

Ofcom Broadcast Bulletin

**Issue number 178
21 March 2011**

Contents

<u>Introduction</u>	4
Standards Cases	
<u>In Breach</u>	
The X Factor <i>ITV1, 24 October 2010, 20:00</i>	5
Kissmas listener competition <i>Kiss FM (London), 22 November to 24 December 2010, various dates and times</i>	9
<u>Resolved</u>	
BBC News at Six <i>BBC 1, 10 November 2010, 18:00</i>	11
Advertising Scheduling Cases	
<u>In Breach</u>	
Advertising minutage <i>Boomerang, 25 October 2010, 15:00</i>	12
Advertising minutage <i>Community Channel, 26 October to 20 December 2010, various times</i>	13
Breach findings table <i>Code on the Scheduling of Television Advertising compliance reports</i>	14
<u>Resolved</u>	
Resolved findings table <i>Code on the Scheduling of Television Advertising compliance reports</i>	15
Broadcast Licence Condition cases	
<u>In Breach</u>	
Breach of Licence Condition <i>Westside FM</i>	17
Associated Note to Broadcasters	18

Fairness and Privacy Cases

Upheld

Complaint by Mrs Alison Hewitt

Panorama: Wills – the Final Rip Off?, BBC1, 9 August 2010 20

Partly Upheld

**Complaint by Mrs Ceri Wyn Roberts on her own behalf
and on behalf of Cariad Care Homes Limited,**

**and three residents: Mrs Megan Roberts,
Mrs Elsie Richards (deceased) and Mrs Rose Smith (deceased)**
Y Byd ar Bedwar, S4C, 23 June 2009 23

Not Upheld

**Complaint by Mr Jordan Cunliffe
made on his behalf by Ms Janet Cunliffe**

Real Crime: Murder of a Father, ITV1, 23 August 2010 53

Other programmes not in breach 60

Introduction

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

- a) Ofcom's Broadcasting Code ("the Code"), the most recent version of which took effect on 28 February 2011 and covers all programmes broadcast on or after 28 February 2011. The Broadcasting Code can be found at:
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

Note: Programmes broadcast prior to 28 February 2011 are covered by the version of the Code that was in force at the date of broadcast.

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

- c) certain sections of the BCAP Code: the UK Code of Broadcast Advertising, which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
- the prohibition on 'political' advertising;
 - sponsorship (see Rules 9.16 and 9.17 of the Code for television broadcasters);
 - '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 advertising¹; and
 - the imposition of statutory sanctions in advertising cases.

The BCAP Code can be found at:

www.bcap.org.uk/The-Codes/BCAP-Code.aspx

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

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

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

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

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

Standards Cases

In Breach

The X Factor

ITV1, 24 October 2010, 20:00

This finding was originally published in Broadcast Bulletin 174 on 24 January 2011 but was subsequently withdrawn by Ofcom because it contained some inaccurate information supplied by Channel TV, who complied the programme on behalf of the ITV Network for ITV1. The finding has been amended in light of additional information provided to Ofcom and is now here re-published.

Introduction

This episode of *The X Factor* featured a pre-recorded performance from the artist Cheryl Cole that included laser lighting effects. The laser lights alternated rapidly at some points, causing the brightness of areas of the screen to change, and producing a flashing effect.

Ofcom received a complaint from a viewer who was concerned about the amount of flashing images broadcast during the programme and the distress these images could potentially cause to photosensitive viewers.

Certain types of flashing images present a danger of triggering seizures in viewers who are susceptible to photosensitive epilepsy ("PSE"). Rule 2.12 of the Code therefore requires that:

"Television broadcasters must take precautions to maintain a low level of risk to viewers who have photosensitive epilepsy. Where it is not reasonably practicable to follow the Ofcom guidance (see the Ofcom website), and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item".

Ofcom carried out a technical assessment of the flashing images in this programme and found some potentially problematic material. Ofcom therefore wrote to Channel Television ("Channel TV" or "the Licensee"), who complied the programme on behalf of the ITV Network for ITV1, and asked it to comment with regard to Rule 2.12.

Response

Channel TV stated that "The programme is a huge entertainment spectacular which makes use of stylized glamour shots and atmospheric VT's throughout – these were all tested to ensure that all was within the accepted parameters".

Channel TV explained that, following an "inadvertent" breach¹ of the relevant Code rule in last year's *The X Factor*, an analogue PSE device was used throughout the live shows, and all pre-recorded programme content was tested using a digital

¹ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb150/Issue150.pdf>

Harding PSE device. Channel TV claimed that the digital Harding PSE device had been hired for the lighting gallery, and the actual performance of the show had been tested using this. An analogue device had been used to test the material during earlier rehearsals. Channel TV said that it “suspect[ed] that as the [digital] PSE device used at the studio was hired each weekend rather than being *in situ* permanently, it was in need of re-calibration” and that this factor was likely to have led to the breach of Rule 2.12 in this instance.

Channel TV explained that, in addition to the pre-transmission technical checks, every live programme was prefaced with the warning “This programme contains flashing lights”. It explained that: “We did not expect any parts of the programme to be in breach of Rule 2.12, but as the X Factor attracts a very large audience we were mindful of the need to ensure viewers were aware that the programme has high production values and employs many different lighting and visual effects, which may otherwise have come as a surprise to some viewers”. Channel TV said that, as soon as this issue was brought to its attention, it “introduced a new policy of giving a verbal warning as to flashing lights within the programme itself as well as the established pre-transmission announcements”.

These comments of the Licensee were reflected in the original finding that was published on 24 January 2011. That finding recorded a breach of Rule 2.12.

On 27 January 2011, Ofcom was contacted by the manufacturer of the digital PSE device that Channel TV had referred to in their response to Ofcom. The manufacturer explained the digital variant of the PSE testing device has no facilities for calibration or adjustment. The manufacturer explained that “the devices are completely digital systems and are therefore designed to provide consistent results when carrying out assessments of whether programme material is in compliance with Ofcom’s PSE guidelines”. The manufacturer also informed Ofcom that as the only company that hires out the relevant digital PSE testing device, they did not have any record of a machine being loaned for *The X Factor* on the date in question.

Given the clear inconsistencies between the formal comments received from the Licensee, which were reflected in the original finding, and the manufacturer’s comments, Ofcom asked the Licensee for a detailed response. In particular, we asked Channel TV to: confirm if a digital PSE machine was hired for and was in the lighting gallery on 24 October 2010, and whether a digital PSE machine was used to assess the relevant *The X Factor* material broadcast on 24 October 2010; and make any further comments in response to the manufacturer’s statement.

In reply, Channel TV explained that a digital PSE device was not used to test all potentially problematic material throughout this series, as it had originally informed Ofcom. It explained that all post-production material (i.e. the introductory videos of the contestants and guest performers) was tested using a digital PSE device at a production house. A digital PSE device was hired only for the programmes broadcast on 11 and 12 December 2010. Channel TV explained that due to human error its compliance officer had assumed there was a digital PSE device permanently situated in the lighting gallery throughout the series. Channel TV stated: “[We have] always approached our dealing with Ofcom...on the basis of complete candour and transparency. We apologise...for having unwittingly misled Ofcom as to the true position in this matter”.

Decision

Given the significant potential harm that can result in viewers with PSE who are exposed to flashing images, Rule 2.12 makes clear that Ofcom expects broadcasters to maintain a low level of risk in this regard.

Further, Ofcom's Guidance in this area² (and the annexed Guidance Note on flashing images which is based on scientific research), are intended to minimise the risk of PSE seizures. The guidance states that "a warning should only be used in place of the guidelines, if editorially justified".

Ofcom tested this programme against its published PSE Guidance. It found that for one sequence during Cheryl Cole's performance, lasting just over five and a half seconds in total, nearly four seconds of non-compliant material was found, specifically, flashing where the brightness, frequency and screen areas exceeded the "intensity" limits as set out in the Guidance. The material therefore did not comply with the appropriate PSE standards.

Where it is reasonably practicable for broadcasters to follow Ofcom's technical guidance on Rule 2.12 (for example, as here, where material is pre-recorded) we expect broadcasters to do so, and to use appropriate and reliable testing devices. They must also ensure that their technical teams are all familiar with the technical requirements.

