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Introduction

Some of the following complaints were received by the legacy regulators prior to the commencement of Ofcom. Under the terms of the Communications Act 2003, they became the responsibility of Ofcom on 29 December 2003.

The Communications Act allows for the Codes of the legacy regulators to remain in force until such time as Ofcom has developed its own Codes. These will be published at the end of 2004 following a full public consultation.

The Codes currently in force for programming are:

- **Advertising and Sponsorship Code**
  Radio Authority

- **News & Current Affairs Code and Programme Code**
  Radio Authority

- **Code on Standards**
  Broadcasting Standards Commission

- **Code on Fairness and Privacy**
  Broadcasting Standards Commission

- **Programme Code**
  Independent Television Commission

- **Code of Programme Sponsorship**
  Independent Television Commission

The cases have been considered against the above Codes.

- Some programmes will have breached the relevant Code (Upheld).
- Others will not have breached the code (Not upheld).
- However, there may be occasions where Ofcom recognises that a broadcaster has taken appropriate action in response to an issue (for instance, the broadcaster may recognise that an error has occurred and taken responsible steps to rectify it). But even when such action has been taken, Ofcom may still consider it appropriate to find that the programme breached the Code due to the seriousness of the issues involved.

The layout of the report reflects these distinctions.
Standards cases

Significant Interventions

**XplicitXXX**
6, 18, 19, 20 December, 20:30 and 14, 15 January, 22:00

**Issue**

XplicitXXX is a subscription adult service that broadcasts encrypted content from 22:00 nightly. Between 20:30 and 22:00 the channel broadcasts, unencrypted, free-to-air previews of their encrypted output. This is to persuade viewers to subscribe. The ‘freeview’ material from 20:30 to 22:00 should be suitably edited.

Two viewers complained that, on 6 December, the channel was broadcasting explicit sexual images in its ‘freeview’ transmission shortly after 20:30.

A viewer also complained that, on the evenings of 14 and 15 January, the ‘freeview’ section had been extended until 22:05 with the result that sexually explicit material suitable only for encrypted transmission went out unencrypted. During this five-minute period, viewers were invited to subscribe to see more.

**Response**

The broadcaster accepted that the transmission of such material at that time was ‘totally unacceptable’. The broadcaster gave us assurances that this would not occur again. It had been produced for scheduling in the encrypted service and had mistakenly been transmitted too early.

However, on 18, 19 and 20 December, the same material was transmitted again and so we telephoned the broadcaster. They responded that although the freeview promotion had been re-cut to a ‘softer’ version, it “was not cached into the system in time for the weekend’s airing”. The ‘softer’ version had not been transmitted until the evening of 23 December.

The channel also accepted that their encryption had “slipped five minutes” and said immediate action had been taken to rectify it.
Decision

The transmission of such explicit sexual material unencrypted is unacceptable and demonstrates a worrying failure in compliance procedures. XplicitXXX has been informed that any further recurrence may result in the consideration of a statutory sanction.

The channel was in breach of section 1.4 (ii) of the Programme Code (Pay Per View Services).
Resolved cases

Reading 107FM
8 December, 15:45

<table>
<thead>
<tr>
<th>Issue</th>
<th>A listener thought that a presenter’s use of the word ‘pissed’ during a drive time sequence was inappropriate when children were likely to be listening.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Response</td>
<td>The station told us that it had an ‘absolutely no swearing on air’ policy. They therefore treated this incident extremely seriously. The presenter claimed that the word simply slipped out and as soon as it happened she realised that there was a problem. She therefore apologised for her mistake immediately on air. The station went on to say that it prided itself on being a family radio station. It went to great lengths to ensure that all of the output was of the highest standard, which made this error all the more disappointing. The presenter was also reminded of her responsibilities.</td>
</tr>
<tr>
<td>Decision</td>
<td>We were satisfied with the internal measures that the station had taken over this incident</td>
</tr>
</tbody>
</table>

The complaint was resolved.
New Year Anti-Spindown: School Run  
Sky News and Sky One: Various dates in January, pre-21:00

**Issue**  
This promotion showed a mother driving her children to school and adopting a style more reminiscent of an action movie, including handbrake turns and reversing at speed in a city centre.

Three viewers complained about this promotion for Sky Movies, which they felt was irresponsible and endorsed dangerous driving.

**Response**  
Sky said that this promotion had been part of a campaign made just before Christmas. Unfortunately the promotion had gone to air without passing through Sky’s normal compliance system but as soon as it was noticed, it was removed from all Sky’s channels. Although the sequence was meant to be a fantasy, Sky considered that it was actually too close to reality.

A number of changes in its internal clearance procedures had now taken place. The broadcaster will ensure that no promotion can go to air without both the creative and finished promotion being cleared at a senior level.

**Decision**  
We accepted that the promotion was broadcast in error and recognised that Sky had taken appropriate action to prevent similar occurrences in future. We decided that the broadcaster had suitably resolved the matter.

The complaints were resolved.
Upheld cases

Sky News: Littlejohn Leader
Thursday 4 December 2003: 19:00

Issue
Richard Littlejohn presents this half-hour topical discussion show on Sky News at 19:00. He also delivers opinionated ‘leader comments’ on particular issues which are pre-recorded. In the course of one of these leader comments on council tax rises, which he was reading from an autocue, he suddenly broke off and exclaimed "Fuck it! I’m so sorry". Transmission was briefly interrupted before he reappeared on screen and said "OK, well, we seem to have got an earlier recording there. We do apologise for that. Let’s move on to our first story.”

One viewer complained about the swearing and lack of an adequate apology.

Response
Sky News explained that they transmitted a wrong version. It had been a particularly busy few minutes in the run-up to the start of the programme and this had contributed to the mistake. The broadcaster obviously regretted the mistake and any upset it had caused to viewers.

Decision
There is a prohibition on the most offensive language (e.g. ‘fuck’) before the watershed. This was clearly a technical mishap but Richard Littlejohn’s subsequent apology to viewers seemed more in regret for the broadcast of the wrong tape than for the likely offence caused to viewers. The broadcaster did not issue any further apology at the end of the show.

Sky News was in breach of Section 1.5 of the Programme Code (Bad Language).
Youthful Essence
Fox News, 7 November, 19.50

Issue
This segment on Fox News featured the actress Susan Lucci and her range of beauty care products, Youthful Essence. It lasted just under four minutes. There were frequent references to the brand and a strap bearing the range’s name was displayed for a period of time. The products were displayed and demonstrated in the studio and extracts from a promotional video were shown. Susan Lucci also explained how to buy these products through the web.

A viewer complained that there was no editorial justification in this item and the products were given undue prominence.

Response
Fox pointed out that Susan Lucci is arguably the most well known soap actress in the United States. Ms Lucci has performed in soaps for 35 years and received her first Emmy after she was 50.

Fox explained that Ms Lucci’s touting her products was similar to segments seen on other networks where celebrities promoted movies, books, television programmes, CDs websites etc.

Decision
This segment of the programme was simply a promotion for Youthful Essence. Fox advanced no editorial justification for this item beyond the fact that this was a new line of products by a well-known actress.

The product is available to consumers in the UK through the web. The item amounted to nothing more than an advertisement for Youthful Essence.

Fox News was in breach of Section 8.4 of the Programme Code (Undue Prominence).