephone number].
For more information: Mawlana Farid Ahmed Khan T: [telephone number] M:
[telephone number] email: [email address]".*

Occasionally the following scrolling text appeared underneath the strap detailed above, *"Journey to Masjid AL-AQSA 2013, Please, Call live for more information".*

The programme also contained a number of short videos of Mawlānā Farid Ahmed Khan at Masjid Al-Aqsa showing viewers what they could expect to see if they went on the tour.

The Licensee confirmed to Ofcom that neither it, the programme producer, nor any person connected with either², received payment or other valuable consideration for the inclusion of the references to Mawlānā Farid Ahmed Khan's pilgrimage tour during the programme, and that therefore the references had not been subject to any product placement arrangement.

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

- Rule 9.2: "Broadcasters must ensure that editorial content is distinct from advertising."
- Rule 9.4: "Products, services and trade marks must not be promoted in programming."
- Rule 9.5: "No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:
- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
 - the manner in which a product, service or trade mark appears or is referred to in programming."

We therefore asked the Licensee for its comments on how the material complied with Rules 9.2, 9.4 and 9.5.

Response

Rule 9.2

The Licensee stated that the programme did not promote any particular tour operator or agency, rather the guests on the programme were "specialized individual(s) who might have organizational affiliations". The Licensee submitted that the editorial content was distinct from advertising as Channel i's own employee who presented the programme was aware of the relevant Code rules and he was briefed by its compliance team before the broadcast. The Licensee explained that the purpose of the programme was to give viewers an idea about pilgrimages to different historical and/or holy places. Therefore, the aim was to broadcast a programme which "accommodated" an expert who was operating a tour to Masjid Al-Aqsa.

Rule 9.4

The Licensee submitted that Mawlānā Farid Ahmed Khan's pilgrimage tour was not promoted in this particular programme. The Licensee argued that when addressing the queries of the viewers, the presenter and guests only talked about "the procedure and route of the journey".

Rule 9.5

The Licensee submitted that the references to Mawlānā Farid Ahmed Khan's pilgrimage tour were not unduly prominent. However, the Licensee stated that the

² "Connected person" is defined in Part 1 of Schedule 2 of the Broadcasting Act 1990.

duration of the programme was longer than usual. The Licensee explained that it had conducted extensive market/audience research for more than a year and found its viewers to be interested in programming about pilgrimage tour packages to a number of significant religious places. The Licensee argued therefore that it was clear that the programme was created in response to viewers' needs and not to offer any undue prominence to any product or trade mark.

The Licensee assured Ofcom that since becoming aware of the issues with this programme it has initiated a series of workshops on compliance issues which it considers will assist in ensuring that similar programmes broadcast in the future comply with the Code.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, one of which is "that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with".

Article 19 of the EU Audiovisual Media Services Directive ("the AVMS Directive") requires, among other things, that television advertising is kept visually and/or audibly distinct from programming. The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. Further, Article 23 of the AVMS Directive requires that television advertising is limited to a maximum of 12 minutes in any clock hour.

The above requirements are reflected in, among other rules, Rule 9.2 of the Code which states that editorial content must be distinct from advertising. Rule 9.2 requires that editorial content is distinct from advertising in order to prevent editorial material being distorted for commercial purposes. This is intended to ensure that the Licensee maintains editorial control over its programming and that it is clear to viewers that programming has not been subject to the control of advertisers. Rule 9.2 therefore seeks to ensure that viewers are easily able to differentiate between editorial material and advertising.

Rule 9.4 of the Code states that products, services and trade marks must not be promoted in programming, while Rule 9.5 of the Code prohibits products, services or trade marks being given undue prominence in programming.

In this case, Ofcom considered that the programme was highly promotional. It encouraged viewers to book Mawlānā Farid Ahmed Khan's pilgrimage tour by providing:

- i) positive reviews of the tour, e.g.

"I went to the trip to Masjid Al-Aqsa two years ago.... I thank Imam [Farid Khan] that he organised for us to visit Masjid Al-Aqsa. We had a fantastic time.... We were taken care of very well..."

- ii) an itinerary, e.g.

"So this year, you are going on 31st March and you will come back on 15th April"; and

“...Visiting Jordan and Jerusalem will be included in the package. We will stay at Masjid Al-Aqsa for four days and Amman for two days. For those six days breakfast will be provided. Visa cost, tickets, border cost et cetera will be included in the package”;

- iii) frequent references to specific price options, e.g. *“it will cost an adult £1550”;* and *“If the child is under twelve then it will cost £100 less. And if the child is under two then he/she can go for £300. If the child is under twelve and he/she does not need a separate bed, then it will cost £850”;* and
- iv) details of how to book or request further information, e.g.

“Our contact number is on the screen. You can write that down or you can Give us your contact details”.

“Sister, there are some numbers on the screen. Both of [them] are Mawlānā Farid Khan’s and there is an email address as well. You can contact him by his mobile number, email address or his home telephone number and do the booking”.

“JOURNEY TO MASJID AL-AQSA 2013. Studio Line: [telephone number]. For more information: Mawlana Farid Ahmed Khan T: [telephone number] M: [telephone number] email: [email address]”.

“Journey to Masjid AL-AQSA 2013, Please, Call live for more information”.

In view of the above, Ofcom considered the material clearly directly promoted the pilgrimage tour, its features and positive qualities, over an extended period, including a number of calls to action to viewers to book the tour or request further information. The programme therefore breached Rule 9.4 of the Code.

In addition, the nature and duration of the promotion of the tour throughout this almost six hour long programme was such that it was clearly presented in an unduly prominent manner, in breach of Rule 9.5 of the Code.

Further, as the item was presented as editorial material, but nevertheless contained direct, detailed and extended promotions of the tour’s features and positive qualities, and numerous calls to action to viewers to book the tour, Ofcom took the view that the item was akin to a teleshopping feature. Ofcom therefore concluded that this editorial material was not distinct from advertising, in breach of Rule 9.2 of the Code.

Ofcom was very concerned to note the Licensee’s view that the presenter of this programme had been aware of the Code rules and had been briefed by its compliance team prior to the broadcast. It was unclear to Ofcom how the rules in this case had been taken appropriately into account at all by the Licensee in complying this material before broadcast. Ofcom will be providing additional formal guidance to the Licensee on its compliance with this area of the Code.

Breaches of Rules 9.2, 9.4 and 9.5

In Breach

TV10 competition

Real Radio Northwest, 5 February 2013, 06:15

Introduction

Real Radio Northwest is a regional commercial radio station based in Manchester that broadcasts to the northwest of England. Its licence is held by Real and Smooth Radio Limited ("the Licensee") which is owned by Global Radio.

Each weekday morning on its breakfast show, Real Radio Northwest runs the TV10 competition. The presenters play a short montage of ten theme tunes from television programmes and invite listeners to call the studio's 0845 number to identify them. Each day a caller is brought to air and given the opportunity to name a previously unidentified theme tune. If successful, the caller then selects an available numbered box from the 'prize board' and is awarded the corresponding prize which is normally a CD or a prize of equivalent value.

Calls to 0845 numbers cost between 1p and 3p (plus a minimum set-up charge of approximately 14p) from a BT landline, and considerably more from a mobile phone.

Ofcom received a complaint which alleged that employees of the station had posed as entrants on air.

Ofcom considered the matter raised issues warranting investigation under Rule 2.14 of the Code:

Rule 2.14 "Broadcasters must ensure that viewers are not materially misled about any broadcast competition".

We therefore sought comments from the Licensee about how the broadcast complied with this rule.

Response

The Licensee said that a caller is randomly selected from the illuminated switchboard lines during the music track that follows the invitation to enter the competition. The call is vetted only to ensure the line quality is sufficient and the caller does not appear rude, offensive or intoxicated. The Licensee added that only one call is taken per day irrespective of whether the selected caller is correct and that if no calls are taken over the duration of the music track it would then be standard practice that the competition would recommence the following day.

However, after investigating the programme broadcast on 5 February, the Licensee confirmed that the breakfast team made an "ill-judged decision which involved bringing to air a station employee pretending to be a contestant in the TV10 competition."

The Licensee said that the competition was promoted in the usual way on this day by playing the montage and inviting listeners to call the studio line to participate. It added that in the subsequent few minutes during the music track, when normally calls would show up on the switchboard, it was reported that no lines were

illuminated, suggesting that on this occasion and for the first time in the competition's history, the competition had generated no immediate interest.

The Licensee explained that "for no reason given other than wishing to maintain continuity, on not seeing any responses from listeners", a member of the on air team asked someone from the production office to ring the studio number and act as if they were a genuine entrant. It said the team attributed this action to a "spur of the moment" decision in a busy breakfast show environment and, in hindsight, recognised it was the result of an error of judgement. The Licensee pointed out, however, that no prize was awarded on this occasion, and as such the inclusion of this call had no impact on the overall competition conclusion that day nor did it exclude any genuine listeners from participating.

The Licensee apologised on behalf of the team and Real Radio management and said that it had taken disciplinary action against those involved. It said that it had also carried out a specific review of the producer role within this programme and given additional compliance training to all those involved in the compilation, production and on air delivery of the programme. Consequently, the Licensee believed that any such an instance would not be repeated.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure standards objectives, including "that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of ... harmful material."

This objective is reflected in Section Two of the Code. Rule 2.14 requires broadcasters to ensure that viewers and listeners are not materially misled about any broadcast competition.

In this case, Ofcom noted that upon discovering that no callers were initially responding to the invitation to participate in the competition, one of the production team asked a member of its staff to pose as an entrant.

We recognised the Licensee's apology and full acknowledgement that the team's decision was ill-judged. Additionally, we welcomed the action taken by the Licensee to discipline and provide further training to the relevant staff to prevent a recurrence.

However, Ofcom has published many findings detailing its investigations into the conduct of broadcast competitions. In 2008 and 2009, Ofcom imposed statutory sanctions on several radio and television broadcasters for breaches of its rules regarding broadcast competitions. Several of these cases involved employees of broadcasters acting as fake competition entrants and winners. In numerous published Findings and Sanctions Adjudications, Ofcom stated that it considered this practice constituted a very serious breakdown in the fundamental relationship of trust between audiences and broadcasters. Ofcom has also issued extensive guidance on how broadcast competitions should be handled to ensure their compliance with the Code, including specific guidance¹ on the need for broadcasters to take into account the potential for technical issues and the effect of production pressures on the compliance of broadcast competitions.

¹ see page 9 of Ofcom's guidance notes to Section Two of the Code - <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section2.pdf>

Ofcom was therefore very concerned that, even in a pressured live show environment, the production team considered that asking a member of staff to act as a fake competition entrant was an acceptable course of action. In this instance, no other listeners had attempted to call and enter that day's competition and therefore the inclusion of the fake entrant did not cause any financial detriment to listeners. However by presenting a member of staff on air as a fake competition entrant, the station deliberately misled its listeners, resulting in a breach of their trust in Real Radio Northwest. Ofcom considers audience trust to be a fundamental principle in broadcasting and is therefore recording a breach of Rule 2.14 with regard to this matter.

Ofcom was particularly concerned about the breach in this case. In the event of any recurrence, Ofcom will consider taking further regulatory action.

Breach of Rule 2.14

Resolved

The X Factor Results Show

ITV1, 18 November 2012, 20:00

Introduction

The X Factor is a popular musical talent show broadcast weekly from late summer until Christmas. A combination of a panel of four judges and viewers' votes decide which act wins the prize of a recording contract. This one hour live episode of *The X Factor* revealed which two acts would perform again in the elimination round having received the fewest votes from viewers. ITV Broadcasting Limited ("ITV") managed the compliance of the programme for Channel Television, the licensee responsible for this programme on behalf of the ITV Network.

During the programme, it was announced that the two contestants facing elimination were Ella Henderson and James Arthur. One of the judges on the programme, Nicole Scherzinger, introduced her act (James Arthur) as follows:

"I am so proud, this is James 'effing' Arthur".

Ofcom received 52 complaints from viewers who considered that Nicole Scherzinger's language was inappropriate given the show's pre-watershed scheduling.

Ofcom considered the material raised issues warranting investigation under the following rule of the Code.

Rule 1.16: "Offensive language must not be broadcast before the watershed...unless it is justified by the context."

Ofcom therefore sought comments from ITV as to how the material complied with this rule.

Response

ITV explained that all judges are briefed by the producers about the need for their language and behaviour to be appropriate, and are well aware that the show is broadcast pre-watershed to a family audience. The producers also discuss the notes made by judges during dress rehearsals in order to have a broad idea of what they are intending to say. However, it added the judges' comments in any live show (as here) are unscripted.

ITV said that as an American Nicole Scherzinger sometimes used words that are largely innocuous in the US but which might have different connotations in the UK. For example, in the first few live shows, Nicole Scherzinger used the word "frickin'" but, following occasional complaints from viewers, she was asked by the producers to refrain from doing so.

ITV said that the judges were genuinely shocked at the result of the vote (Ella Henderson and James Arthur receiving the lowest number of votes) and that Nicole Scherzinger was particularly emotional since James Arthur was one of the acts she was mentoring. In the following commercial break, the Producer reminded her not to

swear on air when introducing her act. It was therefore a considerable surprise to ITV that Nicole Scherzinger introduced contestant James Arthur as she did. However, ITV believed viewers would have understood she was merely expressing her emotional response to the result of the public vote.

ITV explained that the compliance manager and the producers discussed whether an apology should be made on air by presenter Dermot O'Leary, but decided not to do so. It considered at the time that "whilst "effing" had some potential for offence, it was much less offensive than using the f-word itself," and that in the context it would have been clear to most viewers that Nicole Scherzinger had not intended to cause any offence.

ITV said that the Producer of the programme spoke to Nicole Scherzinger immediately after the show. She explained that she had remembered the briefing about not swearing on air. In summary, the Producer considered that whilst "effing" would not cause as much offence as the "f-word", her choice of words was less than ideal and still had potential to cause offence.

ITV said the term "effing" is not an example of the most offensive language and that it would be wrong for Ofcom to treat the term as if it was equivalent to the word "fucking". While acknowledging that it did have the potential to offend, ITV argued that this was "not the same thing as language being offensive" and pointed out that Ofcom was "obliged to adjudicate under Rule 1.16 whether "offensive language" was broadcast and whether there was justification...by virtue of the context". ITV also pointed out that there was nothing in Ofcom's research to suggest that the term "effing" is generally regarded as offensive language.

ITV did therefore not accept that the phrase "effing" constituted offensive language "at all" and was of the view that it was a "traditional English euphemism, most often used in the phrase "effing and blinding" to describe when someone is using a stream of swear words in an angry fashion." ITV submitted that viewers would have understood that Nicole Scherzinger was annoyed at the result of the public vote and was deliberately using the euphemism to avoid offence.

ITV added that it did not consider the comment would have exceeded viewer expectations generally for pre-watershed programmes, particularly in the context of a highly charged moment in a live show such as *The X Factor* featuring a judge known for "extravagant turns of phrase". Further, it did not believe the phrase in this particular context was inappropriate for a programme with a significant appeal to children.

Decision

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

In reaching a decision in this case, Ofcom acknowledged the importance attached to freedom of expression in the broadcasting environment. In particular, broadcasters must be permitted to enjoy the creative freedom to make entertaining programmes which sometimes contain offensive material, and the public must be free to view these programmes without unnecessary interference. The Code sets out clear principles and rules which allow broadcasters freedom for creativity, and audiences freedom to exercise viewing and listening choices, while securing the wider

requirements of the Act. While pre-watershed programmes must have room for innovation and creativity, Ofcom has a statutory duty with regard to all programmes to ensure that under-eighteens are protected – including from unjustified offensive language.

Rule 1.16 of the Code states that offensive language must not be broadcast before the watershed unless it is justified by the context. Ofcom therefore first considered whether the term “effing” had the potential to offend.

Ofcom noted that this was a live broadcast and that recognising the compliance challenges that this presented, the Producer, having previously asked Nicole Scherzinger not to use the word “frickin’”, reminded her not to swear when introducing her act.

While we recognised that Nicole Scherzinger may have intended to avoid offending viewers by using the term “effing”, a number of viewers clearly interpreted this word as a substitute for the word “fucking”. This word in turn, Ofcom’s research¹ notes, is considered by audiences to be amongst the most offensive language. Ofcom therefore considered that in the context and bearing in mind the emphatic manner in which Nicole Scherzinger used it, this language had the potential to offend.

By way of clarification, Ofcom emphasises that it does not consider the word “effing” to be the equivalent of the word “fucking”, nor does it believe its use is capable of causing the same level of offence as that example of the most offensive language. However, Ofcom rejected ITV’s argument that the use of “effing” in this particular case was not an example of offensive language. By ITV’s own acknowledgement, this use of “effing” “might have some potential to offend a small minority of viewers”. Ofcom considered “effing” as used in this particular context was an example of offensive language, and its emphatic use here differed considerably from that in – for example – the phrase “effing and blinding”. Further, it is important to note that Ofcom’s research on offensive language is not intended to contain an exhaustive list of offensive words and phrases: it is illustrative and non-exclusive.

Ofcom then went on to consider whether this particular example of offensive language was justified by the context of the programme. Ofcom noted that, although *The X Factor Results Show* is not specifically aimed at children, it is broadcast before the watershed and attracts a large number of child viewers. Although Nicole Scherzinger may have used the word with the intention of not swearing on air, it was clear that a number of viewers considered the use of the term “effing” in this context simply as a substitute for “fucking”, and as a result it was capable of causing a certain amount of offence. In Ofcom’s view on balance the use of “effing” in this specific context exceeded audience expectations for this programme, which is aimed at a family audience, and was not appropriate for a pre-watershed programme with a significant appeal to children. Ofcom did not therefore consider that this use of offensive language was justified by the context.

However, we noted the measures ITV undertook to remind judges to avoid using offensive language before the broadcast, including specifically asking Nicole Scherzinger to avoid using words that may be interpreted differently by a UK audience, the consideration given during the broadcast to the most appropriate response to Nicole Scherzinger’s use of “effing”, and its submissions on the differing levels of offence that a US and UK audience may attach to this particular term. We

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

also took into account that *The X Factor Results Show* is broadcast live and that the elimination round can often be tense and emotionally charged.

Taking these factors into account, Ofcom considered the matter resolved.

Resolved

Advertising Scheduling Findings

In Breach

Advertising minutage

Zing, 17 March 2013, 10:00

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.”

During monitoring of licensees’ compliance with COSTA, Ofcom noted that on 17 March 2013 Zing transmitted 2 minutes and 40 seconds more advertising than the amount permitted in a single clock hour.

Ofcom therefore sought comments from the Licensee (or “Zee TV”) under Rule 4 of COSTA.

Response

The Licensee explained that the extra minutage was due to a programme being received just before its transmission and the part lengths not being checked properly. One programme segment was shorter than anticipated, resulting in commercials from the 11:00 clock hour being moved to the 10:00 clock hour.

The Licensee apologised for the error and said that staff had been reminded to check part lengths carefully, even on programming received last minute.

Decision

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

Articles 20 and 23 of the EU Audiovisual Media Services (“AVMS”) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring of all of its licensees’ compliance with COSTA.

In this case, Ofcom found that the amount of advertising broadcast by Zing was in breach of Rule 4 of COSTA.

This compliance failure follows a number of previous breaches recorded by Ofcom covering a series of minutage overruns on Zing¹. In those cases, Zee TV had

¹ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb1971/obb198.pdf>;
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb194/obb194.pdf>;

provided assurances to Ofcom that adequate procedures had been implemented to minimise the risk of a recurrence.

Ofcom is particularly concerned that despite these previous assurances by Zee TV, its revised procedures have not proved sufficiently robust to prevent a further breach of Rule 4 of COSTA.

In light of our concerns, Ofcom is requiring the broadcaster to attend a meeting to discuss its compliance processes and procedures.

Breach of Rule 4 of COSTA

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb188/obb188.pdf>;
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/817960/issue173.pdf>; and
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb158/Issue158.pdf>.

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 must not exceed 12 minutes.”

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Sky Arts 1	7 April 2013, 04:00	COSTA Rule 4	<p>Sky notified Ofcom that its service Sky Arts 1 exceeded the permitted advertising allowance on this date by two minutes.</p> <p>The error occurred due to very late delivery of programmes, and technical issues meant these programmes had to be rescheduled manually, with some commercials intended for the 05:00 clock hour being moved to the 04:00 clock hour.</p> <p>Sky confirmed it was working to improve the technical issues, that manual procedures had been improved in the meantime, and that all relevant staff had been reminded of the need for care when appending schedules.</p> <p>Resolved</p>

Fairness and Privacy cases

Upheld in Part

Complaint by Ms Mariette McArdle

Dispatches: Undercover Hospital, Channel 4, 11 April 2011

Summary

Ofcom has upheld in part this complaint of unjust or unfair treatment and unwarranted infringement of privacy made by Ms Mariette McArdle.