Ofcom notes that Channel TV had ensured that technical checks on the flashing images of this pre-recorded material had been undertaken prior to transmission, and that it had introduced further checks of this type since a breach of the relevant Code rule in 2009. However, we were concerned to note that the analogue PSE testing device was solely relied upon for the 'as live' broadcast by Cheryl Cole, given that a breach of the relevant Code rule in the previous series of *The X Factor* had occurred when the broadcaster previously relied on the same type of device. While Ofcom appreciates that the use of automated analogue test equipment may be the preferred method by which some broadcasters seek to assure compliance with the PSE guidelines, some equipment may have limitations and display different levels of accuracy when measuring different types of flashing image sequence. Ofcom therefore considers that regardless of which device a broadcaster uses, it must ensure that it accurately assesses its output against PSE standards. In this case Channel TV failed to correctly identify the material as problematic in advance of transmission.

There may be circumstances where it is editorially justified to broadcast material that does not comply with the appropriate PSE standards (for example, in a live news report or where there is other sufficient editorial justification for including the material). In these circumstances, it is essential that appropriate warnings are given to assist viewers with PSE to avoid instances of flashing images that the broadcaster cannot reasonably control

Ofcom therefore considered whether there had been sufficient editorial justification in this case for the broadcast of this material. We noted that the material in question was pre-recorded (and therefore capable of being edited), and that there was only limited editorial justification for including flashing images in this entertainment

² <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/812612/section2.pdf>

programme. In Ofcom's view there was insufficient editorial justification for including in the programme flashing images that so clearly exceeded the appropriate PSE standards.

We note that a pre-transmission warning was given. We also note that when Channel TV was notified of the complaint in this case, it took the decision to also include a verbal warning within the programme, as well as the established pre-transmission announcement.

However, the transmission of warnings in these circumstances are not in themselves sufficient to ensure compliance. They do not replace the need for appropriate and accurate technical checks in advance of transmission to avoid the inclusion of flashing images that exceed the limits set out in Ofcom's guidance.

We note that Channel TV and the programme's producers have now further improved procedures in this area. However, this is the second occasion on which a broadcast of *The X Factor* has breached Rule 2.12.

Ofcom is particularly concerned that in this case the Licensee did not carry out a thorough investigation before responding to Ofcom's original formal request for comments. Broadcasters are reminded of their obligations under their licence to provide accurate and timely information to Ofcom to enable it to carry out its functions. The provision of inaccurate and potentially misleading information to Ofcom is a very serious matter.

In view of the very large audience this programme attracts, and the greater risk that viewers with PSE will be in the audience, and in light of the previous and fairly recent breach of Rule 2.12 regarding *The X Factor*, Ofcom advises the broadcaster to take particular care with future broadcasts. If there are any further breaches of Rule 2.12 in relation to *The X Factor* Ofcom may consider further regulatory action.

Breach of Rule 2.12

In Breach

Kissmas listener competition

Kiss FM (London), 22 November to 24 December 2010, various dates and times

Introduction

During the 2010 Christmas period, Kiss FM invited listeners to participate in its annual “Kissmas” competition. Entrants were required to register free of charge on the station’s website by giving their name, contact details and desired prize (up to the value of £500).

Entrants were advised to listen to the station during the competition’s operating period. At various points during this period, an entrant’s name was selected at random and read out on air. This particular entrant was then given a period of twenty minutes within which to call the station and claim their specified prize.

Ofcom received a complaint from a listener who was concerned that there appeared to be discrepancies in Kiss FM’s description of the competition’s operating period:

- the competition’s web entry page and on-air presenters indicated that names would be read out between 09:00 and 18:00; and
- the online terms and conditions, available in a different document on the station’s website, indicated that the period was from 07:00 and 19:00.

The complainant also identified a number of occasions where names had been read out on air before 09:00 or after 18:00 and was therefore concerned that some entrants may not have been aware of this in view of the advice given on the web entry page and on air.

Ofcom sought comments from Bauer Media, the owner of Kiss FM, with regard to Rule 2.15 of the Code, which requires that:

“Broadcasters must draw up rules for a broadcast competition...These must be clear and appropriately made known.”

Response

Bauer Media said that this was a free-to-enter competition and that it “did not intend to mislead, make unfair or lessen the chances of winning in any way”. It explained that there were 21 occasions where an entrant’s name was read out on air either before 09:00 or after 18:00. However, it added that all executions of the competition were within the timeframe stipulated in the competition’s online terms and conditions (i.e. between 07:00 and 19:00). It said that the intention of these additional announcements was purely to “maximise the giveaways on days when fewer people had heard their names and called to win”.

The broadcaster said that, where names were scheduled to be announced outside 09:00 and 18:00, it normally made listeners aware by broadcasting frequent announcements and posting information on social media sites. It explained that there were two occasions when this type of additional announcement did not take place

owing to the necessity to carry additional local news updates regarding student protests or extreme weather conditions.

Bauer Media said it deliberately drew up “separate Terms and Conditions for this competition in order to provide entrants with as much detail as possible in a clear, consider[ed] and easy to understand way”. Additionally, it stated that the competition’s web entry page included a direct link to the full terms and conditions and advised entrants to read to them.

Decision

Ofcom accepted that Bauer Media had not sought to mislead listeners about the period of time during which entrants’ names would be read out on air as part of this competition. We also noted that the broadcaster’s justification for adding more executions of the competition was to increase the number of prizes issued to entrants.

However, there did not appear to be any clear reason why the competition operating periods that had been stated on air and on the web entry form differed from those specified in the online terms and conditions. Furthermore, Ofcom considered that this may have caused confusion among entrants about when they should listen to the station in case their names were read out on air.

Ofcom noted that this competition was free for listeners to enter. We took into account that no entrants would have been financially harmed as a result of this confusion.

Nevertheless, Ofcom concluded that the rules regarding the competition’s operating period were not made clear as required by Rule 2.15 of the Code, as, on 21 occasions, any entrant who did not listen to Kiss FM in the hours preceding or following the competition’s operating period, as promoted on air (09:00 to 18:00), had risked not knowing that they had an opportunity to win a prize.

Breach of Rule 2.15

Resolved

BBC News at Six

BBC 1, 10 November 2010, 18:00

Introduction

On 10 November 2010, the *BBC News at Six* reported on student demonstrations taking place in London, about the Government's planned changes to university student finance. Ofcom received seven complaints about an interview appearing in the programme, which featured a student with the word "*fuck*" written across his face.

Ofcom asked the BBC for its comments under the following Code Rules:

- Rule 1.14: "The most offensive language must not be broadcast before the watershed..."; and
- Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context..."

Response

The BBC stated its regret that a swearword was visible on the face of a student protester, sitting next to another student who was being interviewed in the programme. The broadcaster said that, "It was not noticed at the time of filming, or in the subsequent edit, that this man had the word "*fuck*" written on his face".

The BBC said that it recognised that the inclusion of this image in an early evening news programme was inappropriate, and apologised for any offence that might have been caused. In addition, the broadcaster said that it published a full apology on the BBC Complaints website. In summary, the BBC said that the "incident arose as a result of human error" and added that "[s]taff have nevertheless been reminded of the importance of ensuring the suitability of contributors interviewed for pre-watershed programmes".

Decision

Ofcom research on offensive language¹ clearly indicates that the word "*fuck*" and its derivatives are considered by audiences to be very offensive. In this case, we note that offensive language was included in a programme broadcast before the watershed, due to human error. However, Ofcom took into account that an apology was published, and we also welcome the measures introduced to avoid any recurrence in the future. In the circumstances, Ofcom is of the view that the BBC has taken appropriate steps to remedy this error and we therefore consider this matter resolved.

Resolved

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

Advertising Scheduling Cases

In Breach

Advertising minutage

Boomerang, 25 October 2010, 15:00

Introduction

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

Ofcom’s routine monitoring of broadcasters’ compliance with COSTA identified that Boomerang appeared to have transmitted 15 minutes of advertising during the 15:00 clock hour on 25 October 2010.

Ofcom wrote to Turner Broadcasting Systems Europe Ltd. (“Turner”), the licence holder for the service Boomerang, asking it to provide comments relating to the incident under Rule 4 of COSTA.

Response

Turner apologised, acknowledging that an advertising minutage overrun had occurred. The licensee explained that four breaks of three minutes had originally been scheduled, totalling the maximum 12 minutes per hour permitted under COSTA. However a late programme change required the break pattern to be amended to consist of three breaks of four minutes. This change was made but the last of the original three minute breaks was not deleted, resulting in 15 minutes of advertising being scheduled during the 15:00 clock hour.

Turner attributed this infringement to human error. It said that it does have procedures in place to ensure that hourly minutage does not exceed 12 minutes. However on this occasion, due to the last minute nature of the scheduling change which occurred on a Friday when the team schedules three consecutive transmission days, the usual checks and procedures on this occasion were overlooked.

To mitigate the risk of similar incidents in the future, Turner said that it has reminded all staff involved in the incident of the necessity of ensuring all checks are carried out correctly.

Decision

Ofcom notes Turner’s apology and the steps it has taken to remind staff of the need to follow the procedures in place. Ofcom is concerned that such procedures have been overlooked on days of the week when the volume of work required would suggest errors might be more likely to occur. Given the substantive nature of this overrun, we are recording a breach of Rule 4 of COSTA.

Ofcom will continue to monitor Boomerang and may consider regulatory action if this problem recurs.

Breach of Rule 4 of COSTA

In Breach

Advertising minutage

Community Channel, 26 October to 20 December 2010, various times

Introduction

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

Ofcom’s routine monitoring of broadcasters’ compliance with COSTA identified that the Community Channel appeared to have transmitted more than 12 minutes of advertising in an hour on ten occasions between 26 October and 20 December 2010, with overruns ranging from between three seconds to one minute and 14 seconds.

Ofcom wrote to Community Channel Ltd., the licence holder for the Community Channel, asking it to provide comments relating to the incidents under Rule 4 of COSTA.

Response

The broadcaster acknowledged that advertising minutage overruns had occurred. Community Channel Ltd. explained that the scheduled advertising minutage is checked twice; firstly when the schedule is initially finalised, and again immediately prior to the schedule being exported for transmission. The second check automatically warns of any overruns inadvertently introduced to the schedule due to last minute adjustments. The broadcaster said that the second check had been disabled due to a system bug or software update, without its knowledge, at some point in October. As a result, late changes to the schedule meant that minutage was shifted across clock hours creating overruns.

To mitigate the risk of similar incidents in the future, Community Channel Ltd. said that it has reinstated its automatic warning system by ensuring that the software has been repaired and a new release has been issued, which should prevent further overruns. It said it has also introduced a further manual check of any late changes to the schedule to double check the impact on advertising minutage.

Decision

Ofcom welcomes the measures Community Channel Ltd. has taken to limit the likelihood of similar incidents in the future, but is concerned that there do not appear to be post transmission checks in place to pick up any infringements that may occur. Such a procedure would prevent multiple infringements of the type recorded above. Given the number and the substantive nature of some of the overruns, we are recording a breach of Rule 4 of COSTA.

Ofcom will continue to monitor the Community Channel and may consider regulatory action if this problem recurs.

Breach of Rule 4 of COSTA

In Breach

Breach findings table

Code on the Scheduling of Television Advertising compliance reports

Rule 4b of the Code on the Scheduling of Television Advertising (“COSTA”) states:

[On non-PSB channels] “time devoted to television advertising and teleshopping spots must not exceed an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising.”

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Attheraces	14 December 2010, 22:00; and 3 January 2011, 17:00	COSTA Rule 4b	Attheraces transmitted 30 seconds and two minutes and two seconds more advertising respectively than permitted in a single hour. Finding: Breach
Box TV and 4Music	Box TV 4 December 2010, 24:00 4Music 8 November 2010, 22:00	COSTA Rule 4b	Box TV and 4Music transmitted 43 seconds and ten seconds more advertising respectively than permitted in a single hour. Finding: Breach
Disney XD	17 November 2010, 15:00; and 17 November 2010, 18:00	COSTA Rule 4b	Disney XD transmitted three minutes and one minute and 20 seconds more advertising respectively than permitted in a single hour. Finding: Breach
Horse & Country	23 October 2010, 20:00; and 26 November 2010, 22:00	COSTA Rule 4b	Horse & Country transmitted 22 seconds and four seconds more advertising respectively than permitted in a single hour. Finding: Breach

Resolved

Resolved findings table

Code on the Scheduling of Television Advertising compliance reports

Rule 4b of the Code on the Scheduling of Television Advertising (“COSTA”) states:

[On non-PSB channels] “time devoted to television advertising and teleshopping spots must not exceed an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising.”

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Military History	12 December 2010, 10:00	COSTA Rule 4b	<p>Military History transmitted five seconds more advertising than permitted in a single hour.</p> <p>Ofcom recognises that this is the first issue of this type on Military History, and notes steps the licensee says it has taken to address the failure.</p> <p>Finding: Resolved</p>
Comedy Central Extra	6 December 2010, 29:00	COSTA Rule 4b	<p>Comedy Central Extra transmitted six seconds more advertising than permitted in a single hour.</p> <p>Ofcom recognises that this is the first issue of this type on Comedy Central Extra, and notes steps the licensee says it has taken to address the failure.</p> <p>Finding: Resolved</p>
Food Network	25 November 2010, 11:00	COSTA Rule 4b	<p>Food Network transmitted six seconds more advertising than permitted in a single hour.</p> <p>Ofcom notes Food Network’s explanation that this incident occurred during a software upgrade to improve future advertising compliance.</p> <p>Finding: Resolved</p>

Men & Movies	23 October 2010, 14:00	COSTA Rule 4b	<p>Men & Movies transmitted 30 seconds more advertising than permitted in a single hour.</p> <p>Ofcom recognises that this is the first issue of this type on Men & Movies, and notes steps the licensee says it has taken to address the failure.</p> <p>Finding: Resolved</p>
--------------	------------------------	---------------	--

Broadcast Licence Condition Cases

In Breach

Breach of Licence Condition

Westside FM, 31 January 2011 to present

This finding was originally published on 15 March 2011.

Introduction

Westside FM is a community radio station providing a service for the multicultural community living in Southall, west London and the surrounding area and has a particular focus on young people. It has been on air since September 2007 and the output is presented by volunteers. The licence is held by BBA Media.

The station's licence includes as an annex a 'key commitments' document which sets out what the radio station is required to broadcast (which is based on the promises made by the station in its original application for the licence).

On 25 February 2011 Ofcom received a complaint from a listener who had "...noticed dead air on 89.6 [the Westside FM frequency] each day... I also noticed they were on dead air on another occasion a week or so ago." Accordingly, Ofcom wrote to the licensee, BBA Media, for its comments on this.

Following a telephone conversation with the station manager at Westside FM on 28 February when it was confirmed that the station had not been broadcasting for a number of weeks, Ofcom wrote to the licensee again to ask how it felt it had complied with the following two licence conditions relating to key commitments delivery:

1. Condition 2(1) contained in Part 2 of the Schedule to the licence, which states that:

"The Licensee shall provide the Licensed Service specified in the Annex¹ for the licence period."

2. Condition 2(4), contained in Part 2 of the Schedule to the licence, which states that:

"The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex* so as to maintain the character of the Licensed Service throughout the licence period."

Response

The licensee apologised for its oversight in not contacting Ofcom regarding its intention to temporarily cease broadcasting. It said that BBA Media had to vacate its studio premises at the end of January 2011 when its lease expired. In mid-January the licensee found suitable premises to move into, however, the lease on the new premises was only due to be signed in the first week of March. By the end of

¹ The annex sets out the radio station's 'key commitments'. Westside FM's key commitments can be found here:

<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr072.pdf>

January, with no extension available on its current premises and no studio for live programmes to be broadcast, the licensee “decided to broadcast pre-recorded shows for a short period of time.” The licensee says it informed its presenters of these temporary arrangements and that it would last until the new studio was set up. The licensee said it had negotiated with a company based in the same building as its transmitter to house the broadcast playout system in order to continue broadcasting pre-recorded programming. However this solution did not come to fruition and the station was off air and not broadcasting output until “...finally on 26th Feb we got an automated service back on air”.