On 11 April 2011, Channel 4 broadcast an edition of its investigative current affairs documentary strand *Dispatches*. The programme broadcast footage obtained by two undercover reporters who had surreptitiously filmed staff and patients at a hospital in Manchester in order to find out what impact cuts to the National Health Service (“NHS”) were having on staff and patients. One of the nurses whose contribution was secretly filmed and broadcast was the complainant, Ms McArdle.

Ms McArdle complained to Ofcom that she was treated unjustly or unfairly in the programme and that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast. Ms McArdle said that following the broadcast of the programme disciplinary action was taken against her by her employer, the Pennine Acute Hospitals NHS Trust, and she was suspended from her job for the comments she made in the programme. Ms McArdle later resigned from her position.

Ofcom found that:

- It was not unfair for the programme to include Ms McArdle’s legitimate and genuine concerns about the pressure nurses faced and the detrimental impact the cuts were having particularly in relation to the health and safety of patients.
- Ofcom considered that the broadcaster’s right to freedom of expression, the public interest in the subject matter of the filming, and the public interest in programme makers gathering material on a matter of public interest without being unduly constrained, outweighed Ms McArdle’s legitimate expectation of privacy in these circumstances. Ofcom concluded that there was no unwarranted infringement of Ms McArdle’s privacy in connection with the obtaining of material included in the programme.
- Ofcom considered however that the broadcaster’s right to freedom of expression and the audience’s right to receive information and ideas without interference, in the circumstances of this particular case, did not outweigh the legitimate expectation of privacy that Ms McArdle had in relation to the surreptitiously filmed footage of her being broadcast in the programme without her consent. Ofcom concluded that there was an unwarranted infringement of Ms McArdle’s privacy in the broadcast of the programme.

It is important for all broadcasters to be aware of the need to consider very carefully the possible adverse repercussions for individuals that can result from broadcasting footage of them without their consent, especially those who are not in any way suspected of wrongdoing or criminal behaviour.

Introduction

On 11 April 2011, Channel 4 broadcast an edition of its investigative current affairs series *Dispatches*. The programme was entitled *Undercover Hospital* and investigated what was happening in the NHS in the context of multi-million pound spending cuts, impending job losses and the government's pledge to protect the NHS. The programme reported a warning from the Royal College of Nursing that cuts to frontline staff could have a catastrophic impact on patient safety. Two undercover reporters filmed secretly at hospitals run by the Pennine Acute Hospitals NHS Trust ("the Trust"), which provides hospital treatment to the residents of Bury, Oldham, Rochdale and north Manchester.

The programme included footage filmed secretly in the Medical Assessment Unit ("MAU") of the North Manchester General Hospital, where patients are assessed having been discharged from the Accident & Emergency department ("A&E"). This included a number of clips of the MAU nursing sister, who was not named and whose face was blurred in all the footage of her that was shown in the programme. Her words were accompanied by subtitles.

The nursing sister was Ms McArdle, who spoke about the pressure to meet the four hour target set by the government, to move patients out of A&E and either discharge them or move them into suitable wards and how the nurses felt highly pressured by the management team to meet this target. In addition, Ms McArdle spoke of the problems of having nowhere to move patients to when no beds were available in the hospital and secretly filmed footage was shown of her discussing with her manager the patients in MAU and the reasons they could not be moved. Ms McArdle said that the consequences of the pressure faced by nurses meant that patients' lives were at risk and she said:

"We've had a lot of people arrest and die the second they get on the unit when they've been, you know, moved too quickly".

Ms McArdle also told the undercover reporter that although the guidelines advised that the nurse to patient ratio is one to five, a colleague was working with ten patients. Footage of grieving relatives was shown in the programme while an elderly patient was walking around the ward close to the bereaved members. Ms McArdle remarked that the MAU ward was not the place for people to die because the care and attention that families needed could not be given in such a fast paced environment.

Ofcom noted that the programme included surreptitiously filmed footage of nurses and other employees working for the Trust commenting on the challenges they faced in their work and surreptitiously filmed footage of patients commenting on their experience. In almost all cases in which such a contribution was used in the programme, the face of the contributor was blurred, however, their voices were not obscured and what they said was subtitled.

Summary of the complaint and the broadcaster's response

Following the broadcast of the programme, Ms McArdle complained to Ofcom that she was treated unjustly or unfairly in the programme as broadcast and that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast. Ms McArdle said that following the broadcast of the programme disciplinary action was taken against

her by the Trust and she was suspended from her job for the comments she made in the programme. Ms McArdle later resigned from her position.

Unjust or unfair treatment

Ms McArdle complained that she was treated unjustly or unfairly in the programme as broadcast in that:

- a) The broadcast of the secretly recorded footage of Ms McArdle, which was obtained by deception in the making of the programme, resulted in an unfair portrayal of her.

Before responding to the specific complaints by Ms McArdle, Channel 4 provided some background to the programme's investigation. Channel 4 said that it had been widely reported in July 2010 that the Chief Executive of the NHS, Sir David Nicholson, had informed NHS Trusts that they would have to deliver between £15 billion and £20 billion in efficiency savings over three years from 2011 to 2014. Channel 4 said that the programme set out to investigate the practices inside an NHS hospital that had already announced planned cuts in services, at a time when further cuts across the NHS were predicted. In particular, it aimed to observe a large NHS Trust where the closure of wards, including an A&E department, had been predicted and plans to make further cuts had been widely reported and had been the subject of debate and concern by local councillors and patients' representatives. The programme makers decided to focus on the Pennine Acute Hospitals NHS Trust, in light of its announcement earlier in the year that at least £45 million pounds worth of savings would have to be made in the next year, which would mean that one in ten jobs could be lost across its five hospitals, one of which was North Manchester General Hospital. Plans to close the Rochdale A&E department had been announced which in turn gave rise to concerns about the impact on already strained resources in the Trust and particularly on the A&E department at the hospital. In 2012, it was announced that these plans were being brought forward and the closure was predicted to take place in 2011.

The programme set out to examine the operation of an NHS Trust and the potential impact of the cuts. The programme team considered two reports on Mid Staffordshire NHS Foundation Trust: one was the Healthcare Commission (now known as the Care Quality Commission) report and the other was an independent inquiry led by Mr Robert Francis QC. Both reports found serious failings in patient care. The Mid Staffordshire Trust was investigated, in part, because of its consistently high mortality rate. The Pennine Acute Hospitals Trust had also had a consistently high mortality rate over the past six years.

Channel 4 said that they carefully briefed the undercover reporter and the programme makers not to entrap those whom they spoke to but rather to let them speak for themselves. In addition it was not the undercover reporter's role to put words in the mouths of staff or to goad them into making negative comments or express insincere opinions about their employer or the running of the hospital. Channel 4 said that the undercover reporter's cover story deliberately did not involve her in obtaining admissions from staff in any formal sense so that any remarks or observations made would evolve naturally during conversations and so carry greater evidential value. Channel 4 said that Ms McArdle's comments were made of her own volition and not taken out of context.

Channel 4 referred to transcripts of the secretly filmed footage and the programme as broadcast and said that it was clear that Ms McArdle's remarks that were broadcast were not isolated but represented fairly her consistently expressed opinions. In addition, the comments made were not taken out of context or otherwise edited unfairly.

Unwarranted infringement of privacy

Ms McArdle complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that:

- b) She was totally unaware that the reporter, who was wearing a uniform and staff pass, was filming her covertly and her permission for the filming was not sought. The reporter lied repeatedly, telling Ms McArdle and other staff that she wanted to train as a nurse.

In response, Channel 4 said that prior to secret filming, preliminary research had found anecdotal evidence and accounts suggesting that some practices and failings were similar to those found and criticised at Stafford Hospital, for example, untrained staff claiming that they were expected to carry out duties outside of their expertise and training. Channel 4 said the programme makers also came across concerns voiced by patient groups and former patients themselves and their families about patient care across the Pennine Acute Hospitals Trust including claims that nurses had on occasion been rude to or to otherwise behaved badly towards patients. Channel 4 said that prior to the production company seeking permission from the broadcaster to secretly film, the undercover reporter undertook six days volunteer work at the North Manchester General Hospital and a morning shift at Fairfield Hospital for research purposes. The undercover reporter found poor morale among the staff that she met and heard concerns expressed by a number of staff members about the quality of the care at the North Manchester General Hospital and other hospitals in the Trust. The reporter also witnessed and made contemporaneous notes of the following accounts from staff first-hand:

- untrained staff claiming they were expected to undertake tasks for which they had not been trained;
- a porter claiming not to have been trained on how to handle patients;
- a volunteer claiming to have been expected to carry out duties outside their expertise and training;
- staff over-stretched and a back log of administration work affecting patient records; and
- widespread staff concern about the impact of the cuts on patient care.

Channel 4 said that there was *prima facie* evidence in the form of the contemporaneous notes from the staff at the hospitals as set out above. In addition, the impact of cuts to the NHS budgets was of immense public interest and concern because of the significant number of the population who rely on the NHS for either their own care or that of a relative. Channel 4 added that the cuts had already provoked fears that front line services would suffer and of a detrimental impact on patient care. Channel 4 also said that it was not possible to find any current or former members of staff who would be prepared to be interviewed on camera about their concerns. Therefore, in Channel 4's view, covert filming was considered to be the only way to obtain an accurate picture of the position within the Trust and the everyday experience of both staff and

patients. In addition, Channel 4 said that it was the only means to substantiate serious allegations such as bullying, poor patient care, concern about the cuts and untrained staff carrying out nursing duties. Channel 4 added that no hospital would allow a film crew to film openly without wishing to monitor and control the access and that secret filming was the only way to record the real experiences and attitudes of the hospital staff including the pressures they faced daily. The Trust's own survey findings of bullying inside the hospital and unwillingness to report it, confirmed to the programme makers that it was most unlikely that staff would feel free and able to report and openly discuss any concerns that they might have regarding the practices of the hospital. Channel 4 said that in these circumstances it considered it had met the provisions of Practice 8.13 of Ofcom's Broadcasting Code when authorising the covert filming.

Channel 4 added that the undercover reporter covertly filmed over a two month period and the majority of that filming was over ten shifts of around four hours' duration at the MAU at the North Manchester General, whose A&E department is the busiest in the country. Channel 4 said that the undercover reporter's cover story was that she was a volunteer and her role at the hospital was to carry out patient surveys by helping patients to complete questionnaires about their hospital experience and to help out with tasks such as mealtimes and serving hot drinks. Channel 4 said that it was obviously necessary for an undercover reporter to have a plausible cover story which would entail a degree of deception. However, Channel 4 argued that the level of deception was proportionate and if the undercover reporter indicated a possible interest in nursing in the future this was not improper and did not amount to entrapment.

Ms McArdle also complained that her privacy was unwarrantably infringed in the programme as broadcast in that:

- c) Although her face was blurred, friends, colleagues and managers had no difficulty identifying her.

By way of background, Ms McArdle said that she had been suspended by her employers as a result of her identification and Ms McArdle later resigned from her position.

Channel 4 said that it had not intended to expose Ms McArdle or to precipitate the action she faced from her employer. However, it added that, had the Trust taken a responsible course, it would have carried out a thorough investigation of its staff complaints and not accused the more outspoken staff of making false claims and unfairly dismissed the more vocal critics, as the Employment Tribunal found in the case of Ms McArdle's colleague, Mrs Lorraine Millington¹.

Channel 4 said that there was a clear public interest in broadcasting Ms McArdle's comments as they provided actual examples of the impact in practice of budget cuts, time pressures and staff shortages.

¹ Mrs Millington, a nurse at the North Manchester General Hospital, was also secretly filmed and featured in the programme. She was dismissed by the Trust as a result of what was broadcast in the programme, however Mrs Millington subsequently won an unfair dismissal claim against the Trust. Ofcom also considered a complaint made by Mrs Millington of unjust or unfair treatment and unwarranted infringement of privacy.

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 carefully considered all the relevant material provided by both parties. This included a recording and a transcript of the programme as broadcast and the parties' submissions. Channel 4 was unable to provide the unedited, unbroadcast footage of the material included in the programme as it no longer existed. However, it did provide the undercover logs and DVDs and transcripts of the "rough assemblies" of footage filmed in the hospital featuring Ms McArdle and the broadcaster's response to the complaint.

Ofcom prepared a Preliminary View in this case (which was to uphold in part) and both parties were given the opportunity to comment on it. Channel 4 did not provide Ofcom with any representations on the Preliminary View. Ms McArdle provided Ofcom with very brief comments that corrected a factual inaccuracy in the description of what she had said in the programme. She did not make any other representations on the Preliminary View that were directly relevant to the complaint responded to by the broadcaster and considered by Ofcom,

Unjust or unfair treatment

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

- a) Ofcom first considered the complaint that Ms McArdle was treated unjustly or unfairly in the programme as broadcast in that the programme showed secretly recorded footage of Ms McArdle, which was obtained by deception in the making of the programme, which resulted in an unfair portrayal of her.

In considering this part of the complaint, Ofcom had regard to Practices 7.6, 7.9 and 7.14 of the Code. Practice 7.6 of the Code states that when a programme is edited, contributions should be represented fairly. Practice 7.9 states that before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Practice 7.14 states that broadcasters or programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception (deception included surreptitious recording). However, it may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means.

By way of background, Ofcom took into account that following the broadcast of the programme, Ms McArdle faced disciplinary action by her employer and was suspended from work. She later resigned from her position at the hospital. Ofcom considers that in general terms of fairness it is important for broadcasters, in exercising their duty of care to contributors in programmes, to be aware of the repercussions which may occur following a programme they have broadcast.

Ofcom viewed the programme in detail and noted that it concerned the effect of cuts made by the Trust, particularly on the North Manchester General Hospital, and the impact on the staff and patients. The programme included comments and observations from hospital managers, a patient advocate, staff, patients and the reporter. The majority of the footage broadcast contained surreptitiously filmed material of the nurses and patients at the North Manchester General Hospital. All of the nurses and patients' faces were obscured, however, their voices were not. What they said was captured in subtitles in the programme. Ofcom also took into account that the programme made it clear to viewers that the material gained was the result of undercover reporters who had told staff that they were volunteers who secretly filmed inside the hospitals.

Ofcom focussed in particular on the parts of the programme in which Ms McArdle featured in order to assess what impression viewers were likely to form of Ms McArdle, when taking account of the programme as a whole. In addition, Ofcom looked at whether what was represented of Ms McArdle was edited fairly and in a way that did not cause unfairness to her.

Ofcom noted the parts of the programme which featured Ms McArdle. Ms McArdle was first shown towards the beginning of the programme having a conversation with the undercover reporter, shortly after the programme's presenter explained the pressure that the MAU was under. Ofcom observed the following:

Ms McArdle: *"Patients have to be out of the A&E department within four hours of their bum touching a chair. And patients don't conform to time schedules unfortunately, but they are ruled by time in A&E."*

Undercover reporter: *What does that mean for patients?*

Ms McArdle: *It means that patients are not treated correctly. They're not fully worked up as they should be before they are referred. The minute they've been referred to another discipline the clock is ticking. And it's all people in offices, managers do, is sit and look at this symphony system. That's all they do. And when they see these clocks ticking beside patients, they pile the pressure on us to move patients as fast as we possibly can. That's nursing now... especially in this department..."*

Ofcom noted that shortly after this, Ms McArdle asked another nurse what her view was and the other nurse confirmed her agreement with what Ms McArdle had said. The presenter of the programme went on to explain the importance of patients not staying too long in MAU so that the four hour deadline for patients moving out of A&E could be met. The presenter explained that as a part of cost cutting, the Trust did not open a "Winter Pressure Ward", which meant the

hospital was “*reaching gridlock*”. Immediately after this, Ofcom noted the following exchange:

Ms McArdle: *“Just wait as that, as that gets nearer and nearer to 12 o’clock the phone calls will start.*

Undercover reporter: *I’ve been watching it, so that gets...so they’re just gonna say move them?*

Ms McArdle: *Haven’t got anywhere to move them to.*

Undercover reporter: *Can they not go on a ward?*

Ms McArdle: *There aren’t any beds anywhere in the hospital.*

Presenter (voiceover): *It’s not long before the MAU Ward Sister (Ms McArdle) gets a call from management.*

Ms McArdle: *My immediate manager has been watching that screen and rung me to say what am I doing about it? That’s what they do. She says “I’m losing the will to live”.*

Ms McArdle was then shown speaking with a nurse consultant who was “*looking for MAU patients who can be moved or sent home*”. Ms McArdle discussed the reasons why the patients selected for a possible move or to be discharged by the consultant were not suitable to be moved or discharged.

Ofcom observed that part of a conversation concerning targets between Ms McArdle and the undercover reporter, which took place on a break in what appeared to be a staff room, was broadcast:

Ms McArdle: *“Sometimes the managers exerting what they think is pressure, um, is verging on bullying.*

Undercover reporter: *Really.*

Ms McArdle: *Hm, yeah.*

Undercover reporter: *Why is that?*

Ms McArdle: *Somebody is kicking their backsides before they kick our backsides.*

Undercover reporter: *Yeah.*

Ms McArdle: *And their jobs are on the line”.*

A few minutes later, Ms McArdle told the undercover reporter that the pressure to move patients out of MAU ward was having a dangerous impact on patients' lives:

Ms McArdle: *"We've had a lot of people arrest and die the second they get on the unit when they've been, you know, moved too quickly."*

Undercover reporter: *Yeah.*

Ms McArdle: *They should have been stabilised in the department, yeah.*

Undercover reporter: *But because the clock was ticking...*

Ms McArdle: *Yeah. Yeah. They, they [sic], to me they've removed the element of the duty of care from the doctors, from the nurses and given it to the managers".*

Ms McArdle also told the undercover reporter that although the guidelines advised that the nurse to patient ratio is one to five, a colleague was working with ten patients. Later in the programme, the presenter reported that a man with heart failure and a woman with neurological disease had both died. The reporter further explained that while the relatives were gathering, elderly patients were wandering around the ward. Ms McArdle said:

"This is not the place for people to die, because it's too...it's too fast paced and they need attention and they need care and the families need care".

Ofcom also took into consideration that the comments were broadcast as a result of surreptitious filming and were gathered by an undercover reporter who had told Ms McArdle that she was a volunteer who was considering a career as a nurse. Ofcom recognised the potential for unfairness where a contributor is secretly filmed by an undercover reporter posing as a volunteer. The extent to which the surreptitious filming was warranted in this case is discussed further in head b) below. However, in terms of unjust or unfair treatment, Ofcom was concerned with the extent to which the undercover reporter encouraged or led Ms McArdle. Ofcom took into consideration the broadcaster's comments that a certain amount of deception was necessary with undercover filming and reviewed the unedited footage to determine whether the deception was proportionate. Ofcom noted from the unedited footage and transcripts that the undercover reporter had indicated that she was interested in becoming a nurse, asked numerous questions about the job and sought to clarify certain points with the people she was shadowing, including Ms McArdle. By way of example, Ofcom considered the following extract from the unedited footage which was illustrative of the type of conversation which Ms McArdle and the undercover reporter had. (The sections that were included in the programme are marked in bold):

Ms McArdle: "Strange to see people's perceptions you know of what we just accept as everyday factors.

Undercover reporter: Yeah. There is a lot you know there is a lot you don't know about I guess.

Ms McArdle: It is very political.

Undercover
reporter: Yeah. Has it got worse?

Ms McArdle: Yes.

Undercover
reporter: Obviously because of the...

Ms McArdle: ***Hmm, sometimes the managers exert what they think is pressure is verging on bullying.***

Undercover
reporter: Really?

Ms McArdle: ***Oh yeah.***

Undercover
reporter: ***Why is that?***

Ms McArdle: ***There are so many kicking their backsides so they are kicking our backsides.***

Undercover
reporter: ***Yeah.***

Ms McArdle: ***And their jobs are on the line.***

Undercover
reporter: ***Really?*** Is it that serious?

Ms McArdle: Uh huh.

Undercover
reporter: So if they don't reach these...

Ms McArdle: If they don't get the performance out of their division their job is on the line".

Ofcom observed from this example that Ms McArdle appeared to speak freely without being prompted or led by the undercover reporter in giving her opinion. Both from the footage of Ms McArdle that was broadcast and her conversations which were not broadcast, it was evident to Ofcom that Ms McArdle was genuinely concerned about the continuing politicisation of the role of nursing, the excessive focus on targets and the consequences this had for the patients and the nurses who looked after them. Ofcom considered that what Ms McArdle said in the programme (as set out above) were pertinent and highlighted the issues being raised in the programme and the increased pressure nurses felt "*which compromises treatment*" and corroborated the warning given by the Royal College of Nursing (also broadcast in the programme) that "*cuts to frontline staff can have a catastrophic impact on patients' safety*". Ofcom also observed that some of Ms McArdle's criticisms were directed at the attitudes of the hospital management, which she described as "*verging on bullying*" because of the focus

on reaching targets set by the government and their lack of support and understanding for the nurses and lack of empathy for the patients themselves.

Ofcom also noted that there was a section of the programme which focussed on a few nurses who were said to be behaving unprofessionally towards patients by referring to them by derogatory and offensive terms when talking about them to other colleagues or by failing to show a level of compassion which could reasonably be expected from a nurse. However, Ms McArdle was not a part of this group of nurses and the remarks that she made and were broadcast in the programme were solely concerned with the management of the hospital and the impact on patients' health and safety.

Ofcom noted that not all of the unedited footage was available for it to watch. However, it did consider the unedited footage and transcripts of the logs made at the time which were available in order to ascertain whether the broadcaster had presented Ms McArdle's comments in the programme fairly. Ofcom noted that the unedited footage and the transcripts provided by Channel 4 were mainly focussed on Ms McArdle discussing with the undercover reporter the daily administration of the ward which included the systems which the hospital had in place, discussing the stability of some of the patients, the demands placed on nurses to reach the targets set by the government and the consequences which could emerge as a result of the imposition of these targets. Having viewed the material available, Ofcom considered that the footage of Ms McArdle that was broadcast in the programme was a fair and accurate representation of the conversations she had with the undercover reporter.

When taking into account the factors set out above, Ofcom considered that viewers watching the programme were likely to empathise with Ms McArdle's position. It considered that Ms McArdle came across as a professional nurse who cared about her job and the patients she looked after, but who felt frustrated by the pressures which were placed on her and others in the hospital which, in her view, negatively affected patient care and safety. This view was strengthened by the undercover reporter's own analysis of her experience when she stated that she felt that the nurses were frustrated because they felt unable to look after patients to the high standard that they wanted to because of the pressures on them.

For all the reasons given above, Ofcom considered that the broadcast of Ms McArdle's genuine and legitimate concerns did not portray her in a way that was unfair to her. Ofcom concluded therefore that Ms McArdle was not treated unjustly or unfairly in the programme as broadcast.

Unwarranted infringement of privacy

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 intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

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

- b) Ofcom considered the complaint that Ms McArdle's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that she was totally unaware that the reporter, who was wearing a uniform and staff pass, was filming her covertly and her permission for the filming was not sought. The reporter lied repeatedly, telling Ms McArdle and other staff that she wanted to train as a nurse.

When considering this complaint, Ofcom had regard to Practices 8.5, 8.9 and 8.13 of the Code. Practice 8.5 states 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 says that the means of obtaining material must be proportionate in all the circumstances, and in particular to the subject matter of the programme. Practice 8.13 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.

In considering whether Ms McArdle's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom first assessed the degree to which Ms McArdle had a legitimate expectation of privacy that she would not be the subject of undercover filming. As stated in the Code, "legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question". When considering the extent to which an individual has a legitimate expectation of privacy, Ofcom has regard to a number of factors which were taken account of below.

Ofcom first noted that Ms McArdle was filmed surreptitiously and therefore did not know that she was being filmed. Ofcom also took into account that Ms McArdle was under the impression that she was having a private conversation with a volunteer who said that she wanted to become a nurse, when in fact she was talking to an undercover reporter. Ms McArdle was being filmed surreptitiously in her work place, a hospital, while she was carrying out her job as a nurse. Ofcom was provided with some of the untransmitted footage together with the accompanying transcripts of what was said in conversations between Ms McArdle and the undercover reporter. In summary, the content of those exchanges, some of which are set out above in head a), was confined to the challenges she and others faced doing their jobs, which included: the lack of support from the Trust's management; the struggle to meet targets set by government and enforced by the management; and the focus of the Trust's managers on saving money and achieving targets rather than a higher standard of patient care. Ofcom also noted from the footage that there were times when Ms McArdle and the undercover reporter spoke within earshot of other staff and patients. However, it was also clear from the manner in which Ms McArdle spoke to the reporter and the content of their conversation that Ms McArdle had intended their conversation to be solely between her and the reporter.

Ofcom considered that the fact that Ms McArdle was conversing with someone she thought was a volunteer meant that she exchanged a personal, candid and frank account of the challenges she and other nurses faced in her job. In these circumstances, Ofcom took the view that the matters Ms McArdle discussed did give rise to an expectation of privacy, particularly when taking into consideration that she made criticisms about her employers and the way the Trust managed the hospital, and she also discussed the health of some of the patients. Ofcom also took into account that a hospital, in itself is a place which does give rise to an

expectation of privacy, because of the restrictions on filming there without permission, the fact that medical matters (which attract a very high degree of privacy) are discussed, sometimes openly, and the patients themselves are often in distress, pain and discomfort. Ofcom noted Channel 4's representations that some of the matters discussed between Ms McArdle and the undercover reporter took place in "public" areas of the hospital. However, Ofcom did not consider that this affected the legitimate expectation of privacy which Ms McArdle had when taking into consideration the circumstances set out above. Ofcom also noted that, while the views Ms McArdle expressed were personal concerns which were critical of her employer, she did not divulge confidential or highly sensitive information relating to patients or the Trust.

When taking into consideration all of the factors above, Ofcom considered that Ms McArdle did have a legitimate expectation of privacy in these circumstances.

Having found that Ms McArdle had a legitimate expectation of privacy, Ofcom went on to consider whether it was warranted to obtain the material by the use of surreptitious filming. In particular Ofcom considered whether the programme makers and the broadcaster complied with Practice 8.13.

Ofcom noted the circumstances which preceded the programme maker's decision to surreptitiously film inside the hospital, which were set out in Channel 4's representations summarised above. In particular, Ofcom took into account that in July 2010, the Chief Executive of the NHS had announced further cuts to the NHS and that with reference to the hospital where undercover filming took place, there were concerns at the pressure there would be on the resources there following the closure of a nearby A&E department. Ofcom took the view that issues concerning the efficacy the NHS and the impact reduced budgets has on the standard of care in hospitals were of considerable public interest as the state of the NHS touches the lives of the majority of people in the country and, in particular, those who were potentially affected by the state of their local hospitals. There was further specific public interest in the North Manchester General Hospital because of the likely impact of the closure of an A&E department at a nearby hospital. The research undertaken by the undercover reporter prior to filming also revealed the lack of training for staff at North Manchester General Hospital, strained resources and widespread concern from staff themselves over the quality of care at the hospital and the impact that the cuts would have on the patients. In light of the general public interest in the NHS and the specific public interest in this particular hospital, Ofcom considered that there was *prima facie* evidence of a story in the public interest.

In addition, Ofcom took into consideration that on the basis of the programme makers' preliminary research, there were reasonable grounds to believe that further material evidence could be obtained. Further, the broadcaster stated that it was difficult to find current or former employees who would be prepared to speak on camera about some of the issues which were uncovered by the preliminary research. Therefore in order to potentially substantiate the claims made in the research, it was necessary, in Ofcom's view, for the programme makers to film staff undercover in order to have the views expressed honestly and to document the daily issues which the NHS staff faced at the hospital. In particular, Ms McArdle worked in the MAU, which was, as stated by the broadcaster, a "crucial hub in any hospital" and therefore Ms McArdle's views as a nurse working there were of particular importance to the programme.

An individual's right to privacy has to be balanced against the competing right of the broadcasters to freedom of expression. Neither right has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific right. Therefore, in considering whether it was warranted for the broadcaster to infringe Ms McArdle's legitimate expectation of privacy, Ofcom considered both Ms McArdle's right to privacy and the broadcaster's right to freedom of expression.

The Code states that "warranted" has a particular meaning. It means that where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

As already mentioned above, Ofcom considered that the issue of budget cuts in the NHS to be of great public interest and that there was a specific public interest in the North Manchester General Hospital because of the likely impact of the closure of an A&E department at a nearby hospital would have in a particular area. Given this, Ofcom considered the importance of making programmes that highlight issues of genuine public interest and to gather and obtain information for this purpose and for filming the material surreptitiously. Ofcom takes the view that it would be a disproportionate restriction of the programme makers' freedom of expression if they were unduly constrained from filming in such circumstances. For these reasons, Ofcom considered that the infringement into Mrs Millington's legitimate expectation of privacy was warranted. However, Ofcom also considered that it is important in circumstances such as those of this complaint that the programme makers and/or the broadcaster takes steps to ensure that the subsequent broadcast of any material filmed secretly and without consent does not result in an unwarranted infringement of privacy. This is dealt with in head c) of the decision below.

Having taken all the factors above into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression, the significant public interest in the subject matter of the filming and the public interest in programme makers gathering material on a matter of significant public interest without being unduly constrained, outweighed Ms McArdle's legitimate expectation of privacy in obtaining the material included in the programme in these circumstances.

Ofcom considered, therefore, that Ms McArdle's privacy was not unwarrantably infringed in connection with the obtaining of material included in the programme.

- c) Ofcom went on to consider the complaint that Ms McArdle's privacy was unwarrantably infringed in the programme as broadcast in that although her face was blurred, friends, colleagues and managers had no difficulty identifying her.

By way of background, Ms McArdle said that she had been suspended by her employers as a result of her identification and she subsequently resigned from her position.

In considering this part of the complaint, Ofcom had regard to Practices 8.6 and 8.14 of the Code. Practice 8.6 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. Practice 8.14 states that material gained by surreptitious filming and recording should only be broadcast when it is warranted.

Ofcom first assessed the extent to which Ms McArdle had a legitimate expectation of privacy in relation to the material broadcast in which she was featured. In considering the extent to which a person has a legitimate expectation of privacy, Ofcom has regard to a number of factors, which includes the circumstances in which the person was filmed, which were discussed in head b) above.

Ofcom first took into account that Ms McArdle was filmed without her knowledge and in circumstances which did give rise to a legitimate expectation of privacy. Ofcom also observed what was broadcast in the programme, as set out and discussed in head a) above. Ms McArdle was shown in the programme expressing her thoughts and feelings on the challenges she faced daily in her job as a nurse. The comments made by Ms McArdle and broadcast in the programme included criticisms of her employers. As set out above, Ms McArdle was under the impression that she was speaking to a volunteer who was thinking about going into nursing. Ofcom considered, therefore, that the views Ms McArdle shared with the undercover reporter, together with the content of what she said, meant that she had a legitimate expectation of privacy that these matters would not be shared with others or broadcast to a wider audience without her consent.

Ofcom noted that Ms McArdle's face was blurred in the broadcast of the programme and that she was not named, but that no other measures were taken to help ensure that Ms McArdle was not identifiable. Her voice was not disguised at all in any of the extracts from the surreptitiously filmed footage of her that were included in the programme; and, her work place and the department she worked in were identified in the programme. Therefore, in Ofcom's view, Ms McArdle would have been identifiable to her colleagues, friends and family and her employer (who subsequently suspended her after the programme was broadcast). Furthermore, Ofcom considered that Ms McArdle's expectation of privacy was particularly strong because the matters she was unwittingly revealing in the broadcast of the programme placed her in a very vulnerable position with regard to possible repercussions from her employer.

Taking all the above points into consideration, Ofcom's view was that Ms McArdle had a legitimate expectation of privacy in relation to the surreptitiously filmed footage of her included in the programme without her consent. Since Ms McArdle clearly did not consent to the broadcast of her comments, Ofcom went on to consider whether the infringement of privacy was warranted.

As already mentioned in head b) above, the Code states that "warranted" means that where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy.

Ofcom again observed the general public interest in the subject of the programme, namely the impact of the cuts on the NHS and the specific public interest in relation to North Manchester General Hospital, as set out under head b) above. Ofcom acknowledged the significant public interest in the subject

matter of the programme, however it was concerned whether it was warranted to infringe Ms McArdle's privacy.

Ofcom observed that the purpose of the programme was stated to be for the staff who worked at the hospitals to "*reveal what's really happening in the NHS*". The programme was also broadcast on the day that the Royal College of Nursing revealed that staff were "*struggling with targets, understaffing and ward closures*".

Ofcom noted that Ms McArdle's contribution to the programme highlighted the pressure staff felt in meeting targets set by management, and enforced, at times harshly, on the staff which she described as "*verging on bullying*". It also demonstrated that Ms McArdle felt that patients were suffering because of the pressure to reach targets and a lack of support from management. Ofcom noted that Ms McArdle said that in her opinion the element of duty of care had been taken away from doctors and nurses "*and given to the managers*" who would monitor how quickly patients were being moved out of A&E into suitable wards and "*pile the pressure on us (i.e. nurses) to move patients as fast we can*". She had also said that because management were keen to move patients from A&E to meet the four hour target some patients were not stable enough to be moved and in other cases there were no appropriate wards to move them to. Ms McArdle also said that in some cases, patients unfortunately arrested and died once they had been moved because they had not been stabilised before being moved out of the A&E department.

Ofcom recognised that Ms McArdle's contributions provided first hand evidence of the challenges faced by nurses in light of the cuts that the Trust was making and supported the warning by the Royal College of Nursing "*that cuts to front line staff can have a catastrophic impact on patients' safety*". However, Ofcom also considered it important to note that her contribution had been obtained by an undercover reporter who secretly filmed her conversations with Ms McArdle without her knowledge and that this footage was broadcast without her consent.

As set out in head b) above, the individual's right to privacy has to be balanced against the competing rights of the broadcaster's to freedom of expression. Neither right has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific right. Ofcom recognises that in this case the balancing exercise was especially delicate and difficult because of the level of Ms McArdle's expectation of privacy and the significant public interest in the broadcaster reporting on the important issues raised in the programme.

Ofcom carefully took into consideration Ms McArdle's position that surreptitiously filmed footage of her at her workplace, discussing her personal views and opinions about her job as a nurse, was broadcast in the programme without her consent. While Ofcom noted the broadcaster's submissions that it had not intended to expose Ms McArdle and nor did it precipitate the action her employer took in suspending her, Ofcom was concerned by what it considered to be a lack of consideration by the broadcaster of the possible adverse consequences for Ms McArdle following the broadcast of her critical comments and the intrusion into her privacy. In Ofcom's view, it was reasonably foreseeable that the broadcast of Ms McArdle's comments which were critical of the hospital management could lead to difficulty for Ms McArdle in her work place and possible adverse repercussions. Ofcom considers that when broadcasting all material (whether recorded surreptitiously or not), broadcasters must have regard to reasonably

foreseeable adverse consequences for contributors, especially those who are not in any way suspected of wrongdoing or criminal behaviour.

Following the broadcast of the programme Ms McArdle was suspended because of the comments she made in the programme and she later resigned from her position.

Ofcom noted that Channel 4 had taken some steps to protect her identity: Ms McArdle's face was blurred in the broadcast of the programme and she was not named. However, no other measures were taken to help ensure that she was not identifiable. While Ofcom notes the importance of programmes presenting the views of contributors in their own voices where possible, it is also important to ensure that adequate steps are taken by programme makers and broadcasters to protect the identity of those secretly filmed and unwittingly included in programmes. Given that Ms McArdle was identifiable from the footage and that it was reasonably foreseeable that adverse repercussions for Ms McArdle could follow the broadcast of the footage, and that she was not in any way suspected of wrongdoing or criminal behaviour, Ofcom considered that the broadcaster failed to adequately protect Ms McArdle's identity.

Taking all these points into account, Ofcom therefore balanced Ms McArdle's right to privacy in the broadcast of her remarks in the programme against the broadcaster's right to freedom expression and the audience's right to receive the information broadcast. In this particular case, Ofcom had concerns about the extent to which Channel 4 had properly considered the possible adverse consequences for Ms McArdle in these circumstances, of broadcasting her contribution. Ofcom considered that the consequence of the broadcast of the surreptitiously filmed footage was in effect to make Ms McArdle an unwitting "whistleblower" criticising the Trust's management. While Ofcom recognised the importance of broadcasters investigating stories of significant public interest, such as in this programme, it considered that the broadcaster could have fulfilled that public interest without making Ms McArdle identifiable in the programme and therefore exposing her to possible repercussions that were, in Ofcom's view, reasonably foreseeable. For these reasons, Ofcom considered that the broadcast of the surreptitiously filmed footage without sufficient anonymity protection for Ms McArdle in the programme was a disproportionate interference with her expectation of privacy and it was not warranted in the circumstances.

Therefore, on balance, and given all the factors referred to above, Ofcom concluded that the broadcaster's right to freedom of expression and the audience's right to receive information and ideas without interference, in the circumstances of this particular case, did not outweigh the legitimate expectation of privacy that Ms McArdle had in relation to the surreptitiously filmed footage of her broadcast in the programme without her consent. Ofcom concluded that there had been an unwarranted infringement of Ms McArdle's privacy in the broadcast of the programme.

It is important for all broadcasters to be aware of the need to consider very carefully the possible adverse repercussions for individuals that can result from broadcasting footage of them without their consent, especially those who are not in any way suspected of wrongdoing or criminal behaviour.

Ofcom considered therefore that Ms McArdle's privacy was unwarrantably infringed in the programme as broadcast.

Accordingly, Ofcom has not upheld Ms McArdle's complaint of unjust or unfair treatment in the programme, and unwarranted infringement of privacy in the obtaining of material included in the programme. However, Ofcom has upheld Ms McArdle's complaint of unwarranted infringement of privacy in the programme as broadcast.

Ms McArdle's complaint therefore is upheld in part.

Upheld in Part

Complaint by Mrs Lorraine Millington

Dispatches: Undercover Hospital, Channel 4, 11 April 2011

Summary

Ofcom has upheld in part this complaint of unjust or unfair treatment and unwarranted infringement of privacy made by Mrs Lorraine Millington.

On 11 April 2011, Channel 4 broadcast an edition of its investigative current affairs documentary strand *Dispatches*. The programme broadcast footage obtained from two undercover reporters who had surreptitiously filmed staff and patients at a hospital in Manchester to find out what impact cuts to the National Health Service (“NHS”) were having on staff and patients. One of the nurses whose contribution was secretly filmed and broadcast was the complainant, Mrs Millington.

Mrs Millington complaint that she was treated unjustly or unfairly in the programme and that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast. Mrs Millington stated in her complaint that following the broadcast of the programme she was accused by her employer, the Pennine Acute Hospitals NHS Trust, of “making false allegations which brought the Trust into disrepute” and suspended from her position. She was later dismissed. Mrs Millington subsequently instigated a successful unfair dismissal claim against the Trust, following which she was reinstated in her original position.

Ofcom found that:

- It was not unfair for the programme to include legitimate and genuine concerns expressed by Mrs Millington about the impact of NHS cuts.
- Ofcom considered that the broadcaster’s right to freedom of expression, the public interest in the subject matter of the filming, and the public interest in programme makers gathering material on a matter of public interest without being unduly constrained, outweighed Mrs Millington’s legitimate expectation of privacy in these circumstances. Ofcom concluded that there was no unwarranted infringement of Mrs Millington’s privacy in connection with the obtaining of material included in the programme.
- Ofcom considered that the broadcaster’s right to freedom of expression and the audience’s right to receive information and ideas without interference, in the circumstances of this particular case, did not outweigh the legitimate expectation of privacy that Mrs Millington had in relation to the surreptitiously filmed footage of her being broadcast in the programme without her consent. Ofcom concluded that there was an unwarranted infringement of Mrs Millington’s privacy in the broadcast of the programme.

It is important for all broadcasters to be aware of the need to consider very carefully the possible adverse repercussions for individuals that can result from broadcasting footage of them without their consent, especially those who are not in any way suspected of wrongdoing or criminal behaviour.

Introduction

On 11 April 2011, Channel 4 broadcast an edition of its investigative current affairs series *Dispatches*. The programme was entitled *Undercover Hospital* and investigated what was happening in the NHS in the context of multi-million pound cuts, impending job losses and the government's pledge to protect the NHS. The programme reported a warning from the Royal College of Nursing that cuts to frontline staff could have a catastrophic impact on patient safety. Two undercover reporters filmed secretly at hospitals run by the Pennine Acute Hospitals NHS Trust ("the Trust"), which provides hospital treatment to the residents of Bury, Oldham, Rochdale and north Manchester. The programme explained that the reporters had filmed "*undercover over a two month period inside an NHS Trust*" in order to uncover "*what staff say is really happening inside the NHS*".