The licensee says it is working to a timetable that will see Westside FM back to delivering its full key commitments by 1 April 2011.

Decision

In late December, prior to the issue under consideration, Ofcom was in correspondence with Westside FM regarding the possibility of a studio and a transmission site move. By mid-January the licensee confirmed that it had settled on a studio move a short distance from its current location with the transmitter site remaining the same.

Given that we were in correspondence with the station up until mid-January, we were concerned that we were not informed of the problems that subsequently arose. This led to the service being off air for almost four weeks and the licensee unable to provide a service that delivered its key commitments in full for a further month. By ceasing to broadcast its licensed service over the period in question, and informing us that it will not be able to provide the service for at least another month, BBA Media is clearly in breach of the above licence conditions. Ofcom has therefore formally recorded this breach by BBA Media.

Provision by a licensee of its licensed service is the fundamental purpose for which a community radio licence is granted. Ofcom has a range of duties in relation to radio broadcasting, including securing a range and diversity of local radio services which are calculated to appeal to a variety of tastes and interests, and the optimal use of the radio spectrum. These matters find expression in, or are linked to, the licence condition requiring the provision of the specified licensed service. Where a licensed service is not being provided in accordance with the licence, the required community radio programme output is not provided. These include ‘social gain’ (such as opportunities for discussion) and access to and participation in the service (volunteering opportunities, for example). This is to the potential disadvantage of the target community, and in addition, choice for listeners is reduced. In addition to this, access to and participation in the service, including opportunities to volunteer, are not being offered whilst the licensee does not have access to studio premises and an automated service in being broadcast.

Ofcom has formally notified the Licensee that we are considering these licence contraventions for the imposition of a statutory sanction in light of their seriousness.

Breach of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by BBA Media (licence number CR072).

Note to broadcasters

Licensees should contact Ofcom if they foresee or are experiencing any problems, such as technical issues, building works or studio moves, that may affect their ability

to provide their broadcast service. Providing the licensed service is a fundamental function of a community radio service and failure to do so is a significant breach of the licence.

Ofcom will shortly be writing to all community radio licensees regarding this and all licensees should contact us if any issues arise that may lead to the broadcast service being adversely affected.

Fairness and Privacy Cases

Upheld

Complaint by Mrs Alison Hewitt

Panorama: Wills – the Final Rip Off?, BBC1, 9 August 2010

Summary: Ofcom has upheld this complaint of unwarranted infringement of privacy made by Mrs Alison Hewitt.

In this episode of *Panorama*, which investigated will-writing companies, the telephone number used by Willmakers of Distinction Ltd (now in liquidation) was broadcast for approximately two seconds. The company was linked to two men who pleaded guilty to theft and fraud charges and who were each jailed for three and a half years. Mrs Hewitt, who had no connection with the company, complained that her privacy was unwarrantably infringed by the programme as broadcast, because the telephone number shown was now her home telephone number and had been so for a year.

In summary, Ofcom found that Mrs Hewitt would not have expected her home telephone number to appear on screen during the programme and, in the absence of any justification for its inclusion, Ofcom found that the broadcast of her telephone number amounted to an unwarranted infringement of her privacy.

Introduction

On 9 August 2010, BBC1 broadcast an edition of *Panorama*, its current affairs documentary series. This edition, entitled *Wills – the Final Rip Off?*, which investigated will-writing companies, highlighted some of the financial pitfalls for consumers and asked if it was time for the industry to be properly regulated.

One section of the programme was concerned with the conduct of a company called Willmakers of Distinction Ltd (now in liquidation). It was reported that the man who started the company and an employee had stolen money that was due to beneficiaries of estates being administered by the company. The programme said that in May 2010 the two men pleaded guilty to theft and fraud charges and were both subsequently jailed for three and a half years.

While reporting the issues surrounding Willmakers of Distinction Ltd, footage of the results of an internet search on the company's name was broadcast which, for approximately two seconds, clearly showed its telephone and fax numbers. The telephone number shown had previously been the business number of Willmakers of Distinction Ltd, but at the time of the broadcast, the number was that of Mrs Alison Hewitt's home telephone.

Mrs Hewitt complained that her privacy was unwarrantably infringed in the programme as broadcast.

The Complaint

Mrs Hewitt's case

In summary, Mrs Hewitt complained that her privacy was unwarrantably infringed in the programme as broadcast in that her telephone number was broadcast as the

telephone number of a company that had not only gone into liquidation, but had two employees prosecuted for fraud.

By way of background, Mrs Hewitt said that this had led to her receiving a large number of telephone calls and answerphone messages complaining about the company, some of which were rude and distressing.

The BBC's case

The BBC said that the telephone number included in the programme was previously that of Willmakers of Distinction Ltd whose directors were, in May 2010, successfully prosecuted for fraud. Its telephone number had been reallocated to Mrs Hewitt after the company ceased trading and it appeared in the programme when a company document was shown as the result of an on-screen internet search.

The BBC said that the mistake arose initially because the telephone number was then, and still is, to be found online as the telephone number of Willmakers of Distinction Ltd. The BBC said that during the programme's editing process this was identified as something which should be checked out but, through a simple oversight, this did not happen.

The BBC said that when this was brought to its attention by Mrs Hewitt on 12 August 2010, the matter was addressed swiftly and the programme was withdrawn immediately from the BBC iPlayer until a re-edited version could be shown. The BBC said that the programme would not be repeated with Mrs Hewitt's telephone number visible.

The BBC said that when the producer telephoned Mrs Hewitt after she contacted the BBC, he offered his apologies for what had happened. The BBC said it was very sorry that Mrs Hewitt received a number of calls as a result of the telephone number being publicised and said it appreciated that they must have been unpleasant and distressing and it apologised for any distress and embarrassment caused.

Decision

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

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

In reaching its decision, Ofcom considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and both parties' written submissions. In its considerations, Ofcom took account of Ofcom's Broadcasting Code ("the Code").

Ofcom considered the complaint that Mrs Hewitt's privacy was unwarrantably infringed in the programme as broadcast because her telephone number was broadcast as the telephone number of a company that had not only gone into liquidation, but had two employees prosecuted for fraud.

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

This is reflected in 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.

In considering whether Mrs Hewitt's privacy was unwarrantably infringed in the programme, Ofcom first considered the extent to which Mrs Hewitt could reasonably have expected that her telephone number would not be disclosed without her prior consent.

Ofcom noted that Mrs Hewitt was a private individual and that the telephone number broadcast was her home telephone number and had been for a year. The telephone number was broadcast without her prior knowledge or consent and was visible on screen for approximately two seconds.

Ofcom considered that the telephone number was in the public domain in the sense that it was accessible on the internet in connection with Willmakers of Distinction Ltd. In addition, Mrs Hewitt did not suggest that her telephone number was ex-directory and Ofcom considered that it would therefore have been accessible from telephone directories and known by people to whom Mrs Hewitt had chosen to disclose it.

However, notwithstanding the extent to which the telephone number was accessible by the public, Ofcom considered that a home telephone number would normally be understood to be personal information, which the holder decides to disclose or not disclose as they see fit. In Ofcom's view, the disclosure of Mrs Hewitt's home telephone number in the programme as broadcast resulted in its publication in a manner that she could never have foreseen. Ofcom therefore took the view that Mrs Hewitt had a legitimate expectation of privacy that her home telephone number would not be broadcast in the programme.

Ofcom then considered the broadcaster's right to broadcast Mrs Hewitt's telephone number. Ofcom noted that the BBC did not suggest that its right to freedom of expression or the public interest justified the broadcast of Mrs Hewitt's telephone number. Rather, the BBC said that it had been broadcast as a result of an oversight and that as soon as the issue was brought to its attention, it took immediate steps to ensure that the telephone number would not appear in the programme again. In the circumstances, Ofcom did not consider that there was any justification for broadcasting Mrs Hewitt's telephone number and concluded that Mrs Hewitt's privacy had been unwarrantably infringed in the programme as broadcast.

As a result, Ofcom has upheld this complaint.

Accordingly, Ofcom has upheld Mrs Hewitt's complaint of unwarranted infringement of privacy in the programme as broadcast.

Partly Upheld

Complaint by Mrs Ceri Wyn Roberts on her own behalf and on behalf of Cariad Care Homes Limited, and three residents: Mrs Megan Roberts, Mrs Elsie Richards (deceased) and Mrs Rose Smith (deceased)

Y Byd ar Bedwar, S4C, 23 June 2009

Summary: Ofcom has not upheld this complaint of unfair treatment. It has upheld Mrs Roberts' complaint of unwarranted infringement of privacy in the making and broadcast of the programme but has not upheld the complaints made on behalf of the three residents of unwarranted infringement of privacy in the making and broadcast of the programme.

This programme investigated the standards of care for the elderly at Bodawen, a care home in north Wales managed by Cariad Care Homes Limited ("CCH"). On receipt of a complaint about Plasgwyn, another care home managed by CCH, the programme employed an undercover reporter to investigate the homes. During the course of her investigation, the reporter secretly filmed residents and carers at Bodawen and footage of residents and carers, with identities obscured, was broadcast to illustrate some of the issues of concern raised by the programme.

Mrs Ceri Wyn Roberts, a director of CCH, complained to Ofcom that she and CCH had been unfairly treated in the programme as broadcast and that her privacy and the privacy of three residents of the home had been unwarrantably infringed in the making and broadcast of the programme.

In summary Ofcom found the following:

- The programme did not present allegations of elder abuse in a way that was unfair to either Mrs Roberts or CCH.
- In so far as Mrs Roberts provided explanations on various practices at Bodawen, the programme's legal expert was informed of these explanations before expressing his opinions, and the programme was not unfair to the complainants in that respect.
- A statement that convenience rather than medical need drove practices at Plasgwyn was not unfair to the complainants as it was clearly an expression of opinion rather than a statement of fact.
- The programme did not suggest that a carer had been suspended due to an allegation of assault, that staff were contravening food hygiene regulations or that staff had not received appropriate manual handling training.
- A suggestion that a resident was left on the toilet for 15 minutes before being assisted to leave was not presented in a way that was unfair to the complainants.
- The complainants were provided with an appropriate and timely opportunity to respond to the allegations made in the programme.
- Mrs Roberts' privacy was unwarrantably infringed in the making and broadcast of the programme because, despite having answered the programme makers questions, she was doorstepped by the programme makers and the resulting footage was broadcast in the programme.
- The privacy of the three residents was not unwarrantably infringed in the making or broadcast of the programme.

Introduction

On 23 June 2009, S4C broadcast an edition of its current affairs series, *Y Byd ar Bedwar*. This edition investigated standards of care for the elderly at a care home in north Wales. Following a complaint about the treatment of a resident of the Plasgwyn care home operated by CCH, the programme used an undercover reporter who obtained a position as a care worker with CCH. The reporter initially worked at the Plasgwyn care home and then at CCH's other care home, Bodawen.

Whilst working at Bodawen, the reporter secretly filmed residents and carers. This filming raised a number of concerns about the treatment of residents at Bodawen. These were put to the programme's legal expert, who suggested the treatment described to him was, variously, inappropriate, breached guidelines, could give rise to disciplinary and/or legal action or amounted to "*torture*".

Footage of a number of residents and carers at Bodawen, with their faces either hidden or obscured, was broadcast in the programme to illustrate some of the issues of concern. Residents were shown, for example, sitting on the toilet, asking to be taken to the toilet, restrained by a lap strap and asleep at a table.

The programme said that CCH had refused to provide a representative to be interviewed and included footage of the programme makers arriving at Bodawen and attempting to interview Mrs Roberts.

Mrs Roberts complained to Ofcom on her own behalf and on behalf of CCH that they were treated unfairly in the programme as broadcast. Mrs Roberts also complained to Ofcom on her own behalf and on behalf of a resident of the care home, Mrs Megan Roberts, and on behalf of two former residents of the care home, both of whom have died since the programme was broadcast, the late Mrs Elsie Richards and the late Mrs Rose Smith, that their privacy was unwarrantably infringed in both the making and the broadcast of the programme.

The Complaint

Mrs Roberts' case

In summary, Mrs Roberts complained on her own behalf and on behalf of CCH that they were treated unfairly in the programme as broadcast in that:

- a) They had been unfairly portrayed because:
 - i) Throughout the programme it was wrongly insinuated that elder abuse was practised at Bodawen and Plasgwyn.
 - ii) The programme's legal expert commented on facts put to him without also being provided with the explanations of Mrs Roberts and the families of affected residents.
 - iii) The programme was a distortion of the truth in that:
 - The programme suggested that convenience rather than medical need was the reason for leaving the mother of the person who originally contacted the programme makers ("Mrs X") in her bed for 24 hours a day and for wanting to change the way she was fed.

By way of background, Mrs Roberts said no such complaint had ever been made to the care home and she had been unable to identify the resident referred to so could not respond to the specific complaint. However, she said that at Plasgwyn a large number of residents were nursed in bed 24 hours a day as they were very weak and poorly, but they were encouraged to get up for as many hours of the day as possible. In addition, she said that if there were choking concerns, after a proper feeding assessment, a resident may be transferred to a liquidised diet. Mrs Roberts said that no care home would wish to see either an increase in the number of bedridden residents or an increase in liquidised feeds as they were more time consuming and required more work. Neither would be more convenient for the care home.

- The programme wrongly suggested that staff woke residents in the early hours.
- The programme suggested that the undercover reporter was not told about feeding arrangements when, in fact, she had worked a volunteer shift at Bodawen and filmed four residents at a table.
- The programme alleged that a carer had assaulted a resident, resulting in her suspension. Mrs Roberts said that the allegation was withdrawn immediately before the programme was broadcast and the programme should not have reported the suspension resulting from that allegation.
- The programme wrongly suggested that staff entering the kitchen without blue aprons were contravening food hygiene regulations. Mrs Roberts said that there were no such regulations and no evidence of this was included in the programme.
- The programme suggested that the staff were not appropriately trained by explaining that the undercover reporter could not help a female resident off the toilet because she had received no manual handling training.

By way of background, Mrs Roberts said that the undercover reporter had received no manual training to physically assist a non-weight bearing resident as she was simply working a “shadow shift”.

- The programme suggested that a female resident, who was said to be unable to walk, had to wait for 15 minutes before being assisted to leave the toilet.

Mrs Roberts said that the female resident was fully weight-bearing and was able to walk unaided to the toilet, that it was not unusual for a resident to sit on the toilet for 15 minutes due to constipation and that the undercover reporter had failed in her own obligations by ignoring requests for assistance while continuing to film her rather than inform another member of staff that a resident needed assistance.

- b) Mrs Roberts and CCH had not been provided with an appropriate opportunity to respond to the allegations made in the programme.

Mrs Roberts said that prior to broadcast the programme makers had put vague and unsubstantiated allegations of elder abuse to her verbally, but refused to

provide details. Mrs Roberts said that as she would have been unable to respond on camera to vague allegations she had refused to appear on the programme. Mrs Roberts said that only if the full facts had been put to her in detail beforehand would she have been able to answer the allegations by reference to care plans and daily logs, but that she would have been unable to access those while on camera for reasons of client confidentiality.

Mrs Roberts said that, for example, in order to investigate and respond to the allegations in the programme she would have needed details of:

- when and which carer was sleeping on the night shift;
- which residents were woken at 05:30 and when;
- which resident had been tied to a chair and when;
- which resident had her nightdress tied and when;
- which carer told which resident to soil her nappy and when;
- which resident was left on the toilet for a long time and when; and
- which resident was allegedly struck by a carer and when.

Mrs Roberts said that on several occasions, off camera, she had answered every complaint put to her by the programme makers.