The programme was in three parts. The first and third part included secretly filmed footage of a female nurse talking to an undercover reporter. The nurse was not named and her face was blurred in all the footage of her that was shown in the programme. Her voice, however, was not disguised and her words were accompanied by subtitles because they were indistinct in parts.

The introduction to the programme showed secretly filmed footage of the nurse in which she told one of the undercover reporters (the words set out below and attributed to the nurse reflect the words of the captions):

"They're [i.e. the Trust's managers] there to control the money and that's all they give a shit about. They might not say that, they're not gonna say that of course. We care about providing high quality..." It's bullshit".

Later in part one of the programme, the reporter was in the Medical Assessment Unit ("MAU") in the North Manchester General Hospital where patients were assessed having been discharged from the Accident and Emergency department ("A&E") and the footage referred to above was repeated. The nurse went on to say:

"Bullshit. It's corporate bullying what we go through sometimes because of them [i.e. the managers], patients waiting in A&E. Move them, move them, move them, move them. We've had jumped up people who are managers come down here and say move this patient. You say you can't move this patient because they're not stable enough to move to move to this particular ward for whatever reasons. Well why not? You know, I'm the [bleep] nurse. How the hell can you actually question something like that? They're not. It's as simple as that. They're an unstable patient. It's like I can't move him to anywhere other than a gastro ward. He's bleeding... They're not numbers, they're not figures to be moved around on a piece of paper. They're people".

Later, in part three of the programme, in the context of high patient numbers and budget cuts in the MAU, the nurse then said:

"It's just horrible. Being dumped down there on your own. I hate it. It's terrible, it's dangerous and it shouldn't be allowed.... We're not giving the care we want to give, a lot of the time. And it's wrong... Things like people on hourly urine outputs, they don't get that. Fluid balances, they don't get fluid balances and they are quite important, but if you're busy it's like, oh shit, it's half one, I should have done it at one o'clock, oh well it will have to wait until two and then oh [bleep], I'm doing something else at two o'clock and you're busy and you leave it and it's three o'clock and it's three hours since you've done it".

Ofcom noted that the programme included a number of pieces of surreptitiously filmed footage of nurses and others working for the Trust commenting on their work, and of patients commenting on their experience. In almost all cases their faces were blurred, and where this happened and a clip of interview was used, their voices were not disguised and their words were shown on captions.

Summary of the complaint and the broadcaster's response

Following the broadcast of the programme, Mrs Lorraine Millington made a fairness and privacy complaint to Ofcom as set out below. By way of background, Mrs Millington stated in her complaint that following the broadcast of the programme she was accused by the Trust of "making false allegations which brought the Trust into disrepute" and suspended from her position. She was later dismissed. Mrs Millington subsequently instigated a successful unfair dismissal claim against the Trust, following which she was reinstated in her original position.

Unjust or unfair treatment

Mrs Millington complained that she was treated unjustly or unfairly in the programme as broadcast in that:

- a) The material was edited in a way that unfairly portrayed her. Mrs Millington said that only footage showing her in a negative light was included in the programme as broadcast.

Before responding to the specific complaints by Mrs Millington, Channel 4 provided some background to the programme's investigation. Channel 4 said that it had been widely reported in July 2010 that the Chief Executive of the NHS, Sir David Nicholson, had informed NHS Trusts that they would have to deliver between £15 billion and £20 billion in efficiency savings over three years from 2011-2014. The programme makers decided to focus on the Pennine Acute Hospitals NHS Trust in order to examine the operation of a NHS Trust and to investigate the impact of the cuts. The Trust was selected in light of its announcement earlier in the year that at least £45 million pounds worth of savings would have to be made in the next year, meaning that one in 10 jobs could be lost across its five hospitals, including the North Manchester General Hospital. The Trust had also announced plans to close the Rochdale Infirmary A&E unit, giving rise to concerns about the impact on already strained resources in the Trust and particularly on the A&E department at the hospital. In 2010 it was announced that these plans were being brought forward and the closure was predicted to take place in 2011.

The programme also examined a second NHS Trust and the potential impact of the cuts there. The programme team considered two reports on Mid-Staffordshire NHS Foundation Trust: one was the Healthcare Commission (now known as the Care Quality Commission) report and the other was independent inquiry led by Mr Robert Francis QC. Both reports found serious failings in patient care. The Mid-Staffordshire Trust was investigated, in part, because of its consistently high mortality rate. The Trust had also had a consistently high mortality rate over the past six years.

In response to the complaint of unfair treatment, Channel 4 referred Ofcom to a number of points in the programme which it considered demonstrated that Mrs Millington's comments were not taken out of context or otherwise edited unfairly. Channel 4 added that Mrs Millington was one of the most vocal members of staff

when it came to discussing complaints about the hospital and its operating systems. Channel 4 said that Mrs Millington spoke to the undercover reporter about the pressures involved in being a nurse and referred to: under-staffing, bed shortages, bureaucracy, lack of support from management and the impact of government targets. Channel 4 also pointed to a positive comment Mrs Millington made about 'loving' her job, albeit immediately qualified by her saying that she hated the bureaucracy. Channel 4 submitted that it was evident from the transcripts of the programme, the undercover logs and transcripts of rough assemblies of the footage that it provided to Ofcom that the comments made by Mrs Millington were not taken out of context or otherwise edited unfairly and nor were there any positive remarks made by Mrs Millington which the interests of fairness made it necessary to broadcast.

In relation to the undercover reporter, Channel 4 said that her cover story was that she was a volunteer and that her role at the hospital included carrying out patient surveys by helping patients to complete questionnaires about their hospital experience and helping out with meal times and serving hot beverages. The reporter did indicate that she was considering a nursing career but did not express this as a firm plan. Channel 4 added that it was obviously necessary for an undercover reporter to have a plausible cover story which would entail a degree of deception. In Channel 4's view, the level of deception was proportionate and that, if the undercover reporter indicated a possible interest in nursing in the future, this was not improper and did not amount to entrapment.

Channel 4 said that the reporter was carefully briefed by Channel 4 and the programme makers not to entrap those with whom she spoke, but rather to let them speak for themselves. It was not her role to put words in the mouths of staff or to goad them into making negative comments or expressing insincere opinions about their employer or the running of the hospital. Channel 4 said that, for all intents and purposes, the undercover reporter was an outsider who Mrs Millington had known only for a few days or weeks. The cover story deliberately did not involve her in obtaining admissions from staff in any formal sense so that any remarks or observations would evolve naturally during conversations and so carry greater evidential value. Channel 4 added that Mrs Millington made her comments of her own volition and said that they were not taken out of context. The transcripts of untransmitted footage demonstrated that Mrs Millington readily reiterated and elaborated on her complaints about time pressures, staff shortages, pressure to move patients on and other constraints without needing any encouragement beyond a willing listener.

Channel 4 also submitted that an Employment Tribunal decision in relation to an unfair dismissal claim by Mrs Millington was also relevant to the complaint insofar as it evidenced Mrs Millington's position on the matters which were discussed in the programme.

Unwarranted infringement of privacy

Mrs Millington complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that:

- b) Mrs Millington complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme. The reporter did not inform her that she was filming what Mrs Millington considered to be a private conversation with a colleague. The reporter posed as a hospital volunteer

and said she wanted to train as a nurse and lied in order to gain Mrs Millington's trust, which she did.

In response, Channel 4 said that preliminary research had been conducted prior to any decision being made to secretly film. The research included anecdotal evidence and accounts suggesting some practices and failures similar to those found and criticised at Mid-Staffordshire Trust, for example untrained staff claiming that they were expected to carry out duties outside their expertise and training. The programme makers also came across concerns voiced by patient groups and former patients and their families about patient care across the Pennine Acute Hospitals NHS Trust, including claims that nurses had on occasion been rude to or otherwise behaved badly towards patients. Channel 4 stated that before the production company sought permission from Channel 4 to film secretly, the undercover reporter undertook six days voluntary work at the hospital for research purposes. The undercover reporter found poor morale among the staff that she met and heard concerns expressed by a number of staff members about the quality of the care at the hospital and other hospitals in the Trust. The reporter also witnessed and made contemporaneous notes of accounts from staff first hand and found the following:

- untrained staff claimed that they were expected to undertake tasks for which they had not been trained;
- a porter claimed not to have received training on how to handle patients;
- a volunteer claimed to have been expected to carry out duties outside of their expertise and training;
- staff were over-stretched and there was a back-log of administrative work affecting patients' records; and
- widespread concern from staff about the impact of the cuts on patient care.

On the basis of the research, Channel 4 considered that it was justified in authorising covert filming with two undercover reporters. Channel 4 also said that there was evidence of a story in the public interest which warranted the surreptitious filming because the impact of cuts to the NHS budgets was a subject of immense public interest and concern since it affected a significant number of the population who relied on the NHS. Channel 4 said that the programme makers had not found any current or former members of staff who were prepared to be interviewed on camera about their concerns. Channel 4 therefore considered that covert filming was the only way to obtain an accurate picture of the situation within the Trust and of the everyday experience of staff and patients. In addition, secret filming was the only means to substantiate serious allegations such as bullying, poor patient care, concern about the cuts and untrained staff carrying out nursing duties. Channel 4 added that no hospital would allow a film crew to film openly without wishing to monitor and control the access and that this was even more unlikely where a trust was performing poorly in the official league tables.

In relation to the balancing of freedom of expression and privacy rights, Channel 4 said that while Mrs Millington had a legitimate expectation of privacy in relation to the covert filming of her in her work place, this was limited by a number of factors. In particular, Channel 4 said that Mrs Millington's conversations with the undercover reporter that were recorded and broadcast took place in public areas of the hospital, often in front of other colleagues and in earshot of patients, and were not imparted in circumstances of confidentiality. The undercover reporter and the programme makers who reviewed the untransmitted footage confirmed

that all except two of the conversations with Mrs Millington took place in the “public areas” of the hospital and in the presence of, or at least accessible to, other nurses and other members of staff, and in some cases even patients. The conversations recorded related solely to Mrs Millington’s employment experience and her views of her employer and policy matters, rather than confidential matters and the words broadcast included nothing of a sensitive or private nature in respect of Mrs Millington as an individual. Channel 4 also said that Mrs Millington’s name was not broadcast and her face was heavily blurred in the programme, which severely limited the extent to which Mrs Millington was identifiable.

- c) Mrs Millington also complained that her privacy was unwarrantably infringed in the programme as broadcast in that although her face was blurred, she was identifiable to friends, colleagues and former patients.

By way of background, Mrs Millington said that, following the broadcast, she was accused of “making false allegations which brought the Trust into disrepute” and suspended from work and later dismissed. Mrs Millington subsequently instigated a successful unfair dismissal claim against the Trust, following which she was reinstated in her original position.

Channel 4 argued that the same factors as it had referred to under head b) applied to privacy in the broadcast and that, given the factors set out above, any expectation of privacy Mrs Millington had was necessarily limited. However Channel 4 said that when considering whether any infringement was warranted, it was clear that the broadcast of the material served a clear and important public interest in that it shed crucial light on the day to day impact in a hospital environment of proposed cuts on both staff and patients, an issue affecting the majority of people in the UK. Therefore in Channel 4’s view, any intrusion into Mrs Millington’s privacy in the broadcast of the covertly recorded material in which Mrs Millington featured was entirely warranted by the very high public interest value of the matters revealed.

Channel 4 said that there was no intention to “name and shame” those working for the Trust who revealed matters of concern that were not of their making. Channel 4 said that it accepted however that Mrs Millington was subsequently identified by her employer and was apparently dismissed solely because of what Mrs Millington said in the programme which the Trust considered to be unwarranted and harsh. Channel 4 added that it did not consider that it was appropriate and proportionate for the Trust to “shoot the messenger” in this way and that it was dismayed to find out that Mrs Millington was dismissed on this basis.

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 carefully considered all the relevant material provided by both parties. This included a recording and a transcript of the programme as broadcast and the parties' submissions. Channel 4 was unable to provide the unedited, unbroadcast footage of the material included in the programme as it no longer existed. However, it did provide the undercover logs and DVDs and transcripts of "rough assemblies of footage" filmed in the hospital featuring the complainant and the response to the complaint.

Ofcom provided the parties with the opportunity to make representations on Ofcom's Preliminary View (which was to uphold the complaint in part). Neither party made any representations on the Preliminary View.

Unjust or unfair treatment

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

- a) Ofcom first considered the complaint that Mrs Millington was unjustly or unfairly treated in the programme as broadcast in that the material was edited in a way that unfairly portrayed her. Mrs Millington said that only footage showing her in a negative light was included in the programme as broadcast.

Mrs Millington said that, following the broadcast, she was accused of "making false allegations which brought the Trust into disrepute" and suspended from work and later dismissed. Mrs Millington subsequently instigated a successful unfair dismissal claim against the Trust, following which she was reinstated in her original position.

In considering this part of the complaint, Ofcom had regard to Practices 7.6, 7.9 and 7.14 of the Code. Practice 7.6 of the Code states that when a programme is edited, contributions should be represented fairly. Practice 7.9 states that before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Practice 7.14 states that broadcasters or programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception (deception included surreptitious recording). However, it may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means.

Ofcom reviewed the programme in detail and noted that it concerned the effect of cuts made by the Trust, particularly on the North Manchester General Hospital, and the impact on the staff and patients. The programme included comments and observations from hospital managers, a patient advocate, reporter, and other staff and patients. The majority of the footage broadcast contained surreptitiously filmed material of the nurses and patients at the North Manchester General Hospital. All of the nurses and patients' faces were obscured, however, their voices were not. What they said was captured in subtitles in the programme. Ofcom also took into account that the programme made it clear that the material gained was the result of undercover reporters who had told staff that they were volunteers who secretly filmed inside the hospitals.

Ofcom focussed in particular on the parts in the programme which Mrs Millington featured in order to assess what impression viewers were likely to form of Mrs Millington, when taking account of the programme as a whole. In addition, Ofcom looked at whether what was represented of Mrs Millington was edited in a way that did not cause unfairness to Mrs Millington.

Ofcom noted the parts of the programme which featured Mrs Millington and observed that the commentary said that when the undercover reporter was helping on the MAU she frequently heard nurses complain about the pressure to meet targets. Footage was then included of Mrs Millington saying:

*“Basically they’re [i.e. the Trust’s managers] there to control the money, and that’s all they give a shit about. They might not say that, they’re not gonna say that of course ‘we care about prov...you know, providing high quality...’. Bullshit. Bullshit. It’s corporate bullying what we go through sometimes because of them, patients waiting in A&E. ‘Move them, move them, move them, move them’. We’ve had jumped up people who are managers come down here and say move this patient. You say you can’t move this patient because they’re not stable enough to move to this particular ward for whatever reason. Well why not? You know I’m the **** nurse. How the hell can you actually question something like that? They’re not. It’s as simple as that. They’re an unable patient. It’s like-I can’t move him to anywhere other than a gastro ward, he’s bleeding”.*

Ofcom noted that shortly after this, Mrs Millington was shown speaking with a patient before turning to the undercover reporter and saying:

“They’re not numbers, they’re not figures to be moved around on a piece of paper. They’re people”.

Later in the programme, the undercover reporter returned to the MAU, and the commentary explained that the unit was not designed for long stay patients but that patients were getting stuck there for days. Another nurse had said that the current bed occupancy rate was about 98 per cent, which the programme said was above the maximum 82 per cent recommended by the National Audit Office. The reporter went on to say that MAU staff said they were feeling the effects of both high patient numbers and budget cuts. Mrs Millington was then heard saying that it was *“horrible being dumped down there (i.e. MAU) on your own”* and that it was dangerous. Mrs Millington also expressed her concern that most of the time she was not able to give the standard of care to patients that she wanted to.

The reporter then spoke about the fact that, due to nurses struggling with time pressures, certain checks which could minimise infection spreading in the hospital were not taking place. Footage of Mrs Millington was shown saying as follows:

*“Things like people on hourly urine outputs, they don’t get that. Fluid balances, they don’t get fluid balances and they are quite important but if you’re busy it’s like, oh shit, it’s half one, I should have done it at one o’clock, oh well it will have to wait until two and then, oh ****, I’m doing something else at two o’clock and you’re busy and you leave it and it’s three o’clock and it’s three hours since you’ve done it”.*

Ofcom observed that the reporter gave summaries of what she had experienced at intervals during the programme and at one point she stated:

“I got a real sense of how frustrated staff are by the situation and they want to care for patients to a much higher standard and they want to change things, but they can’t. They’re being asked to do the impossible and they feel defeated by the system and the pressures that are in place”.

Ofcom considered that what Mrs Millington said in the programme (as set out above) corroborated the issues being raised in the programme, namely the impact of cuts being made by the Trust affecting nurses and their ability to look after patients. Ofcom also observed that some of Mrs Millington’s criticisms were directed at the attitudes of the hospital management, which she described as *“corporate bullying”*, because of the focus on reaching targets set by the government, and a lack of support for the nurses and empathy for the patients themselves.

Ofcom considered Mrs Millington’s complaint that only negative comments were broadcast in the programme. Ofcom was provided with some unedited footage by Channel 4, although not all the footage that was filmed was available. Ofcom reviewed the footage provided in order to ascertain whether the broadcaster had represented Mrs Millington’s views in a fair manner and captured her comments accurately. Ofcom recognised that, given that not all of the unedited footage was available, it was not able to ascertain whether Mrs Millington made positive comments that were not included in the programme. Ofcom considered that the unedited footage and the transcripts provided by Channel 4 concentrated on the challenges which Mrs Millington faced in her job. In that respect, Ofcom did not find any “positive” comments. However, as set out above, it was clear to Ofcom from the footage provided that Mrs Millington was a dedicated nurse who wanted to carry out her professional duties to the highest standard, but that she felt that she was prevented from doing so because of the pressures from the hospital management to meet government targets, the increasing number of patients and the lack of nurses which, as Mrs Millington said in her conversations with the undercover reporter, resulted in patient care being compromised. Ofcom considered that this would have been clear to viewers in the programme as broadcast.

Ofcom took into consideration that the comments were broadcast as a result of surreptitious filming and were gathered by an undercover reporter who had told Mrs Millington that she was a volunteer who was considering a career as a nurse. Ofcom recognised the potential for unfairness where a contributor is secretly filmed by an undercover reporter posing as a volunteer. The extent to which the surreptitious filming was warranted in this case is discussed further in head b) below. However, in terms of fairness, Ofcom was concerned with the extent to which the undercover reporter encouraged or led Mrs Millington. Ofcom took into consideration the broadcaster’s comments that a certain amount of deception was necessary with undercover filming and reviewed the unedited footage to determine whether the deception was proportionate. Ofcom noted from the unedited footage and transcripts that the undercover reporter had indicated that she was interested in becoming a nurse, asked numerous questions about the job and sought to clarify certain points with the people she was shadowing, including Mrs Millington. By way of example, Ofcom has set out an extract from the unedited footage which was illustrative of the type of conversation which Mrs Millington and the undercover reporter had, with those sections that were included in the programme marked in bold:

Mrs Millington: *“Patient care is compromised because if you’ve got less patients and you’ve not got enough staff, er, more*

patients. You do what you have to do and you leave the things that you don't have to do."

Nurse: *"There's none of this "Come on love, I'll walk you to the bathroom, it's just..." (makes hauling gesture)*

Mrs Millington: *"Oral care. Not vital, gets left."*

Undercover reporter: *"Oral care? What do you mean?"*

Mrs Millington: *"Oral hygiene for people that are nil by mouth.... You know a lot of other things get missed because you don't have time to do what you want to do."*

Undercover reporter: *"What other things?"*

Mrs Millington: *"Am I being honest now...um what else? **Things like people on hourly urine outputs, they don't get that...Fluid balances, they don't get fluid balances and they are quite important but...**" (continues as broadcast in the programme).*

Ofcom observed from this example that Mrs Millington appeared to speak freely without being prompted or led in a certain way by the undercover reporter. Both from what was broadcast and in Mrs Millington's conversations which were not broadcast, it was clear to Ofcom that Mrs Millington had grave concerns about the effects of the cuts on her ability to give patients the standard of care that she wanted to give. Ofcom considered that viewers watching the programme were likely to empathise with Mrs Millington's position. Mrs Millington came across as a professional nurse who cared about her job and the patients she looked after but felt she was frequently prevented from doing so to a high standard, because of the pressures which were placed on her and others in the hospital. This view was strengthened by the undercover reporter's own analysis of her experience when she stated that she felt that the nurses were frustrated because they felt unable to look after patients to the high standard that they wanted to because of the pressures on them.

As stated in Mrs Millington's complaint, following the broadcast of the programme she was accused of "making false allegations which brought the Trust into disrepute" and suspended from her work and later dismissed. Mrs Millington subsequently instigated a successful unfair dismissal claim against the Trust, following which she was reinstated in her original position.