In summary, Mrs Roberts complained on her own behalf and on behalf of residents that their privacy had been unwarrantably infringed in the making of the programme in that:

- c) The programme makers filmed Mrs Roberts at the care home without her consent.
- d) The programme makers filmed resident Mrs Megan Roberts in the care home without her knowledge or consent. She was the lady shown with bruises who a carer had allegedly physically abused.
- e) The programme makers filmed resident Mrs Elsie Richards in the care home without her knowledge or consent. She was the lady who the carer refused to take to the toilet.
- f) The programme makers filmed resident Mrs Rose Smith in the care home without her knowledge or consent. She was the lady asking for her bed head to be raised and claiming she had suffered a heart attack.

In summary, Mrs Roberts complained on her own behalf and on behalf of residents that their privacy had been unwarrantably infringed in the programme as broadcast in that:

- g) Footage of Mrs Roberts at the care home refusing to answer questions was broadcast without her consent.
- h) Surreptitiously filmed footage of Mrs Megan Roberts in the care home was broadcast without consent.
- i) Surreptitiously filmed footage of Mrs Elsie Richards in the care home was broadcast without consent.

- j) Surreptitiously filmed footage of Mrs Rose Smith in the care home was broadcast without consent.

S4C's case

- a) In summary, S4C responded to Mrs Roberts' complaint that she and CCH had been unfairly portrayed in the programme, as follows:

- i) As regards the complaint that the programme wrongly insinuated that elder abuse was practiced at Bodawen and Plasgwyn, S4C said that the only reference to practices at Plasgwyn was contained within the introductory part of the programme where it was explained that the programme makers were told of Mrs X's concerns about the standard of care received by her mother at the home. S4C said that these concerns reflected only Mrs X's opinion and that further investigations were conducted by the programme makers in order to explore whether there was justification for her concerns. S4C said that the programme did not suggest that elder abuse was practised at Plasgwyn and the programme did not contain any further evidence of the standard of care provided at Plasgwyn.

S4C said that the programme was an accurate and fair representation of the undercover reporter's experiences whilst working at Bodawen. S4C said that the programme stated that it found evidence of specific practices which caused concern and presented that evidence in the form of secret filming and interviews with the undercover reporter. When these practices were raised with the programme's legal expert, he explained that they gave rise to legitimate concerns.

S4C said that the programme contained the statements and explanations Mrs Roberts had provided, namely in relation to the use of lap straps and the tying of a resident's nightdress, and also included other positive comments about and support for practices undertaken by CCH.

- ii) As regards the complaint that the programme's legal expert commented on facts put to him without being provided with Mrs Roberts' explanations or those of the families of affected residents, S4C said that the legal expert had specifically stated that he would not pass judgement on the surreptitiously filmed material and had only agreed to comment on whether certain practices the programme makers experienced were in contravention of current law and guidelines.

S4C said that the programme made clear that the legal expert did not have sight of the surreptitiously filmed material and that it was clear from his comments that his opinion was based on the information provided to him by the programme makers. Where comments were provided by Mrs Roberts to the programme makers to explain certain practices, these were put to the legal expert.

- iii) S4C responded as follows to the complaint that the programme was a distortion of the truth:

- S4C said that the programme reported Mrs X's concerns about Plasgwyn and clearly stated that they were her opinion. The programme went on to explain that the programme makers used the undercover reporter to discover whether there was justification for Mrs X's concerns and that the

programme makers did not obtain evidence to support concerns about the same practices at Bodawen.

S4C said it reported Mrs X's opinion, challenged it and came to its own conclusions based on the programme makers' experiences.

- In relation to waking residents at 05:30 hours, S4C said that the undercover reporter had direct experience of staff waking residents in the early hours. She worked two night shifts shadowing staff at Bodawen and on both shifts she witnessed residents being woken at 05:30 hours. She witnessed two members of staff waking residents at this time and a total of six residents being woken during the two night shifts. Staff told the undercover reporter that, for reasons of convenience, they were expected to wake six residents before the morning shift started. S4C said that the information contained in the programme was factual and based on practices witnessed by the undercover reporter.
- In relation to the feeding arrangements, S4C said that the comment "... *and we were not told about the feeding arrangements*" was made in order to explain that Mrs X's concerns about this issue at Plasgwyn were not alleged in relation to Bodawen nor were they substantiated by the programme makers' experiences there.
- In relation to the suspension of the carer, S4C said that the programme did not allege that a carer had assaulted a resident resulting in her suspension.

S4C said that the programme showed footage of a resident explaining that she had received a bruise on her arm because some of the carers "*had been coming after her*". The programme then went on to state that, when asked about the incident again, the resident denied that anyone had hit her. The programme clearly stated that it was difficult to know what caused the bruise and whether there were any firm grounds to suspect that there was any abuse.

S4C said that the programme's closing sentence, which reported that a care worker from Bodawen had been suspended whilst the authorities investigated the issues raised by the programme, was factually correct and that no link was made in the programme between the suspension of the member of staff and the questions raised regarding the bruising found on one of the residents.

- In relation to the blue aprons, S4C said that there was no mention in the programme of "blue aprons" or of staff entering the kitchen without appropriate clothing of any nature.
- In relation to staff training, S4C said that the programme did not make the general suggestion that staff at Bodawen were not appropriately trained. However, in order to explain why the undercover reporter did not assist a resident from the toilet, the programme explained that she did not have the right or experience to help the resident in question. S4C said that the programme accurately reflected the training received by the reporter.

- In relation to the resident left on the toilet, S4C said that the programme was a true and accurate description of the undercover reporter's experience. She witnessed that the resident in question was left for 15 minutes before being assisted to leave the toilet. S4C said that, although Mrs Roberts stated that the resident was fully weight-bearing and was able to walk unaided to the toilet, the footage clearly showed that she was not able to lift herself off the toilet without assistance.
- b) In summary, S4C responded to the complaint that Mrs Roberts and CCH had not been provided with an appropriate opportunity to respond to the allegations made in the programme as follows:

S4C said that Mrs Roberts, as director of CCH, was invited on more than one occasion to make a contribution to the programme and that Mrs Roberts' views, as represented to the programme's presenter, Mr Eifion Glyn, in telephone calls and meetings, were presented fairly in the programme.

S4C said that Mr Glyn's notes stated that he first contacted Mrs Roberts by telephone on 12 June 2009 and that he had put to her all the allegations that were to be made in the programme. Mrs Roberts told him the allegations were not true. She said that a lap strap was used for one resident with the permission of the resident's family, her doctor and the care standard. Mrs Roberts explained that the home had a very good annual inspection the previous year and that they were expecting another inspection soon and that it would also be very good. Mr Glyn's notes said that on this occasion he asked Mrs Roberts more than once for an interview and explained that it was important for her to provide an on-camera interview in order to provide a response to the allegations. Mrs Roberts refused to provide such an interview and told Mr Glyn to telephone The Care and Social Services Inspectorate Wales ("CSSIW").

Mr Glyn's notes said that he visited Bodawen without a camera in order to have a face to face meeting with Mrs Roberts late in the evening on 16 June 2009. Mr Glyn told Mrs Roberts that the programme makers had evidence on camera to support the allegations and that the programme makers had also received a complaint about Plasgwyn. Mr Glyn tried to persuade Mrs Roberts to give an interview and stressed that it was essential to have an on-camera interview with her in order for her to respond to the allegations. Mrs Roberts told Mr Glyn that she did not trust the programme makers because they had used dishonest methods to obtain evidence and secret filming, but she explained that they strapped one of the residents with the permission of the family and authorities and that they had the permission of the family to tie one resident's nightdress. Mrs Roberts explained that she had received advice from a PR company not to give an interview to the programme makers and Mr Glyn tried to convince her again that the programme makers did not have an agenda against her or anybody else and that she should give an interview to the programme makers because the points she was making were valid and that it was important for her side of the story to be heard.

Mr Glyn's notes said that he telephoned Mrs Roberts on 17 June 2009 and asked her again whether she would give an interview, but she refused explaining that the PR company had advised her not to do so. When he asked about another resident who was being strapped in the care home, Mrs Roberts explained that the home also had permission from the family and the authorities for that individual.