Ofcom took into consideration Channel 4's submission that Ofcom was not bound by the decision made by the Employment Tribunal in relation to Mrs Millington's case. However, Ofcom did note that the Tribunal did consider the factual background to Mrs Millington's dismissal and stated that the concerns that Mrs Millington aired in the programme were based on her own experience as a nurse working in the MAU and her observations of the experiences of other staff and patients at the hospital. In addition the Employment Tribunal's decision stated that at the hearing "a number of former colleagues of the claimant (i.e. Mrs Millington) gave evidence supporting the concerns which the claimant's broadcast comments expressed." In particular, Ofcom noted that the Employment Tribunal Judge "found that sentiments expressed by the claimant through her comments

were not “false” in the sense of having no factual basis or having been made in bad faith”.

For all these reasons, Ofcom considered that broadcasting Mrs Millington’s genuine and legitimate concerns did not portray her in a way that was unfair to her. Ofcom concluded therefore that Mrs Millington was not treated unjustly or unfairly in the programme as broadcast.

Unwarranted Infringement of privacy

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 intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

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

- b) Ofcom considered the complaint that the reporter did not inform Mrs Millington that she was filming what Mrs Millington considered to be a private conversation with a colleague. The reporter posed as a hospital volunteer and said she wanted to train as a nurse and lied in order to gain Mrs Millington’s trust, which she did.

When considering this complaint, Ofcom had regard to Practices 8.5, 8.9 and 8.13 of the Code. Practice 8.5 states 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 says that the means of obtaining material must be proportionate in all the circumstances, and in particular to the subject matter of the programme. Practice 8.13 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.

In considering whether Mrs Millington’s privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom first assessed the degree to which Mrs Millington had a legitimate expectation of privacy that she would not be the subject of undercover filming. As stated in the Code, “legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question”. When considering the extent to which an individual has a legitimate expectation of privacy, Ofcom has regard to a number of factors which were taken account of below.

In these particular circumstances, Ofcom first noted that Mrs Millington was filmed surreptitiously and therefore did not know that she was being filmed. Ofcom also took into account that Mrs Millington was under the impression that she was having a private conversation with a volunteer, when in fact she was talking to an undercover reporter. Mrs Millington was being filmed surreptitiously in her work place, a hospital, while she was carrying out her job as a nurse. Ofcom was provided with some of the untransmitted footage together with the accompanying transcripts of what was said in conversations between Mrs Millington and the undercover reporter. In summary the content of those

exchanges, some of which are set out above in head a), was confined to the challenges she and others faced doing their jobs, which included the lack of support from management; the struggle to meet targets set by the government such as the four hour target for patients to be moved out of A&E and to maintain single sex wards; the focus of managers on money and achieving targets rather than a higher standard of patient care; the lack of qualified people able to deal with mentally ill patients; and some of the dangers of insufficient staff to deal with patients, some of whom are mentally ill and on occasion present a threat to the nurses themselves. Ofcom also noted from the footage that there were times when Mrs Millington and the undercover reporter spoke within earshot of other staff and patients. However, it was also clear from the manner in which Mrs Millington spoke to the undercover reporter and the content of their conversation, that Mrs Millington had intended that the conversation be solely between her and the undercover reporter.

Ofcom considered that the fact that Mrs Millington was conversing with someone she thought was a volunteer meant that she exchanged personal, candid and frank account of the challenges she and others faced in her job. In these circumstances, Ofcom took the view that the matters Mrs Millington discussed did give rise to an expectation of privacy, particularly when taking into consideration that she made some criticisms of her employers and the way they managed the hospital. Ofcom also took into account that a hospital in itself is a place which does give rise to an expectation of privacy, because of the restrictions on filming there without permission, the fact that medical matters (which attract a very high degree of privacy) are discussed, sometimes openly, and the patients themselves are often in distress, pain and discomfort. Ofcom took account of Channel 4's representations that some of the matters discussed between Mrs Millington and the undercover reporter took place in "public" areas of the hospital. However, Ofcom did not consider that this affected the legitimate expectation of privacy which Mrs Millington had when taking into consideration the circumstances set out above. However, Ofcom also noted that, while the views Mrs Millington expressed were personal concerns which were critical of her employer, she did not divulge confidential or highly sensitive information relating to patients or the Trust.

When taking into consideration all of the factors above, Ofcom considered that Mrs Millington did have a legitimate expectation of privacy in these circumstances.

Having found that Mrs Millington had a legitimate expectation of privacy, Ofcom went on to consider whether it was warranted to obtain the material in the manner that was used here, namely surreptitious filming. In particular, Ofcom considered whether the programme makers and the broadcaster complied with Practice 8.13.

Ofcom noted the circumstances which preceded the decision to surreptitiously film inside the hospital, which were set out in Channel 4's representations above. Ofcom took into account that: in July 2010, the Chief Executive of the NHS had announced further budget cuts to the NHS; and, with reference to the hospital where undercover filming took place, there were concerns about the pressure there would be to the resources there following the closure of a nearby A&E unit. Ofcom agreed that in general the issue of the NHS is of great public interest because of the number of people who are potentially affected by the state of their local hospitals. There was further specific public interest in the North Manchester General Hospital because of the likely impact of the closure of an A&E department at a nearby hospital. The research undertaken by the undercover

reporter prior to filming also indicated some evidence of lack of training for staff at North Manchester General Hospital, strained resources and widespread concern from staff themselves over the quality of care at the hospital and the impact that the cuts would have on patients. In light of the general public interest in the NHS and the specific public interest in this particular hospital, Ofcom considered that there was *prima facie* evidence of a story in the public interest.

In addition, Ofcom took into consideration that on the basis of the programme makers' preliminary research, there were reasonable grounds to believe that further material evidence could be obtained. Further, Ofcom noted that the broadcaster stated that it was not possible to find current or former employees who would be prepared to speak on camera about some of the issues which were uncovered by the preliminary research. Therefore, in order to investigate and potentially substantiate the claims made in the research, it was necessary, in Ofcom's view, for the programme makers to film staff undercover in order to have the views expressed honestly and to document the daily issues which the NHS staff faced at the hospital. In particular, Mrs Millington worked in the MAU which was, as stated by the broadcaster, a "crucial hub in any hospital" and therefore Mrs Millington's views as a nurse working there were of particular importance to the programme.

An individual's right to privacy has to be balanced against the competing right of the broadcaster's freedom of expression. Neither right has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific right. Therefore, in considering whether it was warranted for the broadcaster to infringe Mrs Millington's legitimate expectation of privacy, Ofcom considered both Mrs Millington's right to privacy and the broadcaster's right to freedom of expression.

The Code states that "warranted" has a particular meaning. It means that where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

As already mentioned above, Ofcom considered that the issue of budget cuts in the NHS to be of great public interest and that there was a specific public interest in the North Manchester General Hospital because of the likely impact of the closure of an A&E department at a nearby hospital would have in a particular area. Given this, Ofcom considered the importance of making programmes that highlight issues of genuine public interest and to gather and obtain information for this purpose and for filming the material surreptitiously. Ofcom takes the view that it would be a disproportionate restriction of the programme makers' freedom of expression if they were unduly constrained from filming in such circumstances. For these reasons, Ofcom considered that the infringement into Mrs Millington's legitimate expectation of privacy was warranted. However, Ofcom also considered that it is important in circumstances such as those of this complaint that the programme makers and/or the broadcaster takes steps to ensure that the subsequent broadcast of any material filmed secretly and without consent does not result in an unwarranted infringement of privacy. This is dealt with in head c) of the decision below.

Having taken all the factors above into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression, the significant public interest in the subject matter of the filming, and the public interest in programme makers gathering material on a matter of significant public interest without being unduly constrained, outweighed Mrs Millington's expectation of privacy in the obtaining of material in these circumstances.

Ofcom considered therefore, that Mrs Millington's privacy was not unwarrantably infringed in connection with the obtaining of material included in the programme.

- c) Ofcom went on to consider the complaint that Mrs Millington's privacy was unwarrantably infringed in the programme as broadcast in that, although her face was blurred, she was identifiable to friends, colleagues and former patients.

In considering this part of the complaint, Ofcom had regard to Practices 8.6 and 8.14 of the Code. Practice 8.6 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. Practice 8.14 states that material gained by surreptitious filming and recording should only be broadcast when it is warranted.

Ofcom first assessed the extent to which Mrs Millington had a legitimate expectation of privacy in relation to the material broadcast in which she was featured. As set out in head b) above, in considering the extent to which a person has a legitimate expectation of privacy, Ofcom has regard to a number of factors which includes the circumstances in which the person was filmed which were discussed in head b) above.

Ofcom first took into account that Mrs Millington was filmed without her knowledge and in circumstances which gave rise to a legitimate expectation of privacy. Ofcom also observed what was broadcast in the programme, as set out and discussed in head a) above. Mrs Millington was shown in the programme expressing her thoughts and feelings on the challenges she faced daily in her job as a nurse. The comments made by Mrs Millington and broadcast in the programme included vehement criticisms of her employers. As set out above, Mrs Millington was under the impression that she was speaking to a volunteer who was thinking about going into nursing. In Ofcom's view, the honest views Mrs Millington shared with the undercover reporter, together with the content of what she said, meant that she had a legitimate expectation of privacy in her conversations and that it would not be shared with others or broadcast to a wider audience without her consent.

Ofcom noted that Mrs Millington's face was blurred in the broadcast of the programme and that she was not named, but that no other measures were taken to help ensure that Mrs Millington was not identifiable. Her voice was not disguised at all in any of the extracts from the surreptitiously filmed footage of her that were included in the programme and her work place, and the department she worked in, were identified in the programme. Therefore, in Ofcom's view, Mrs Millington would have been identifiable to her colleagues, family and friends and her employer (who subsequently dismissed her after the programme was broadcast). Furthermore, Ofcom considered that Mrs Millington's expectation of privacy was particularly strong because the matters she was unwittingly revealing in the broadcast of the programme, placed her in a very vulnerable position with regard to possible repercussions from her employer.

Taking all the above points into consideration, Ofcom's view was that Mrs Millington had a legitimate expectation of privacy in her views and comments to a colleague, and that they would not be broadcast without her consent. Since Mrs Millington clearly did not consent to the broadcast of her comments, Ofcom went on to consider whether the infringement of privacy was warranted.

As already set out in head b) above, the Code states that "warranted" means that where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy.

Ofcom again observed the general public interest in the subject of the programme, namely the impact of the cuts on the NHS and the specific public interest in relation to North Manchester General Hospital, as set out under head b) above. Ofcom acknowledged the public interest in the subject matter of the programme, however it was concerned with the specific public interest of this programme and whether it was warranted to infringe Mrs Millington's privacy.

Ofcom observed that the purpose of the programme was stated to be for the staff who worked at the hospitals to "*reveal what's really happening in the NHS*". The programme was also broadcast on the day that the Royal College of Nursing revealed that staff were "*struggling with targets, understaffing and ward closures*". Ofcom noted that Mrs Millington's contribution highlighted the pressure staff felt in meeting targets imposed on them by management and enforced, at times harshly, on the staff which she described as "*corporate bullying*". It demonstrated that Mrs Millington felt that she was unable to provide the standard of care she wanted to provide because of these targets, the increase of patients and the lack of support and understanding from hospital management, who did not seem to care about patients needs but were just "*they're to control the money*". Mrs Millington also said that the time pressures on her together with the closure of certain wards meant that patients' health and safety were sometimes compromised and resulted in patients not receiving the care and checks that they were supposed to. Ofcom recognised that Mrs Millington's contributions provided first hand evidence of the challenges faced by nurses in light of the cuts that the Trust was making and supported the warning by the Royal College of Nursing "*that cuts to front line staff can have a catastrophic impact on patients' safety*". However, Ofcom also considered it important to note that her contribution had been obtained by an undercover reporter who secretly filmed her conversations with Mrs Millington without her knowledge and that this footage was broadcast without her consent.

As set out in head b) above, the individual's right to privacy has to be balanced against the competing rights of the broadcaster to freedom of expression and the audience's right to receive information. Neither right has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific right. Ofcom recognises that in this case the balancing exercise was especially delicate and difficult because of the level of Mrs Millington's legitimate expectation of privacy and the significant public interest in the broadcaster reporting on the important issues raised in the programme.

Ofcom carefully took into consideration Mrs Millington's position that surreptitiously filmed footage of her at her workplace, discussing her personal

views and opinions about her job as a nurse, was broadcast in the programme without her consent. While Ofcom appreciated that the Trust were found to have acted unreasonably by the Employment Tribunal and noted the broadcaster's submissions that the purpose of the programme was not to "name and shame" any of the contributors, Ofcom was concerned by what it considered to be a lack of consideration by the broadcaster of the possible adverse consequences for Mrs Millington following the broadcast of her critical comments and the intrusion into her privacy. Ofcom considers that when broadcasting all material (whether recorded surreptitiously or not), broadcasters must have regard to reasonably foreseeable adverse consequences for contributors, especially those who are not in any way suspected of wrongdoing or criminal behaviour.

Following the broadcast of the programme, Mrs Millington was, in fact, accused by the Trust of "making false allegations which brought the Trust into disrepute", suspended from work and later dismissed from her position. Mrs Millington subsequently instigated a successful unfair dismissal claim against the Trust, following which she was reinstated in her original position.

Ofcom noted that the Employment Tribunal decided that the "dismissal of Mrs Millington was profoundly, substantively and procedurally unfair" and that "it was not caused or contributed to by any culpable or blameworthy conduct on her part". The employer (the Trust) in this case was eventually found to have acted unreasonably in this case in dismissing Mrs Millington. In Ofcom's view it was reasonably foreseeable that the broadcast of Mrs Millington's comments which were critical of the hospital management could lead to difficulty for Mrs Millington in her work place and possible adverse repercussions.

Ofcom noted that Channel 4 had taken some steps to protect Mrs Millington's identity: Mrs Millington's face was blurred in the broadcast of the programme and she was not named. However, no other measures were taken to help ensure that Mrs Millington was not identifiable. While Ofcom notes the importance of programmes presenting the views of contributors in their own voices where possible, it is also important to ensure that adequate steps are taken by programme makers and broadcasters to protect the identity of those secretly filmed and unwittingly included in the programme. Given that Mrs Millington was identifiable from the footage and that it was reasonably foreseeable that adverse repercussions for Mrs Millington could follow the broadcasting of the footage and that she was not in any way suspected of wrongdoing or criminal behaviour, Ofcom considered that the broadcaster failed to adequately protect Mrs Millington's identity.

Taking all these points into account, Ofcom therefore balanced Mrs Millington's right to privacy in the broadcast of her remarks against the broadcaster's and audience's right to freedom of expression. In this particular case, as discussed above, Ofcom had concerns about the extent to which Channel 4 had properly considered the possible adverse consequences for Mrs Millington in these circumstances, of broadcasting her contribution. Ofcom considered that the consequence of the broadcast of the surreptitiously filmed footage was in effect to make Mrs Millington as an unwitting "whistleblower", criticising the Trust's management. While Ofcom recognised the importance of broadcasters investigating stories of significant public interest, such as in this programme, it considered that the broadcaster could have fulfilled that public interest without making Mrs Millington identifiable in the programme and therefore exposing her to possible repercussions that were, in Ofcom's view, reasonably foreseeable. For these reasons, Ofcom considered that the broadcast of the surreptitiously

filmed footage without sufficient anonymity protection for Mrs Millington in the programme was a disproportionate interference with her expectation of privacy and it was not warranted in the circumstances.

Therefore, on balance, and given all the factors referred to above, Ofcom concluded that the broadcaster's right to freedom of expression and the audience's right to receive information and ideas without interference, in the circumstances of this particular case, did not outweigh the legitimate expectation of privacy that Mrs Millington had in relation to the surreptitiously filmed footage of her broadcast in the programme without her consent. Ofcom concluded that there had been an unwarranted infringement of Mrs Millington's privacy in the broadcast of the programme.

It is important for all broadcasters to be aware of the need to consider very carefully the possible adverse repercussions for individuals that can result from broadcasting footage of them without their consent, especially those who are not in any way suspected of wrongdoing or criminal behaviour.

Ofcom considered therefore that Mrs Millington's privacy was unwarrantably infringed in the programme as broadcast.

Accordingly, Ofcom has not upheld Mrs Millington's complaint of unjust or unfair treatment in the programme, and unwarranted infringement of privacy in the obtaining of material included in the programme. However, Ofcom has upheld Mrs Millington's complaint of unwarranted infringement of privacy in the programme as broadcast.

Mrs Millington's complaint is therefore upheld in part.

Not Upheld

Complaint by Mr Tony Topping

7/7 Bombings: Conspiracy Road Trip, BBC 3, 1 October 2012

Summary

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

The programme examined a number of conspiracy theories about the terrorist bombings in London on 7 July 2005 (“7/7 bombings”). The complainant, Mr Tony Topping, was one of four contributors to the programme who *“doubted the official version”* of what happened on the day of the 7/7 bombings. The programme sought to test particular conspiracy theories put forward by each contributor while on a “road-trip” organised by the programme. This involved retracing the journey that each terrorist made on the day of the bombings and meeting various experts, witnesses and those who had lost family in the attacks.

Mr Topping complained to Ofcom that he was treated unjustly or unfairly in the programme.

Ofcom’s decision is that:

- Mr Topping gave informed consent for his participation in the programme.
- Footage of Mr Topping’s contribution was not unfairly edited and he was not portrayed in a way that resulted in unfairness to him in the programme as broadcast.
- Footage of the disagreement between Mr Topping and another contributor included in the programme, while edited, reflected the incident fairly and did not portray Mr Topping in a way that was unfair to him.

Introduction

On 1 October 2012, BBC 3 broadcast the first of a three part series in which the programme’s presenter, the comedian Mr Andrew Maxwell, challenged various popular conspiracy theories. This episode examined conspiracy theories surrounding the terrorist bombings in London on 7 July 2005 (“the 7/7 bombings”).

The complainant, Mr Tony Topping, was one of four contributors to the programme (“the group”) who *“doubted the official version”* of what happened on the day of the 7/7 bombings. The programme sought to test particular conspiracy theories put forward by each contributor in a “road-trip”, which involved retracing the journey that each terrorist made on the day of the bombings and meeting various experts, witnesses and those who had lost family in the attacks. Mr Topping was introduced in the programme as *“an ex-security worker and CCTV expert who believes 7/7 was carried out by the government”* and was shown saying:

“Tony Blair was a neo-conservative and I strongly believe that it was under the Blair government – it was a purely politically motivated false flag operation”.

The group first travelled to Beeston in Leeds, where three of the bombers grew up, to talk to members of their community in an effort to find out more about the lives and personalities of the bombers. Each member of the group was then asked to take one of the “identities” of the terrorists and to follow the route from Luton, where the bombers began their journey, to London where the bombers detonated their devices. As the contributors made their way to Luton station, Mr Topping was seen pointing out a CCTV camera outside the station to the group, which he said was important because it was the camera that took the pictures of the bombers when they entered Luton station.

After considering theories put forward by the other members of the group, the programme focused on Mr Topping’s theory, which “*centres around one of his favourite subjects, CCTV*”. Mr Topping was shown outside a cafe introducing himself as a lecturer and researcher and saying that he had been “*involved in security*”. Following this a caption was shown on screen which labelled Mr Topping’s theory as “*Conspiracy 3 - CCTV deliberately missing*”.

In exploring Mr Topping’s theory, the group was introduced to Mr Brian Paddick, who was a Deputy Assistant Commissioner of the Metropolitan Police at the time the 7/7 bombings took place. Mr Topping asked Mr Paddick to explain why there was a lack of CCTV footage on the day of the bombings which would “*place the bombers at the scene of the crime*”. Mr Paddick said that there was some CCTV footage missing and this could be due to a variety of reasons such as CCTV not working properly at some stations or the recording mechanisms being full. Following the meeting with Mr Paddick, Mr Topping added that he would still prefer to view CCTV footage which could show the individuals boarding the train.

Another theory Mr Topping held which was discussed in the programme was that, even if the bombers were travelling on the London Underground at the time the bombs were detonated, they had been “*just innocent bystanders*”. Mr Topping was shown discussing this in more detail on the bus with the group and the presenter and explaining that it was likely that there had been some outside influence or motivation for the terrorists’ involvement.

At one point in the programme, the group was seen discussing the theories and Mr Topping attempted to explain his version of events to his fellow contributor, “Layla”. After this conversation, Layla said that she thought Mr Topping’s explanations were contradictory and described him as a “*die-hard conspiracist*”. She also said that she had started to “*make up bull crap stories*” for her own amusement. This was accompanied by footage of Layla putting a scenario to Mr Topping and Mr Topping’s remark on how “*astute*” her theory was.

As the programme continued to examine the various conspiracy theories held by the group, Layla stated that she was becoming less convinced about them. The programme included footage of an argument between Mr Topping and Layla, in which Layla said that Mr Topping and another member of the group, “Jon”, did not “*understand logic*” and revealed that she had been making up scenarios to see what Mr Topping’s reaction would be.

The final part of the programme looked at whether homemade explosives had the capacity to cause the devastation that the 7/7 bombings did, which was something Mr Topping initially doubted, using an experiment with a real double-decker bus. Mr Topping was shown speaking with the presenter and said that he was “*going to put to bed*” some of his theories and was now considering that some of the events related

to the 7/7 bombings resulted from failings in security and surveillance, rather than conspiracies.

Towards the end of the programme, the group was shown meeting with a man who gave a moving account of his grief following the death of his son in the 7/7 bombings. The presenter then spoke with each member of the group to see whether the programme had altered their conspiracy theories. Mr Topping said that the experience of being a member of the group *"certainly matured me"* and that he could see now that *"a conspiracy can be blown out of all proportion and it just grows like a virus and it can affect incidents, it can affect lives, it can affect people and that's probably an equation that is missing from the conspiracy theory. The victims with conspiracy theories have no say"*.

Following the broadcast of the programme, Mr Topping complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast.

Summary of the complaint and the broadcaster's response

Mr Topping complained that he was treated unjustly or unfairly in the programme as broadcast. In particular, Mr Topping said:

- a) The programme makers did not obtain his informed consent to participate. Mr Topping said that he consented to appear on the programme because of his background in CCTV and security and, therefore, presumed that he would be able to comment on the anomalies in the CCTV footage relating to the 7/7 bombings. Instead, Mr Topping said that the programme was defamatory and more of a tactless, reality type TV show against the background of a serious incident.

Mr Topping said that the programme makers had done background checks and were therefore aware of his CCTV and security background. Mr Topping added that he felt misled because he was under the impression that he was hired as a contributor with a CCTV and security background and not a conspiracy theorist.

In response, the BBC said that all the contributors to this programme, including Mr Topping, were made aware of the nature and style of the programme and what type of contribution they were expected to make. It said that all potential participants who contacted the programme makers received an email setting out the subject matter, nature and scope of the programme. The BBC said that when potential contributors were interviewed by telephone the format was explained in greater depth. Following this the four final candidates were interviewed about their views on the 7/7 bombings and it was made clear that they would be expected to present their theories about the bombings to the other participants on the road trip.

The BBC said it was satisfied that Mr Topping had given his informed consent and was fully aware of the nature of the programme and his expected contribution, and had also signed a consent form. The BBC also pointed out that Mr Topping had approached the programme makers himself to express his interest in participating and had described himself as a "diehard conspiracy theorist" in email correspondence prior to the filming.

The BBC said that Mr Topping was introduced as a CCTV expert whose conspiracy theory centred around concerns about the lack of CCTV footage on the day of the 7/7 bombings even though his interviews demonstrated that Mr

Topping's theories went beyond an interest in security and CCTV. The BBC also noted that Mr Topping appeared satisfied with the manner in which he was treated during filming prior to the broadcast, as demonstrated by further emails to the programme makers after the road trip which set out some of his own ideas for further programmes.

- b) Mr Topping said that his contribution was edited in a way that portrayed him unfairly by making him look like a "bizarre conspiracy theorist" and "an idiot". In particular, Mr Topping said that the programme included a remark (i.e. that the then Labour government was behind the attacks) outside a café, which could have potentially put him at risk of a libel action. Mr Topping said that from one hour's worth of filming he was surprised that only this one remark was used.

In response, the BBC said that during filming both in interviews and on the road trip Mr Topping had put forward numerous theories about what may have happened and who was responsible for the 7/7 bombings. The BBC said that the programme accurately reflected many of these theories and included clips of Mr Topping explaining his views in his own words. The BBC did not accept that the clips used distorted his opinions or were edited in a way that was unfair. In particular, it said there was no unfairness to Mr Topping in portraying him as someone who believed the events of 7/7 were orchestrated or authorised by sources within government or government bodies, as he had expressed this view a number of times on camera and in email correspondence with the programme makers.

- c) The programme makers gave Mr Topping a guarantee that footage of an argument between members of the group would not appear in the programme. Mr Topping added that the argument took place shortly after the group was filmed visiting a man who had lost his son in the 7/7 bombings. However, the manner in which the argument was edited in the programme made it look as if the argument was an isolated incident and not connected to the distressing visit they had had with the bereaved father. Mr Topping said that the group had asked for filming to stop, however the footage was nevertheless broadcast in the programme in order to embarrass him. Mr Topping said that he had spoken with the programme's director who had reassured him that the footage of the argument would not be used in the programme.

In response, the BBC said that as the nature of the programme was to examine the various views put forward by the contributors, the relationships and exchanges between the road trip participants was an "essential" part of the programme. It said that the director had made it clear on the first day of filming that the conversations between them and the presenter were as important as the meetings with expert witnesses. The BBC said that it was not unfair to show the relationships between the participants and any conflict which emerged. It said that during the road trip, it was clear that Layla had become increasingly frustrated with Mr Topping and the apparent lack of evidence to support his theories.

In the BBC's view the disagreement on the bus between Mr Topping and Layla had not been prompted by the meeting with the man whose son had been killed on the day of the 7/7 bombings. The BBC acknowledged that Mr Topping may have been feeling particularly emotional or uncertain as a result of the earlier meeting, but it said that the exchange with Layla was not connected to that meeting. The BBC therefore did not accept that there was any unfairness to Mr Topping in the way that the sequence was presented.

The BBC said that it did not accept that Mr Topping had been assured that the footage of the disagreement on the bus would not be used. It said that this was not the recollection of the cameraman or director, and that any such assurance would have been inconsistent with the instructions given to the participants by the director on the first day of filming. In addition, the BBC referred to the wording of the consent form. The BBC also said that Mr Topping subsequently agreed to be interviewed about his reaction to the day's events and suggested that this follow up would not have been necessary if Mr Topping had expected the footage on the bus not to be used.

Representations on Ofcom's Preliminary View

Ofcom prepared a Preliminary View in this case that Mr Topping's complaint of unjust or unfair treatment should not be upheld. Both parties were given an opportunity to make representations on the Preliminary View. In considering this material, Ofcom restricted itself to the material points made by Mr Topping that were relevant to the complaint responded to by the broadcaster and considered by Ofcom. Mr Topping's and the BBC's representations are summarised below.

Mr Topping's representations

Mr Topping maintained that he was not fully informed about what his contribution would be in the programme, and that he was subsequently exploited by the programme makers and was exposed to undue distress as a consequence of his participation in the programme.

Mr Topping said that none of the theories presented were his ideas, but rather they were theories obtained "from the internet". He said that the programme was misleading in presenting the theories as those of the contributors.

Mr Topping reiterated his concerns regarding the way in which the programme was edited and the inclusion of footage of a disagreement between him and another contributor, Layla. He said that the argument was primarily between him and the presenter, rather than with Layla, and that it was about whether "the victims [of the 7/7 bombings] should have a public enquiry". Mr Topping said that he had been assured that the footage would not be used.

The BBC's representations

The BBC said that it rejected Mr Topping's claim that he was treated unfairly or misled about the nature of the programme and his role. The broadcaster said it was misleading for Mr Topping to suggest that he did not believe there was a conspiracy surrounding the 7/7 bombings and that the theories the BBC said he put forward and debated were conspiracy theories taken from the internet to assist the programme makers in making the programme. The BBC pointed out that Mr Topping had been asked by the programme makers in his initial interview "to clearly outline your main points of departure with the official narrative, you know, the things that you personally would contest". It said that he had responded, giving details of his concerns, including various theories about the event. The BBC also said that Mr Topping had said that the 7/7 bombings had been "a purely politically motivated, false flag operation with a wider agenda".

The BBC also restated that none of the production team shared Mr Topping's recollection of what had happened after the disagreement on the bus with the contributor Layla.

Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, both parties' written submissions and unedited footage of interviews and interactions between the group that was not included in the programme as broadcast.

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

- a) Ofcom first considered the complaint that the programme makers did not obtain Mr Topping's informed consent to participate in the programme.

In considering this part of the complaint, Ofcom had regard to Practice 7.3 of the Code which states that where a person is invited to make a contribution to a programme, broadcasters should take measures that are likely to result in "informed consent" being given.

It is Ofcom's view that potential contributors to a programme should be given sufficient information about the programme's nature and purpose, for them to be able to make an informed decision about whether or not to take part. It is important too that consent continues to apply from the commencement of a contributor's participation through to the conclusion of their involvement. In assessing whether a contributor has given informed consent for their participation, Ofcom will not only look at the information that was provided to the contributor prior to the recording of the contribution (that has been made available for its consideration), but the contribution itself. In this case, Ofcom was provided by the BBC with the correspondence with Mr Topping before his contribution to the programme was filmed, and the unedited recording of Mr Topping's first interview with the programme makers.

Ofcom noted that the format of the programme was the same as that used in a previous programme called *9/11 Conspiracy Road Trip*, which was broadcast in September 2011. Ofcom also noted that Mr Topping had emailed the programme makers on 20 April 2012 to express his interest in participating in the latest *Road Trip* series and said he had applied to them "a few months ago regarding the 9/11

project you were doing...". In the email, Mr Topping noted that the programme makers were looking for people to participate in "the UFO programme" and explained that he had a background in that subject. Mr Topping also said "What I feel even stronger about...is the conspiracy regarding 7/7 and I strongly am of the opinion this was an organised false flag operation...". Mr Topping had also provided the programme makers with a link to a YouTube clip which highlighted an issue relating to 7/7 conspiracies and said "I hope you find this all of interest and would certainly like to get involved. I am a diehard conspiracy theorist". In a further email from Mr Topping to the programme makers of 3 May 2012 he said "...I give a unique perspective based on my own experiences that indeed there is a conspiracy regarding 7/7".

Ofcom took note of the BBC submission that all participants had been provided with an email setting out the format of the programme and that the format and nature of the programme had been explained to potential candidates when they were first interviewed. The BBC did not provide Ofcom with a copy of this email that was sent to Mr Topping specifically. However, from the content of other email correspondence between Mr Topping and the programme makers, it was Ofcom's view it was reasonable for the programme makers to believe that Mr Topping had sufficient information about the format and subject matter of the planned programme prior to giving his informed consent to participate. Ofcom considered that Mr Topping had expressed his interest in contributing to the programme and had been aware of the previous programme (*9/11 Road Trip*) prior to being interviewed as a potential participant on 16 May 2012, and before signing the consent form on 25 May 2012. In particular, Ofcom noted that the form included the programme title and stated that:

"The television documentary focuses on people who doubt the official version of events on 7th July 2005, the day of the bombings in London. You will be going on a road trip in the UK, along with presenter Andrew Maxwell. You will meet people on the trip with whom you will have the opportunity to engage in various discussions, some illustrated with scientific experiments".

In Ofcom's view, the wording of the consent form that Mr Topping signed clearly set out the format of the programme and what Mr Topping could reasonably expect from his participation in it.

Ofcom considered the transcript of Mr Topping's first interview, in which he gave information about his background in security and CCTV and expressed concerns about the lack of CCTV footage placing the bombers at various locations on the day of the 7/7 bombings. Mr Topping discussed various questions and theories about what happened that day and suggested that "...*this is a very dark conspiracy we're obviously dealing with here*", indicating that he saw his concerns about the lack of CCTV footage as part of a wider issue which he was willing to discuss on camera.

Ofcom noted that at the beginning of the programme, the group was seen boarding a bus for their road trip. The presenter said:

"*Good morning and welcome to Conspiracy Road Trip 7/7. Let's begin. OK. Obviously you're all on the bus because you have various doubts and suspicions about the official version of events around 7/7. Is that correct?*".

All members of the group, including Mr Topping, clearly said "Yes".

Ofcom also noted that throughout the programme Mr Topping frequently put forward theories or doubts relating to the “official narrative” of the 7/7 bombings in his own words, indicating that he was aware of the nature and scope of the programme as it was being filmed and that he understood his role and reasons for participating.

Given the information provided to Mr Topping by the programme makers and his correspondence about the programme before filming took place, and taking into account the willingness of Mr Topping to discuss his views during the filming, Ofcom considered that Mr Topping would have had a clear understanding of the format of the programme and the nature his contribution would be. Ofcom therefore considered that the programme makers had given Mr Topping sufficient information about the programme to be able to give informed consent for his participation.

Ofcom noted Mr Topping’s representations on the Preliminary View that he maintained that he was not fully informed about what his contribution would be in the programme; and the BBC’s repeated assertion in response that it rejected Mr Topping’s claim that he was misled. Ofcom’s Preliminary View was careful to examine the measures taken by the programme makers to ensure that Mr Topping and the other contributors had been given sufficient information about the programme’s nature and purpose for them to be able to make an informed decision about whether or not to take part. Without repeating the detail of the measures taken (which are set out above) Ofcom concluded that the programme makers had given Mr Topping sufficient information about the programme to be able to give informed consent for his participation. Ofcom therefore considered that Mr Topping’s representations on the Preliminary View did not raise any points that altered its initial view not to uphold this head of complaint of unjust or unfair treatment.

Ofcom’s decision is that Mr Topping was not treated unfairly in this respect.

- b) Mr Topping said that his contribution was edited in a way that portrayed him unfairly by making him look like a “bizarre conspiracy theorist” and “an idiot”. In particular, Mr Topping said that the programme included a remark (i.e. that the then Labour government was behind the attacks) outside a café which could have potentially put him at risk of a libel action. Mr Topping said that in one hour’s worth of filming he was surprised that only this one remark was used.

In considering this head of the complaint, Ofcom had regard to Practice 7.6 of the Code which states that when a programme is edited, contributions should be represented fairly. It also had regard to Practice 7.9 which states broadcasters should take reasonable care to ensure that material facts have not been presented, or omitted, in a way that is unfair.

Having examined the programme as broadcast and the unedited recordings of interviews with Mr Topping and other participants on the road trip, Ofcom noted from Mr Topping’s first interview that, as well as being asked about CCTV footage he was also asked questions about: his background; where he was at the time of 7/7 bombings; and, whether he had been immediately sceptical about the official version of events upon hearing the news. He was invited to outline his “main points of departure with the official narrative” and also “whether there was anything he wanted to add”. Mr Topping said on camera that he thought *“Tony Blair was a neo-conservative... and I strongly believe that it was, under the Blair government, that it was a purely political motivated false flag operation with a*

wider agenda". Ofcom noted that more footage of the interview was used in the programme later on when Mr Topping was seen introducing himself and explaining his background. Mr Topping was also given opportunities to present his concerns about the lack of CCTV footage to other participants during filming of the road trip, so it was not unreasonable to omit additional footage from the first interview about this specific issue. Ofcom considered therefore that it was not unfair of the programme makers to use this quotation at the beginning of the programme to introduce Mr Topping, as this viewpoint was something he had expressed in email correspondence prior to filming and was something that he appeared to believe prior to the road trip.

Ofcom noted that in his first interview Mr Topping had set out numerous theories about the CCTV footage, about the involvement of the four men held responsible and who could have been ultimately responsible for the 7/7 bombings. The whole premise of the programme was to explore various theories and challenge them on a road trip. Ofcom does not consider presenting Mr Topping's concerns and theories as "conspiracies" resulted in any unfairness to him.

In Ofcom's view, the programme makers were sympathetic to Mr Topping, in so far as the clips that were included in the programme as broadcast, whilst challenging Mr Topping's views, did not portray him as "an idiot" or "bizarre", but rather portrayed someone who, when faced with new information, was able to reassess his views and take a different approach in the face of new evidence. Many of Mr Topping's views changed as a result of the witnesses he encountered and the experiments carried out, to the point that at the end of the programme he thanked the presenter for the experience and said that it had "matured" him. He also said *"...the research I've been looking at and all that kind of thing, you have to be careful what you look at. You have to be sensible with and I've clearly seen now that a conspiracy can be blown out of all proportion..."*.

Ofcom noted that Mr Topping's representations on the Preliminary View reiterated that none of the theories presented in the programme were his ideas. It noted too the BBC's representations in which it refuted Mr Topping's claim and quoted from the responses he had made to the programme makers about his views of the 7/7 bombings. Ofcom's Preliminary View clearly set out Ofcom's consideration of the material included in the programme and the unedited footage that was not broadcast and, in particular, the contribution made by Mr Topping in interviews. It was clear to Ofcom that the views expressed by Mr Topping were his own and appeared to be views he believed in, at least, had done so prior to the road trip. Ofcom therefore considered that Mr Topping's representations on the Preliminary View did not raise any points that altered its initial view that Mr Topping had not been treated unfairly in the programme as broadcast.

Ofcom's decision, therefore, is that the editing of the programme did not result in unfairness to Mr Topping and that his views were not misrepresented or omitted in a way that was unfair to him.

- c) The programme makers gave Mr Topping a guarantee that footage of an argument between members of the group would not appear in the programme. Also the manner in which the argument was edited in the programme made it look as if this was an isolated incident and not connected to the distressing visit they had had with the bereaved father.

In considering this head of the complaint, Ofcom had regard to Practice 7.7 of the Code which states that guarantees given to contributors should normally be honoured. It also had regard to Practice 7.9, as set out under head b) above.

Ofcom noted that the format of the programme and the emotive subject matter would be likely to result in tensions between the participants and that the broadcaster was likely to want to include footage of disagreements between members of the group in the final part of the programme. Ofcom was not in a position to decide whether any specific assurances were or were not given to Mr Topping in respect of the use of footage of the incident on the bus involving Layla and Mr Topping. Ofcom acknowledged that the chronology of events was edited in the programme as broadcast and that a disagreement on the bus first between the presenter and Mr Topping and then between Layla and Mr Topping was shown prior to the visit to the Hyde Park Memorial, when in fact, the visit had occurred prior to the argument. Ofcom took the view that the editing of footage for inclusion in a programme is an editorial decision for the programme makers and broadcaster to make. However, while the programme makers had editorial control over editing the footage and the order in which the material was presented in the programme, they needed to ensure that such editing did not result in unfairness. In this instance, Ofcom considered that the programme makers' decision to change the chronology of events by placing the argument between Mr Topping, the presenter and Layla in the broadcast before their meeting with Mr Fox, did not materially alter the presentation of the relationship between the protagonists. It considered that the deterioration of the relationship between Mr Topping and Layla and her frustration towards his theories had been building slowly throughout the road trip and that the way it was presented was a fair reflection of the feelings members of the group had now at the end of the road trip about the various theories advanced at the beginning of the programme.

Ofcom noted that viewers did not see the build up to the exchange between Layla and Mr Topping, nor would they have been aware of that it took place after the visit to the memorial. However, in Ofcom's view the disagreement did not portray Mr Topping in a disproportionately negative way and did not misrepresent him. In Ofcom's view, the programme as broadcast showed Layla becoming increasingly impatient with Mr Topping and his conspiracy theories and she was featured making what appeared to be a relatively unprovoked attack on Mr Topping and an attempt to undermine him. In response, Mr Topping was not shown as particularly angry or offensive and refusing to argue with Layla further. In Ofcom's view, the footage of the disagreement between Layla and Mr Topping included in the programme, while edited, presented a fair reflection of the disagreement between Layla and Mr Topping and that the manner in which it was shown in the programme did not portray Mr Topping in a way that was unfair to him.

Ofcom noted Mr Topping's representations on the Preliminary View that he reiterated that he had been assured that the footage of the disagreement would not appear in the programme; and the BBC's repeated view in response that none of the production team shared Mr Topping's recollection of what happened after the disagreement on the bus with Layla. Ofcom's Preliminary View clearly stated that Ofcom was not in a position to decide whether or not any specific assurances were given to Mr Topping in relation of the use of footage of the incident involving Layla and Mr Topping. However, Ofcom did consider whether the manner in which the footage was edited and presented in the programme created unfairness to Mr Topping. Ofcom's view was that the programme, while edited, presented a fair reflection of the disagreement between Layla and Mr Topping and that it did not portray him unfairly. Having given due regard to Mr

Topping's representations on the Preliminary View, Ofcom considered that he did not raise any points that altered its initial view that Mr Topping had not been treated unfairly in the programme as broadcast.

Ofcom's decision therefore is that Mr Topping was not treated unfairly in this respect.