S4C said that the doorstep footage which appeared in the programme was filmed on 21 June 2009 and provided evidence that Mrs Roberts had repeatedly refused to provide an interview and that she deferred to the statement provided by the PR company.

S4C said that Mrs Roberts did not at any point during the programme makers' conversations with her prior to broadcast ask for further details of the allegations and did not say that she would not give an interview because the programme makers refused to provide such details. Nor did she say that she needed those details in order to investigate and respond to the allegations to be made in the programme.

S4C said that Mrs Roberts did not respond to all the allegations made to her, but that all the responses she did provide were included in the programme.

In summary, S4C responded to the complaints of unwarranted infringement of privacy in the making and broadcast of the programme, as follows:

- c) and g) Unwarranted infringement of the privacy of Mrs Roberts in the making and broadcast of the programme.

S4C said that Mrs Roberts was "doorstepped" because she had repeatedly refused a request for an interview and the programme makers strongly believed that a representative of CCH should be given the opportunity to explain their side of the story on camera given the evidence of practices at Bodawen. S4C said that it was standard journalistic practice to seek a face-to-face meeting where there were grounds to believe that a potential contributor might be persuaded to take part in a programme.

S4C said that the "doorstepping" did not occur at Mrs Roberts' private home, but at the entrance to Bodawen, her place of work, where she held a senior position as a director of CCH. S4C said that Mr Glyn was known to Mrs Roberts and that she came to the door fully aware that he was there to request an interview. S4C said that Mr Glyn was holding a microphone in clear sight when Mrs Roberts addressed him at the door. The hand-held camera recording Mrs Roberts was not hidden and she continued to speak clearly to Mr Glyn. S4C said that the footage did not contain a discussion of confidential or commercially sensitive material.

S4C said that if there was a legitimate expectation of privacy, any infringement in the filming of the footage was warranted because it was in the public interest for the programme to seek to obtain Mrs Roberts' responses to the points raised by the programme and her direct responses were not obtainable by other means.

S4C said that if there was a legitimate expectation of privacy, any infringement in the broadcast was warranted because it was in the public interest for the programme to provide evidence of the programme makers' attempts to provide a right of reply to the owners of Bodawen and to obtain their substantive comments to the unacceptable practices experienced by the undercover reporter.

- d) to f) Unwarranted infringement of the privacy of Mrs Megan Roberts, Mrs Elsie Richards and Mrs Rose Smith in the making of the programme.

S4C said that research for the programme was undertaken over a period of nine months and was initially commenced after the programme makers obtained

information that Mrs X was concerned about the standard of care that her mother was receiving at Plasgwyn.

S4C said that Mrs X was a retired family doctor and the programme makers were satisfied that her initial concerns were legitimate. The programme makers then undertook further research into the history of standards of care at CCH and secured temporary work for a member of the programme making team shadowing carers in Plasgwyn and Bodawen. Her experience at Bodawen provided evidence that there were a number of deficiencies in the care provided by CCH.

S4C said that following the initial research, the programme makers made a detailed request to S4C for permission to undertake surreptitious filming at Plasgwyn and Bodawen.

S4C said that it considered that there was *prima facie* evidence of a story in the public interest, based on the initial statements made by Mrs X and the subsequent experience of the undercover reporter. It also considered that there were reasonable grounds to suspect that further material evidence of the deficiencies in care witnessed by the programme makers could be obtained through the surreptitious filming and that it was necessary to the credibility and authenticity of the programme that visual evidence of such deficiencies was obtained.

S4C said that after the programme makers had collated the surreptitiously filmed material, they presented 30 pieces of footage to S4C. As a result of a process of assessment of the footage, S4C said that the final programme only included 13 of the original 30 pieces of footage, on the grounds that their inclusion could be warranted provided that the identity of individuals was obscured.

S4C accepted that the filming was undertaken without the knowledge or consent of Mrs Megan Roberts, Mrs Elsie Richards and Mrs Rose Smith and that their privacy was therefore infringed by the filming. However, it considered that the surreptitious filming at Bodawen was warranted and proportionate in the circumstances.

S4C said that the footage of Mrs Megan Roberts showed her suggesting that she had a bruise because of her treatment by the carers and the programme then went on to state that when she was asked again about the issue she denied that anyone had hit her. S4C said that the allegation made by Mrs Megan Roberts was a serious one and it was necessary to the credibility and authenticity of the programme to capture the suggestion on camera in order to report that older people in care make allegations of abuse which can be difficult to rely upon.

S4C said that the footage of Mrs Elsie Richards illustrated the lack of dignity and respect showed by a carer to her in refusing to take her to the toilet and in insisting that she soiled her nappy instead. S4C said that its legal expert explained that this practice was unacceptable and it was necessary to the credibility and authenticity of the programme to capture the footage on camera if the programme was to report that such practices occurred in Bodawen.

S4C said that the footage of Mrs Rose Smith showed the fact that the carer, who had broken English, had difficulty in understanding residents speak and in responding to their requirements. S4C said that the sequence then led the legal expert to state that failure to communicate with patients was a breach of their

basic rights and that it was part of the requirements of registration of care homes that the provider could persuade the public services that they could train appropriate staff.

S4C said that the infringement of privacy of the three residents was warranted by the considerable public interest in bringing these aspects of dealing with elderly care to public notice.

h) to j) Unwarranted infringement of privacy in the broadcast of the programme

As regards infringement of the privacy of Mrs Megan Roberts, Mrs Elsie Richards and Mrs Rose Smith in the broadcast, S4C said that their names were not mentioned in the programme, their faces were blurred, frequently only fleeting images of them were broadcast, they did not appear wearing distinctive clothing and that only people with an intimate knowledge of the three residents' voices and physical shapes could have recognised any of them.

S4C said that if, Ofcom took the view that the residents' privacy was infringed in the broadcast of the footage without their consent, any breach, which would have been significantly reduced by the efforts of the programme makers in obscuring the identity of the residents, was warranted by the public interest in raising the issues of:

- whether allegations of abuse made by those receiving care could be relied upon and how such allegations should be managed;
- the lack of dignity and respect showed by a carer in refusing to take a resident to the toilet and in insisting that she soiled her nappy in bed instead; and
- difficulties that residents encountered in communicating with a carer who had limited English language skills.

Mrs Roberts' comments on S4C's statement

a) As regards the complaint of unfair portrayal, in summary, Mrs Roberts made the following comments:

iii) In relation to the complaint that the programme distorted the truth, Mrs Roberts made the following comments:

- The programme referred to Mrs X's mother as if she was still at Plasgwyn, when in fact she was admitted to Plasgwyn on 16 February 2004 and discharged on 27 October 2004. Mrs Roberts said that the lady was not nursed in bed 24 hours a day and that various swallowing assessments had been carried out and a liquidised diet was recommended to prevent aspiration and choking.
- Mrs Roberts said that CCH did not awaken residents from a deep sleep at 05:30 hours and that there was no evidence of this. If residents were already awake the carers may in some instances have those residents dressed and brought downstairs for their own safety or because they wished to do so. Mrs Roberts said that some residents wished to go to bed at around 18:00 hours and they woke early.

- Mrs Roberts said that she informed the programme makers that an employee had been suspended as a result of Mr Glyn's email to CSSIW which made an allegation of a "carer striking some of the residents". Mrs Roberts said that in her view the programme makers had engineered a situation whereby she had to suspend the carer concerned for striking a resident, even though there was no evidence, and that S4C then broadcast the fact of the suspension to justify and corroborate a false allegation. Mrs Roberts said that Mr Glyn retracted the allegation against the carer on the 22 June 2009 and she considered it was unfair then to mention the suspension in the programme the following day.
 - Mrs Roberts accepted that there was no mention of blue aprons in the programme.
 - Mrs Roberts said that as the resident on the toilet was shouting out "*Please, please I can't stay here all night*", viewers would have been left with the impression that CCH left its residents on the toilet for hours rather than a maximum of 15 minutes. If viewers had been told of this resident's behaviour and medical history of constipation, they would be likely to agree that 15 minutes was not too long. Mrs Roberts also said that the resident was able to walk and that the programme had wrongly stated she was unable to bear her own weight.
- b) As regards the complaint about opportunity to respond, in summary, Mrs Roberts commented as follows:

Mrs Roberts said that Mr Glyn did not put all the allegations to her on 12 June 2009 but that she tried to answer each allegation he put to her with the limited information he provided. Mr Glyn did not ask her more than once for an interview on that occasion nor did he explain that it was important for her to provide an on-camera interview in order to provide a response to the allegations. Mrs Roberts said that she gave Mr Glyn the contact details for CSSIW, because she had answered all his allegations on the phone and he did not appear to believe her.