Having considered all the relevant representations on Ofcom's Preliminary View from both parties, Ofcom considered that nothing raised in Mr Topping's submissions amounted to sufficient grounds for Ofcom to alter the conclusions set out in its Preliminary View not to uphold his complaint of unjust or unfair treatment.

Accordingly, Ofcom has not upheld Mr Topping's complaint of unjust or unfair treatment in the programme as broadcast.

Not Upheld

Complaint by the Federation of Bakers

50 Shocking Facts about Diet and Exercise, Channel 5, 1 January 2013

Summary

Ofcom has not upheld this complaint of unjust or unfair treatment in the programme as broadcast made by the Federation of Bakers.

The programme complained of claimed to reveal the truth behind what are commonly believed to be healthy foods and methods of exercise and weight loss. The programme format was that of a countdown of 50 foods, exercise regimes and diet methods with industry experts and other contributors commenting on the dangers of the various foods and methods of losing weight. One section of the programme (number “48” in the countdown) highlighted potential health issues associated with eating bread.

Ofcom considered that the broadcaster had taken reasonable care to satisfy itself that the material facts were not presented, omitted or disregarded in a way that portrayed the bread manufacturers whose interests the Federation of Bakers represented unfairly in the programme as broadcast.

Introduction

On 1 January 2013, Channel 5 broadcast *50 Shocking Facts about Diet and Exercise*, which claimed to show the truth behind what are commonly believed to be healthy foods and methods of exercise and weight loss. The programme format was that of a countdown of 50 foods, exercise regimes and diet methods with industry experts and other contributors commenting on the dangers of the various foods and methods of losing weight.

Item number 48 in the countdown was bread and the programme introduced this section by asking “*whether we should be eating bread at all?*” This section lasted about two minutes in total in a programme which had a duration of two hours. The bread item included a contribution from Mr Al Overton, Senior Buyer for Planet Organic, who said that less ingredient information was required on bread packaging than for other foods and that “*one of the most common processing aids for producing bread comes from chicken feathers. How many people knew that? Not many*”. The programme then showed footage of chickens running around a yard accompanied by the voiceover stating “*clucking hell, chicken feathers?*”

The programme next included a contribution from Ms Stephanie Moore, a nutritional therapist, who was shown talking about how modern processes in factory bread making meant that bread could be made in half an hour. She said that there were “*...partially fermented yeasts in bread. It’s no wonder people are getting all sorts of problems. Most people are bloated after eating bread. Why? Because yeast is fermenting in their gut*”. Footage of a man sitting on a couch eating a pile of white bread was then shown and his stomach, which appeared to be bloated, was zoomed in on.

Towards the end of the item on bread in the countdown, the programme’s voiceover stated “*Oh, did I mention modern bread could kill you?*” Another contributor, Dr Carl

Heneghan, Director of the Centre of Evidence-Based Medicine, was then shown in the programme saying that:

“Bread’s got a very high salt content. The problem with that is that it increases the risk of stroke. To take salt completely out of bread, the reduction would be so great that you could probably save about 7,000 strokes a year in the UK”.

Whilst Dr Heneghan was speaking, footage of large piles of salt was shown along with dramatised footage of a man sitting at his computer seemingly suffering from a stroke.

Following the broadcast of the programme, Ofcom received a complaint from the Federation of Bakers, which is a membership organisation for manufacturers of bread and baking products in the UK. The Federation of Bakers complained that the industry it represented was treated unjustly or unfairly in the programme as broadcast.

Summary of the complaint and the broadcaster’s response

The Federation of Bakers complained that the industry it represented was treated unjustly or unfairly in the programme as broadcast in that material facts were presented, disregarded or omitted in a way that was unfair. In particular, the Federation of Bakers complained that:

- a) The programme wrongly claimed that one of the most common processing aids in bread production was chicken feathers.

The Federation of Bakers said that chicken feathers were not used in the production of factory baked bread and that all ingredients were suitable for vegetarians.

In response, Channel 5 stated that the programme had not asserted that chicken feathers were a common ingredient or processing aid in the manufacture of bread and that no reasonable viewer could form this conclusion from the programme. Channel 5 explained that there was a common processing aid used in the manufacture of bread, which was derived from chicken feathers. It said that the processing aid in question was an amino acid, L-cysteine, which was obtained from poultry feathers. Channel 5 said that when added as an ingredient to bread, L-cysteine showed on the product label as E920 or E921, but when it was used as a processing aid, it was not required to be listed on the product label. Channel 5 highlighted the fact that the Federation for Bakers had not stated that L-cysteine was not used in the production of bread, or that L-cysteine was not derived from chicken feathers.

Channel 5 said that it did not dispute the Federation of Bakers’ assertion that “... all ingredients used [in the production of plant baked bread] are suitable for vegetarians”, and stated that the comment about the chicken feathers did not relate to the ingredients used in the manufacture of bread, but to the processing aids used. Channel 5 noted that the Federation of Bakers did not comment on whether or not the processing aids used in the manufacture of bread were suitable for vegetarians. It was concerned that vegetarians and consumers generally remained unaware of the fact that the bread they consumed could contain L-cysteine, which was obtained from animal product.

- b) The programme wrongly stated that bread contained partially fermented yeast and that eating it resulted in bloating.

The Federation of Bakers said that the baking of bread killed yeast and pointed out that the British Nutrition Foundation had found that there was no evidence to suggest that there was a link between bread and digestive issues in healthy individuals.

In response, Channel 5 said that it conceded that Ms Moore, the nutritional therapist who appeared in the programme, could have expressed herself more clearly. It explained that there were two different types of fermentation being referred to by Ms Moore: the fermentation of yeast in the process of preparing dough prior to baking bread; and, the fermentation in the gut that arose because of a condition known as Dysbiosis (where discomfort comes from food being fermented rather than digested). Channel 5 said that the point Ms Moore had tried to make was that today mass-produced bread was made with more yeast than previously and that the baking process no longer required yeast to ferment for twenty four hours prior to baking. This meant that today bread was baked with only partially fermented yeast, rather than fully fermented yeast.

Channel 5 pointed out that it could not find any independent research into the effects on humans of the consumption of bread made with partially fermented yeast. It argued, however, that Ms Moore's studies had led her to believe that people who ate bread, which had been produced in other than traditional ways, suffered more consequences, such as bloating and digestion problems, than those people who did not.

Channel 5 said that Ms Moore's statement that *"Most people are bloated after eating bread. Why? Because the yeast is fermenting in their gut"* would have led the reasonable viewer to conclude that some people would be better off, and would not experience bloating problems, if they stopped eating bread produced in the modern way with short yeast fermentation times. It said that it was the case that longer fermented bread was more digestible and less likely to lead to Dysbiosis and other medical conditions.

Channel 5 noted that the Federation of Bakers had drawn Ofcom's attention to a report by the British Nutrition Foundation as part of its complaint. Part of that report stated:

"...when searching for studies on yeast without restricting the search to yeast found in bread, again, no evidence was found that would support the claim that the yeast in bread is associated with gastrointestinal symptoms. Therefore, it is impossible to confirm or reject claims that a higher amount of yeast added to dough of bread made with CBP [Chorleywood Bread Process] is responsible for gastrointestinal problems".

Channel 5 said that rather than support the Federation of Bakers' argument that there was no link between bread and digestive issues, it believed that the report, in fact, made it clear that modern processed bread may be responsible for gastrointestinal problems. Channel 5 also pointed out that there was nothing controversial in its view that bread could cause bloating and that the issue had been raised in the media previously. Channel 5 stated that it was a fact that longer-fermented bread was more digestible and less likely to lead to Dysbiosis and other medical conditions. It stated that it was also a fact that modern

manufactured bread was baked with shorter yeast fermentation times and using more yeast than with traditional baking methods.

Channel 5 said that it did not accept that the programme as broadcast resulted in unfairness to the bread industry. However, it said that if the programme were to be broadcast again, it would ensure that it was edited to make Ms Moore's comments clearer.

- c) The programme wrongly stated that "*Bread could kill you*" and that this was because of the "*very high salt content*" in bread.

The Federation of Bakers said that bread was not considered a salty product and that all factory produced bread had the salt content clearly displayed on its packaging. It also said that the Federation of Bakers' members had met all salt content targets set for the industry by the Food Standards Agency ("FSA").

In response, Channel 5 said that reasonable viewers would not have understood the programme to be asserting that bread was so salty that its consumption could be deadly. It said that the programme made it clear that less salt in bread would be likely to lead to a reduction in the number of people who suffered fatal strokes. It argued that despite meeting FSA targets on the reduction of salt in bread, bread was still the primary single source of salt in people's diets and that salt was a major health concern. Channel 5 referred to the NHS Choices' website¹, which stated that:

"Many of us in the UK eat too much salt. Too much salt can raise your blood pressure, which puts you at increased risk of health problems such as heart disease and stroke. You don't have to add salt to food to be eating too much: 75% of the salt we eat is already in everyday foods such as bread, breakfast cereal and ready meals. But a diet that is high in salt can cause raised blood pressure, which around one third of adults in the UK already have. High blood pressure often has no symptoms. But if you have it, you are more likely to develop heart disease or have a stroke. Cutting down on salt reduces blood pressure, which means that your risk of developing stroke or heart disease is reduced".

Channel 5 said that there was no question that consuming high levels of salt could cause serious health problems. It said that NHS figures suggested that reducing salt from bread would be likely to save 16,588 preventable deaths per year. Channel 5 said that, therefore, it was conceivable that, given this, permitting bread to retain salt at the present levels, would likely contribute to around 16,588 deaths per year.

Channel 5 stated that there was no relevant misrepresentation of fact in the programme in relation to the presence of salt in bread and its consequent health issues. Channel 5 therefore did not accept that the programme as broadcast resulted in any unfairness to the bread industry.

Representations on Ofcom's Preliminary View

Ofcom prepared a Preliminary View in this case that the Federation of Bakers' complaint of unjust or unfair treatment in the programme as broadcast should not be upheld. Both parties were given the opportunity to comment on the Preliminary View.

¹ www.nhs.uk/livewell/goodfood/pages/salt.aspx

Ofcom has summarised below the main points made by the Federation of Bakers and Channel 5 in their representations on the Preliminary View that were directly relevant to the complaint responded to by the broadcaster and considered by Ofcom.

- a) The programme wrongly claimed that one of the most common processing aids in bread production was chicken feathers.

The Federation of Bakers' representations

The Federation of Bakers stated that it agreed that on reading the transcript of the programme, the programme referred to a common processing aid derived from chicken feathers. It stated, however, that in the absence of a transcript, viewers would be left with the impression that the programme was asserting that bread was made with chicken feathers.

The Federation of Bakers pointed out that L-cysteine was a flour treatment agent and that whether used as an additive or a processing aid, it must be declared on packaging as a flour treatment agent. It therefore felt that Channel 5's assertion that, where L-cysteine was used as a processing aid, it was not required to be listed on the product label was incorrect. The Federation of Bakers stated that it was able to confirm that all L-cysteine used by its members in their products came entirely from synthetic sources, and that these products were therefore suitable for vegetarians.

Channel 5's representations

In response, Channel 5 pointed out that the Federation of Bakers did not represent every manufacturer of sliced bread in the UK, nor did the programme focus on sliced bread particularly. It said that the programme discussed the manufacture of bread generally and not that made only by Federation of Bakers' members.

Channel 5 said that it was not disputed that L-cysteine could come from animal sources and was used in the manufacture of bread. It said that the complaint could only have merit if it were the case that every bread manufacturer in the UK did not use L-cysteine as part of the bread manufacturing process. In any event, Channel 5 stated that the complaint was that the programme wrongly claimed that one of the most common processing aids in bread was chicken feathers, but it had been established that the programme stated "*one of the most common processing aids for making bread comes from chicken feathers*".

- b) The programme wrongly stated that bread contained partially fermented yeast and that eating it resulted in bloating.

The Federation of Bakers' representations

The Federation of Bakers stated that all live yeasts were capable of gas production, but that the baking process deactivated yeast (no matter which baking process was used) and that as such the yeast used in bread making was not capable of gas production. It stated that the claim that modern bread caused bloating, because of the shorter fermentation times, was therefore inaccurate and misleading.

Channel 5's representations

Channel 5 stated that whilst the Federation of Bakers had challenged Ofcom's Preliminary View, it had not raised any matters which had not already been dealt with in Channel 5's original response and Ofcom's Preliminary View. Channel 5 accepted the decision in the Preliminary View to be correct, that the complaint should not be upheld.

- c) The programme wrongly stated that "*Bread could kill you*" and that this was because of the "*very high salt content*" in bread.

The Federation of Bakers' representations

The Federation of Bakers pointed out that salt was an essential ingredient in bread. With reference to the NHS Livewell website, referred to in Channel 5's original response to the complaint, the Federation of Bakers said that it highlighted that bread was rated "amber" for salt under the traffic light labelling system (red being an indicator of the highest level).

It also pointed out that Channel 5 discussed the salt content in loaves of bread rather than that in individual slices which it felt had the potential to mislead regarding the amount of salt actually being consumed. It stated that it did not refute the link between salt intake and high blood pressure, or the contribution that consuming bread could make in daily diets in the consumption of salt, however it said that bread manufacturers had made great efforts to address this concern.

Channel 5's representations

Channel 5 stated that whether or not efforts had been made to improve the levels of salt in bread, or whether the level of salt in bread did or did not meet government standards, was not to the point. It said that the programme was simply about the presence of salt in bread.

Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a transcript and both parties' written submissions.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of

Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its decision. When considering each of the heads of complaint below, Ofcom took into consideration Practice 7.9 of the Code which states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

The Code recognises the importance of freedom of expression and the need to allow broadcasters the freedom to broadcast matters of a genuine public interest. However, in presenting material that could be regarded as amounting to significant allegations, reasonable care must be taken not to do so in a manner that does not cause unfairness to individuals or organisations.

- a) Ofcom first considered the complaint that the bread industry had been treated unjustly and unfairly in the programme as broadcast, in that the programme wrongly claimed that one of the most common processing aids in bread production was chicken feathers.

Ofcom noted the comments made by Mr Overton, Senior Buyer for Planet Organic, in the programme:

"... One of the very interesting things about bread is that the ingredients declaration required for it is less than it is for other foods. So for instance, one of the most common processing aids for making bread comes from chicken feathers. How many people knew that? Not many".

Ofcom also noted that following Mr Overton's comments, footage of chickens was shown with an accompanying voiceover which commented "*clucking hell, chicken feathers?*"

It is important to note that it is not for Ofcom to investigate and adjudicate on whether a statement broadcast is factually correct or not, but rather to consider whether the inclusion of a statement and or accompanying footage amounted to unjust or unfair treatment of an individual and or organisation. In this case, Ofcom noted that Mr Overton had stated in the programme that "*... one of the most common processing aids for making bread **comes from** [Ofcom's emphasis] chicken feathers*". Ofcom understood from Channel 5's submissions a common processing aid in the modern manufacture of bread was L-cysteine, an amino acid derived from chicken feathers.

In these circumstances, Ofcom considered that the comments made in the programme would have been likely to have been understood by viewers to mean that a substance that "*comes from*", i.e. is derived from, chicken feathers and not that actual chicken feathers were used as a processing aid in bread production. Ofcom therefore did not consider that Mr Overton's comments in the programme were likely to mislead viewers in a way that would materially and adversely affect the bread manufacturers whose interests the Federation of Bakers represented.

Ofcom noted the comments made by the Federation of Bakers in its representations on the Preliminary View and that it confirmed that all L-cysteine used by its members in their products was entirely from synthetic sources and therefore suitable for vegetarians. However, Ofcom also noted that the Federation of Bakers did not dispute the fact that some L-cysteine, was made from animal sources such as chicken feathers. Given that the Federation of Bakers did not represent all bread manufacturers in the UK, and has not shown

that no bread manufactures in the UK use L-cysteine derived from chicken feathers, Ofcom considered that the claim “... *one of the most common processing aids for making bread comes from* [Ofcom’s emphasis] *chicken feathers*” was unlikely to mislead viewers and in doing so cause unfairness to the bread industry generally. Ofcom considered that the points raised by the parties did not alter its view not to uphold this head of the complaint.

Ofcom considered that there was no unjust or unfair treatment in this respect.

- b) Ofcom next considered the complaint that the bread industry had been treated unjustly and unfairly in the programme as broadcast, in that the programme wrongly stated that bread contained partially fermented yeast and that eating it resulted in bloating.

Ofcom noted the contribution made by Ms Moore, a nutritional therapist, who was shown talking about problems with modern bread manufacturing processes:

“Now they’re making bread in half an hour. They’ve got partially fermented yeasts in bread. It’s no wonder that people are getting all kinds of problems. Most people are bloated after eating bread. Why? Because the yeast is fermenting in their gut”.

It noted too that this was immediately followed by footage of a man sitting on a couch eating a pile of white bread, and his stomach, which appeared to be bloated, was zoomed in on.

Ofcom considered that Ms Moore’s comment that “*Most people are bloated after eating bread*” was presented as Ms Moore’s opinion. Again, and as already mentioned above, it is not Ofcom’s role to establish whether the substance of opinions are correct or not, but to determine whether in broadcasting them, the broadcaster took reasonable care not to present, disregard or omit material facts in a way that was unfair to the bread industry. In doing so, Ofcom considered the context of Ms Moore’s opinion as expressed in the programme and whether the programme’s presentation of her opinion resulted in unfairness to the bread industry that the Federation of Bakers represented.

Ofcom noted that Channel 5 argued in its submissions that Ms Moore’s own studies had led her to believe that patients who ate bread, which had been produced in other than traditional ways, suffered more consequences, like bloating and digestion problems, than patients who did not. Ofcom considered that the programme highlighted breads produced by modern factory methods potential to cause discomfort to some people who consumed it and did not believe there to be conclusive evidence to the contrary. It considered that the programme did not purport to present a conclusive scientific analysis of the health benefits and problems associated with eating bread, but simply highlighted an observation, made by Ms Moore, based on her studies, that bread appeared to be the cause of bloating in some people.

Ofcom accepted that Channel 5 conceded that Ms Moore could have expressed herself more clearly, regarding the different types of fermentation processes which she discussed. However, having examined what was said and the context it was given, Ofcom considered that Ms Moore’s comments in the programme were unlikely to mislead viewers in a way that would materially and adversely affect the bread manufacturers, whose interests the Federation of Bakers represented.

Ofcom noted the comments made by the Federation of Bakers in its representations on the Preliminary View, regarding whether shorter fermentation times in the manufacture of modern bread were responsible for bloating. Ofcom considered that it had taken account of all relevant factors concerning this issue in the Preliminary View, and was not persuaded by the Federation of Bakers' representations in any way that caused it to alter its Preliminary View that the complaint should not be upheld.

Ofcom considered that there was no unjust or unfair treatment in this respect.

- c) Ofcom also considered the complaint that the programme wrongly stated that *"Bread could kill you"* and that this was because of the *"very high salt content"* in bread.

Ofcom noted that towards the end of the item on bread, the programme's voiceover said *"Oh, did I mention modern bread could kill you?"* This was followed by a contribution from Dr Heneghan, Director of the Centre of Evidence-Based Medicine, who said:

"Bread's got a very high salt content. The problem with that is that it increases the risk of stroke. To take salt completely out of bread, the reduction would be so great that you could probably save about 7,000 strokes a year in the UK".

Ofcom noted that Dr Heneghan's comments were accompanied by footage of large piles of salt and dramatised footage of a man sitting at his computer seemingly suffering from a stroke.

Ofcom considered these comments, including the footage of piles of salt and the man acting out a stroke at his desk.

Ofcom took the view, having watched the programme, that the material included in it had been had been intentionally presented in a way that was light-hearted in nature and that most viewers were likely to have understood the style in which the information was included. In this context, Ofcom considered that the comment *"Bread could kill you"*, was not given as a serious warning that eating bread, in itself, could be fatal. Ofcom recognised that it was widely accepted that consuming high levels of salt, be it from eating bread or any other food, could be detrimental to an individual's health. Ofcom considered that it would be reasonable to assume that most viewers would have taken from the comment made in the programme that consuming high levels of salt could be dangerous, and that bread (just one of many other foods which viewers may not have previously considered in relation to salt content) could contribute to their general daily salt intake. Ofcom considered that it was made clear, from the qualifying comments from Dr Heneghan that followed the programme statement, that bread had a *"very high salt content"* and that a reduction in that content would prevent a considerable number of strokes per year.

Given the factors considered above, Ofcom considered that the comment complained about in the programme was unlikely to mislead viewers in a way that would materially and adversely affect the bread manufacturers whose interests the Federation of Bakers represented.

Ofcom noted the comments made by the Federation of Bakers in its representations on the Preliminary View, regarding the salt content in bread, but considered that it had taken account of all relevant factors concerning this issue

in the Preliminary View, and was not persuaded by the Federation of Bakers' representations so as to alter its Preliminary View that the complaint should not be upheld.

Ofcom considered therefore that there was no unjust or unfair treatment in this respect.

Having considered each head of the complaint made by the Federation of Bakers separately, and in the context of the programme as a whole, Ofcom considered that viewers' attitudes towards consuming bread were unlikely to be materially or adversely influenced by the comments made in the programme. The comments did not refer to a particular bread manufacturer or collective group of bread manufacturers. Rather, the comments were made broadly and with specific regard to the modern bread manufacturing processes generally. Ofcom took the view that, while the programme encouraged viewers to question what they may have understood about healthy foods and methods of exercise and weight loss, it did not present itself as a serious news and current affairs programme, where viewers might expect to be presented with much more researched analysis and opinion on a subject. The information included in the programme was, in contrast, presented in an exaggerated and humorous manner, in a format that viewers were likely to be accustomed to, i.e. the presentation of potentially complex issues in short snippets of information in a relatively short space of time (approximately two minutes out of a two hour long programme). Broadcasters should note, however, that even in factual entertainment programmes of a light hearted nature, they must ensure that the content is sufficiently accurate that it does not result in unjust or unfair treatment.

In this case, taking the complaint of unjust or unfair treatment in the programme as broadcast overall, Ofcom considered that the broadcaster had taken reasonable care to satisfy itself that the material facts (as detailed in the heads of complaint above) were not presented, omitted or disregarded in a way that portrayed the bread manufacturers whose interests the Federation of Bakers represented unfairly in the programme as broadcast.

Accordingly, Ofcom has not upheld this complaint of unjust or unfair treatment in the programme as broadcast made by the Federation of Bakers.

Other Programmes Not in Breach

Up to 20 May 2013

Programme	Broadcaster	Transmission Date	Categories
BBC News at Ten	BBC 1	15/02/2013	Under 18s in programmes
Emmerdale	ITV	23/04/2013	Violence and dangerous behaviour
Lee Nelson's Well Funny People	BBC 3	11/04/2013	Race discrimination/offence
Oggerz Breakfast	Kane FM 103.7	05/04/2013	Generally accepted standards
Samjhota Express	PTV Global	24/03/2013	Religious/Beliefs discrimination/offence
The Incredible Mr Goodwin	Watch	24/03/2013	Violence and dangerous behaviour
The Village	BBC 1	07/04/2013	Suicide and self harm
You've Been Framed!	ITV	13/04/2013	Under 18s in programmes

Complaints Assessed, not Investigated

Between 7 and 20 May 2013

This is a list of complaints that, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
10 O'Clock Live	Channel 4	15/05/2013	Generally accepted standards	1
10 O'Clock Live	Channel 4	17/05/2013	Generally accepted standards	1
118 118 sponsorship credits	ITV2	28/04/2013	Sponsorship credits	1
5 News	Channel 5	14/05/2013	Scheduling	1
Adventure Time	Cartoon Network	11/04/2013	Offensive language	1
Advertisements	Heart FM	n/a	Advertising minutage	1
Advertisements	Watch	25/04/2013	Advertising minutage	1
Agatha Christie's Poirot	ITV3	17/05/2013	Advertising scheduling	1
'Allo 'Allo	Gold	28/04/2013	Scheduling	1
Animal Antics	BBC 3	04/05/2013	Animal welfare	1
Asia Bhi Hota Hai	Samaa TV	14/04/2013	Advertising/editorial distinction	1
Bangladesh Today	CHSTV	27/03/2013	Religious/Beliefs discrimination/offence	2
Banshee	Sky Atlantic	04/05/2013	Generally accepted standards	1
Barely Legal Drivers	BBC 3	12/04/2013	Outside of remit / other	1
Basic Instinct	ITV	04/05/2013	Generally accepted standards	1
BBC News	BBC 1	09/05/2013	Outside of remit / other	1
BBC News	BBC 2	17/05/2013	Outside of remit / other	1
BBC News	BBC News	19/05/2013	Outside of remit / other	1
BBC News	BBC News	n/a	Due impartiality/bias	1
BBC News	BBC News	n/a	Outside of remit / other	1
BBC News	BBC Radio 2	15/05/2013	Scheduling	1
BBC News	BBC Radio 2	19/05/2013	Scheduling	1
BBC News	BBC Radio 4	13/05/2013	Generally accepted standards	1
BBC News at One	BBC 1	14/05/2013	Generally accepted standards	1
BBC News at Six	BBC 1	08/05/2013	Outside of remit / other	1
BBC News at Ten	BBC 1	03/05/2013	Outside of remit / other	1
BBC Newsline	BBC 1 Northern Ireland	29/04/2013	Generally accepted standards	1
BBC Wales Today	BBC 1 Wales	07/05/2013	Outside of remit / other	1
Ben Fogle: New Lives in the Wild	Channel 5	13/05/2013	Animal welfare	1
Bradford: City of Dreams	BBC 2	09/05/2013	Outside of remit / other	2

Bradford: City of Dreams	BBC 2	16/05/2013	Outside of remit / other	1
Brainiac: Science Abuse	Challenge	03/05/2013	Nudity	1
Breakfast	BBC 1	04/05/2013	Drugs, smoking, solvents or alcohol	1
Breakfast	BBC 1	08/05/2013	Generally accepted standards	1
Breakfast	BBC 1	10/05/2013	Outside of remit / other	1
British Academy Television Awards	BBC 1	12/05/2013	Outside of remit / other	1
British Academy Television Awards	BBC 1	12/05/2013	Transgender discrimination/offence	1
Butterflies	Yesterday	22/04/2013	Generally accepted standards	1
Capital Breakfast	Capital FM	14/05/2013	Offensive language	1
Capital Breakfast with Hirsty, Danny and Jojo	Capital Radio - Yorkshire	14/05/2013	Offensive language	1
Caroline Quentin's National Parks	ITV	07/05/2013	Religious/Beliefs discrimination/offence	5
Casualty	BBC 1	04/05/2013	Drugs, smoking, solvents or alcohol	1
Catchphrase	ITV	28/04/2013	Outside of remit / other	1
Celebrity Juice	ITV2	18/05/2013	Race discrimination/offence	1
Channel 4 News	Channel 4	01/05/2013	Due impartiality/bias	1
Channel 4 News	Channel 4	03/05/2013	Due impartiality/bias	1
Charity Appeal	Channel i	14/04/2013	Sponsorship credits	1
Charity Appeal	Channel i	29/04/2013	Sponsorship credits	1
Chase	ITV	n/a	Materially misleading	1
Concorde	BBC Radio 4	10/05/2013	Generally accepted standards	1
Cooking with Siba	The Africa Channel	07/05/2013	Offensive language	1
Coronation Street	ITV	10/05/2013	Disability discrimination/offence	8
Cricket	ITV4	15/05/2013	Advertising scheduling	1
Danny Kelly	BBC Radio WM	26/04/2013	Race discrimination/offence	1
Daybreak	ITV	03/05/2013	Generally accepted standards	4
Daybreak	ITV	15/05/2013	Generally accepted standards	3
Deal or No Deal	Channel 4	17/05/2013	Scheduling	1
Diaaubati	Star Plus	13/05/2013	Advertising minutage	1
Dickinson's Real Deal	ITV	10/05/2013	Competitions	1
Doctor Who	BBC 1	04/05/2013	Religious/Beliefs discrimination/offence	1
Doctor Who	BBC 1	04/05/2013	Scheduling	1
Doctors	BBC 1	14/05/2013	Generally accepted standards	1
EastEnders	BBC 1	02/05/2013	Generally accepted standards	1
EastEnders	BBC 1	07/05/2013	Drugs, smoking, solvents or alcohol	1

EastEnders	BBC 1	07/05/2013	Generally accepted standards	1
EastEnders	BBC 1	07/05/2013	Race discrimination/offence	1
EastEnders	BBC 1	09/05/2013	Generally accepted standards	1
EastEnders	BBC 1	14/05/2013	Scheduling	1
Eddie Stobart: Trucks and Trailers	Channel 5	03/05/2013	Generally accepted standards	1
Eddie Stobart: Trucks and Trailers	Channel 5	03/05/2013	Offensive language	1
Embarrassing Bodies	Channel 4	07/05/2013	Gender discrimination/offence	1
Embarrassing Bodies	Channel 4	07/05/2013	Nudity	3
Embarrassing Bodies	Channel 4	14/05/2013	Generally accepted standards	1
Emmerdale	ITV	03/05/2013	Religious/Beliefs discrimination/offence	1
Emmerdale / Coronation Street	ITV	n/a	Generally accepted standards	1
Endeavour	ITV	21/04/2013	Drugs, smoking, solvents or alcohol	1
Entertainment Ke Liye Aur Bhi Kuch Karega	SAB TV	n/a	Outside of remit / other	1
Eurovision Song Contest 2013: Semi-Final Two	BBC 3	16/05/2013	Generally accepted standards	1
Evening Report	Sky Sports News	11/05/2013	Offensive language	1
FA Cup Final	ITV	11/05/2013	Fairness & Privacy	1
FA Cup Final	ITV	11/05/2013	Generally accepted standards	1
Fake Britain	BBC 1	13/05/2013	Gender discrimination/offence	1
Fear Factor	Channel 5	07/05/2013	Animal welfare	1
Fit	CBBC	29/04/2013	Violence and dangerous behaviour	1
Flava	Flava	21/04/2013	Generally accepted standards	1
Foxy Bingo's sponsorship of The Jeremy Kyle Show	ITV	09/05/2013	Generally accepted standards	1
Foxy Bingo's sponsorship of The Jeremy Kyle Show	ITV	n/a	Generally accepted standards	1
Futurama	Sky1	09/05/2013	Offensive language	1
Game of Thrones	Sky Atlantic	06/05/2013	Advertising scheduling	1
Gillette Soccer Saturday	Sky Sports News	04/05/2013	Religious/Beliefs discrimination/offence	1
God Channel	God Channel	08/05/2013	Outside of remit / other	1
Gouover 71 Special	Bangla TV	26/03/2013	Violence and dangerous behaviour	1
Grand Designs	More4	17/05/2013	Offensive language	2
Green Lantern - In Love and War	Cartoon Network	04/05/2013	Scheduling	1
Halfords sponsorship credit	Dave	02/05/2013	Advertising content	1
Halfords sponsorship credit	ITV	17/05/2013	Generally accepted standards	1

Have I Got News for You	BBC 1	03/05/2013	Outside of remit / other	1
Have I Got News for You	BBC 1	10/05/2013	Generally accepted standards	1
Have I Got News for You	BBC 1	10/05/2013	Race discrimination/offence	1
Heart Breakfast	Heart FM Oxfordshire	09/05/2013	Generally accepted standards	1
Holby City	BBC 1	14/05/2013	Generally accepted standards	1
Israel: Facing the Future	BBC 2	17/04/2013	Outside of remit / other	1
ITV News at Ten and Weather	ITV	17/05/2013	Due impartiality/bias	1
ITV News Calendar	ITV Yorkshire	22/04/2013	Due accuracy	1
ITV News London	ITV London	14/05/2013	Scheduling	1
ITV News Lookaround	ITV Border (English)	26/04/2013	Generally accepted standards	1
ITV2 ident	ITV2	06/05/2013	Violence and dangerous behaviour	1
Jaloos 2013	Noor TV	21/04/2013	Religious/Beliefs discrimination/offence	1
James Max	LBC 97.3FM	18/05/2013	Generally accepted standards	1
James Max	LBC 97.3FM	19/05/2013	Generally accepted standards	1
James O'Brien	LBC 97.3FM	08/05/2013	Generally accepted standards	1
Keeping Britain Alive: The NHS in a Day	BBC 2	07/05/2013	Outside of remit / other	1
Kiss Breakfast	Kiss FM	08/05/2013	Generally accepted standards	1
Kisstory	Kiss FM - Norwich	06/05/2013	Scheduling	1
Ladyboys	Sky Living	03/05/2013	Materially misleading	1
Ladyboys	Sky Living	03/05/2013	Race discrimination/offence	1
Live Boxing	Box Nation	17/04/2013	Outside of remit / other	1
Live Test Cricket	Sky Sports 3	19/05/2013	Outside of remit / other	1
Lizard Lick Towing	Dave	24/04/2013	Offensive language	1
Lizard Lick Towing	Dave	11/05/2013	Violence and dangerous behaviour	1
Look East	BBC 1	17/04/2013	Generally accepted standards	1
Most Haunted	Pick TV	03/05/2013	Materially misleading	1
Most Haunted	Pick TV	06/05/2013	Materially misleading	1
Mukto Shonglap	ATN Bangla	08/04/2013	Due impartiality/bias	1
Nationwide Insurance sponsorship credits	Alibi	05/05/2013	Outside of remit / other	1
NCIS	Five USA	09/05/2013	Due impartiality/bias	1
News	Real Radio Wales	01/05/2013	Due accuracy	1
News programming	Various	04/05/2013	Religious/Beliefs discrimination/offence	1
News programming	Various	n/a	Due impartiality/bias	1
Newsnight	BBC 2	07/05/2013	Outside of remit / other	1

Nick Hower: Countdown to Freetown	Channel 4	07/04/2013	Religious/Beliefs discrimination/offence	1
Off Their Rockers	STV	05/05/2013	Generally accepted standards	1
Party Election Broadcast by the UK Independence Party	Various	15/01/2013	Materially misleading	1
Party Political Broadcast by the Conservative Party	Various	n/a	Outside of remit / other	1
Pop's Greatest Dance Crazes	BBC 3	15/05/2013	Scheduling	1
Programme information	Movie Mix	n/a	Information/warnings	1
Programming	BBC channels	n/a	Outside of remit / other	1
Programming	Various	n/a	Outside of remit / other	2
Psychic Today	Psychic Today	30/04/2013	Generally accepted standards	1
Puppy SOS	Pick TV	13/05/2013	Animal welfare	1
Puppy SOS	Sky Living	13/05/2013	Animal welfare	1
Qatar Airways' sponsorship of Sky Weather	Sky News	n/a	Sponsorship	1
Question Time	BBC 1	09/05/2013	Generally accepted standards	1
Question Time	BBC 1	09/05/2013	Race discrimination/offence	1
Radio XL	Radio XL	n/a	Generally accepted standards	1
Red Light Babes	Red Light 3	05/04/2013	Harm	1
Regional News and Weather	BBC 1	08/05/2013	Outside of remit / other	2
Regional News and Weather	BBC 1	14/05/2013	Outside of remit / other	1
Russell Howard's Good News Extra	BBC 3	12/05/2013	Generally accepted standards	1
Saath Nibhana Saathiya	Star Plus UK	09/04/2013	Generally accepted standards	1
Samaa Metro	Samaa	23/03/2013	Religious/Beliefs discrimination/offence	1
Scott and Bailey	ITV	n/a	Gender discrimination/offence	1
Secrets of the Shoplifters	Channel 4	16/04/2013	Crime	1
Sex on Wheels	Channel 4	09/05/2013	Generally accepted standards	3
Skint	Channel 4	13/05/2013	Materially misleading	1
Sky News	Sky News	03/05/2013	Due impartiality/bias	1
Sky News	Sky News	04/05/2013	Due accuracy	1
Sky Sports Football - Hull v Cardiff	Sky Sports 1	04/05/2013	Religious/Beliefs discrimination/offence	1
Snog, Marry, Avoid?	BBC 3	11/05/2013	Race discrimination/offence	1
Something for the Weekend	Meridian FM	12/04/2013	Scheduling	1
Something for the Weekend	Meridian FM	12/04/2013	Sexual material	1
Sportsline	Sky News	04/05/2013	Religious/Beliefs discrimination/offence	1

Station promotion	Radio Hartlepool	27/03/2013	Materially misleading	1
Strictly Baby Fight Club	Really	23/04/2013	Under 18s in programmes	1
Super Sunday	Sky Sports 1	05/05/2013	Offensive language	1
Sweat the Small Stuff	BBC 3	12/05/2013	Generally accepted standards	1
Ted	Sky Premier +1	06/05/2013	Scheduling	1
The Apprentice	BBC 1	08/05/2013	Generally accepted standards	2
The BAFTA Awards	BBC 1	12/05/2013	Outside of remit / other	1
The Big Bang Theory	E4	09/05/2013	Offensive language	1
The Dam Busters	Channel 5	18/05/2013	Offensive language	1
The Goonies	Watch	05/05/2013	Suicide and self harm	1
The Jeremy Kyle Show	ITV	26/04/2013	Generally accepted standards	1
The Jeremy Kyle Show	ITV	20/05/2013	Offensive language	1
The Job Lot	ITV	29/04/2013	Disability discrimination/offence	1
The Politicians Husband	BBC 2	02/05/2013	Generally accepted standards	2
The Politician's Husband	BBC 2	n/a	Generally accepted standards	1
The Prisoners	BBC 1	22/04/2013	Television Access Services	1
The Radio 1 Breakfast Show with Nick Grimshaw	BBC Radio 1	15/05/2013	Generally accepted standards	1
The Real Housewives of Atlanta	ITV2	22/04/2013	Harm	1
The Repo Man	Channel 4	02/05/2013	Fairness & Privacy	1
The Repo Man	Channel 4	02/05/2013	Generally accepted standards	2
The Repo Man	Channel 4	09/05/2013	Crime	1
The Repo Man	Channel 4	09/05/2013	Generally accepted standards	1
The Repo Man	Channel 4	09/05/2013	Violence and dangerous behaviour	1
The Repo Man	Channel 4	16/05/2013	Generally accepted standards	1
The Valleys	MTV	05/05/2013	Generally accepted standards	1
The Village	BBC 1	05/05/2013	Under 18s in programmes	1
The Voice UK	BBC 1	11/05/2013	Generally accepted standards	1
The World This Weekend	BBC Radio 4	19/05/2013	Sexual orientation discrimination/offence	1
The Wright Stuff	Channel 5	07/05/2013	Religious/Beliefs discrimination/offence	1
The Wright Stuff	Channel 5	09/05/2013	Age discrimination/offence	1
The Wrong Show with Tim Shaw	Key 103	21/04/2013	Gender discrimination/offence	1
This Morning	UTV	01/05/2013	Generally accepted standards	1

TNA	Challenge	21/04/2013	Violence and dangerous behaviour	1
Today	BBC Radio 4	08/05/2013	Scheduling	1
Today	BBC Radio 4	09/05/2013	Generally accepted standards	1
Trailer Fear Factor	5*	07/05/2013	Generally accepted standards	1
Träskjägarna	TV10	20/03/2013	Animal welfare	1
Vicious	ITV	29/04/2013	Sexual orientation discrimination/offence	1
Vicious	ITV	02/05/2013	Generally accepted standards	1
Watchdog	BBC 1	15/05/2013	Outside of remit / other	1
Whatever Happened to the Likely Lads?	BBC 4	08/05/2013	Sexual orientation discrimination/offence	1
Whitney	Comedy Central +1	04/05/2013	Offensive language	1
You've Been Framed!	ITV	27/04/2013	Violence and dangerous behaviour	1
You've Been Framed!	ITV2	05/05/2013	Scheduling	1
You've Been Framed!	ITV2	18/05/2013	Scheduling	1
You've Been Framed!	STV	27/04/2013	Generally accepted standards	1

Investigations List

If Ofcom considers that a broadcast may have breached its codes, it will start an investigation.

Here is an alphabetical list of new investigations launched between 9 and 22 May 2013.

Programme	Broadcaster	Transmission date
Advertisements	Channel Nine UK	04 April 2013
Advertising minutage	ARY News	Various
Advertising minutage	TCM2	22 March 2013
Advertising scheduling	Various	Various
Battle Scarred: Soldiers Behind Bars	Channel 5	8 April 2013
Bavaria Beer's sponsorship of The Job Lot	ITV1	13 May 2013
Drivetime	Gravity FM	18 April 2013
Granada Reports	ITV (Granada)	6 February 2013
Inside Hollywood	5 USA	15 May 2013
Loose Women	ITV	1 May 2013
Metro Life	NTV	20 April 2013
News	IBC Tamil Radio	Various
Priyo Shilpi Priyo Gaan	Channel Nine UK	17 April 2013
Skint	Channel 4	13 May 2013
Sky Poker	SkyPoker.com	16 April 2013
Something for the Weekend / School's Out	Meridian FM	Various
Studio 66 TV3	Studio 66 TV3	05 March 2013
Various	ATN Bangla	14 February 2013

It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster has done anything wrong. Not all investigations result in breaches of the Codes being recorded.

For more information about how Ofcom assesses complaints and conducts investigations go to:

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

For fairness and privacy complaints go to:

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