Mrs Roberts said that she was only made aware that the programme makers wanted her to provide an on-camera interview on the evening of 16 June 2009. Mrs Roberts said that her discussion with Mr Glyn on the evening of 16 June 2009 lasted about 45 minutes and that during this time she answered most of the allegations in as much depth as was possible bearing in mind the very limited disclosure which was being made to her. For example, Mrs Roberts said that she told Mr Glyn that if a member of staff was found sleeping on duty they would be disciplined. Mrs Roberts said she had also confirmed to Mr Glyn that she was prepared to be interviewed on-camera providing she could see the edited version prior to the programme being broadcast, to know exactly what was being alleged, but that she was told that it would not be possible for her to see the programme.

- c) As regards infringement of her privacy in the making of the programme, in summary, Mrs Roberts commented as follows:

Mrs Roberts said that she and Mr Glyn had had a lengthy face to face meeting of about 45 minutes on the night of 16 June 2009, so there was no reason for him to doorstep her on Sunday 21 June 2009, which was her day off.

Mrs Roberts said that it was only when she approached the front door that she saw the large microphone in Mr Glyn's hand. Mr Glyn did not inform the care assistant who answered the door that he wished to interview Mrs Roberts and the cameraman was not at the front door with Mr Glyn but hiding around the corner. Mrs Roberts said that the programme makers had already received a response from CCH as their PR company had produced a statement for the programme.

- d) As regards infringement of Mrs Megan Roberts' privacy in the making of the programme, in summary, Mrs Roberts commented as follows:

Mrs Roberts said that the programme makers had no evidence that Mrs Megan Roberts had been physically abused and had spoken to her daughter who had confirmed that her mother bruised easily and had a history of bruising before coming to Bodawen. As Mrs Megan Roberts never made an allegation of physical abuse, there was nothing to investigate. Mrs Roberts said that she believed the reporter had put a leading question to Mrs Megan Roberts, asking her "who did that" rather than "how did that happen". Mrs Roberts said that leading questions should never be put to a vulnerable adult or a child and that the reporter's question appeared to have confused Mrs Megan Roberts.

- e) As regards infringement of Mrs Richards' privacy in the making of the programme, in summary, Mrs Roberts commented as follows:

Mrs Roberts said that if the reporter had been more experienced or aware of Mrs Richards' behaviour and dementia she would have realised that the behaviour filmed was quite typical of Mrs Richards.

- f) As regards infringement of Mrs Smith's privacy in the making of the programme, in summary, Mrs Roberts commented as follows:

Mrs Roberts said that she believed the inclusion of footage of Mrs Smith in bed was an infringement of her privacy. The undercover reporter had no knowledge of Mrs Smith's medical history, her dementia or her care needs. Mrs Roberts said that by not raising the bed, the carer was protecting Mrs Smith from an assessed risk of falling out of bed.

In relation to communication difficulties, Mrs Roberts said that most of the footage in the programme was of one particular carer, when in fact Welsh speakers were present and the undercover reporter herself was a Welsh speaker.

S4C's response to Mrs Roberts' comments

- a) As regards the complaint of unfair portrayal, in summary, S4C commented as follows:

iii) The complaint of distortion of the truth:

- S4C said that the undercover reporter witnessed residents being awoken at 05:30 hours and was told by other staff that residents were awoken at that time so that a certain number were up and dressed before the day shift began, otherwise the day shift had too much to do to get everyone ready for the day ahead if all the residents had to be got up at that point.

- b) As regards opportunity to respond, in summary, S4C noted that there were disputed statements of fact in relation to Mrs Roberts' account of her

conversations with Mr Glyn and said that S4C stood by the accuracy of Mr Glyn's notes.

S4C said that the programme included Mrs Roberts' explanations regarding the lap strap and clearly explained that CCH had obtained the consent of the family of the woman shown with the lap strap for her to be strapped into her chair. The programme then went on to discuss the wider policy issues concerning the fact that the courts have in the past spoken against confining patients.

- d) As regards unwarranted infringement of Mrs Megan Roberts' privacy in the making of the programme, in summary, S4C said that Mrs Roberts appeared to have assumed that the undercover reporter was first told by Mrs Megan Roberts that she had been struck by a carer in the excerpt of undercover footage shown in the programme. In fact Mrs Megan Roberts first made the allegation when the reporter was working at the home but was not wearing a secret camera. When the reporter asked Mrs Megan Roberts how she had acquired a very large bruise, she said that she had been struck. S4C said that in order to test the allegation, the reporter raised the issue again on an occasion when she was equipped with a camera. This allegation was included in the programme not in order to allege that the patient had been struck but to demonstrate the difficulties that arise when vulnerable and confused elderly people make such allegations.
- f) As regards unwarranted infringement of Mrs Rose Smith's privacy in the making of the programme, in summary, S4C said that the footage was included in the programme to demonstrate the difficulties caused by the fact that the staff did not understand what the patient was saying. S4C said that most of the footage was of that particular carer because the undercover reporter was assigned to shadow her. S4C said that there was no attempt to insinuate anything concerning the use of foreign workers, other than the communication problems residents encountered when dealing with some members of staff.

S4C's first response to Ofcom's request for its reasons for placing an undercover reporter at Bodawen

In summary, S4C said that following a meeting with Mrs X, the programme makers undertook further research into standards of care at CCH homes and were made aware that some ex-employees of Bodawen had concerns regarding the standards of care there.

S4C said that, based on this research and information, the programme makers concluded that they needed to obtain independent evidence of practices at both Plasgwyn and Bodawen. The programme makers then sought temporary work for the reporter at CCH homes. S4C said that due to the way in which temporary work was organised at CCH, once registered with CCH for temporary work, shifts could be offered at either of the two homes. However, because the programme makers had received information regarding practices which were cause for concern at both Plasgwyn and Bodawen, this was acceptable to the programme makers. S4C said that the undercover reporter was offered two shifts at Plasgwyn and all other shifts at Bodawen.

Further information provided by S4C at Ofcom's request to elaborate upon the "research and information" obtained by the programme makers

S4C repeated that the further research and information obtained by the programme makers included gaining knowledge of concerns raised by ex-employees of Bodawen regarding the standards of care at Bodawen.

S4C said that, whilst researching the complaints of Mrs X and the concerns of the ex-employees, the programme makers were also aware that Bodawen had in recent years been at the centre of allegations of abuse by staff of its residents. There had been a finding of misconduct against a matron and the home had been forced to take special measures by CSSIW.

S4C said that, on the basis of Bodawen's background, the programme makers concluded that it was reasonable to work undercover at homes owned by CCH to investigate the complaints and concerns of Mrs X and the ex-employees (who were not prepared to be named or quoted).

S4C said that the programme makers did not go on a "fishing expedition" at Bodawen, but sought temporary work with CCH for a member of the team in order to investigate further the complaint/concerns raised in relation to both Bodawen and Plasgwyn.

Unsolicited representations from Mrs Roberts

Mrs Roberts said that she believed that undercover filming was undertaken on 28 and 29 March 2009, some weeks before S4C provided consent on 7 May 2009 to undertake the undercover filming.

Mrs Roberts said that S4C was delving back to 2004 to justify its investigation and that the allegations of 2004 were far too stale to justify further investigation in early 2009, even if the disciplining of the former matron who had been suspended in November 2004 was not dealt with by the Nursing Council until February 2008.

S4C's further comments

S4C said that the programme makers did not commence investigations into homes owned by CCH due to the historic problems of 2004/05, but that it was relevant for Ofcom to know the history of Bodawen in recent years, by way of background. While that history was not used as justification for the investigation, it could not reasonably be ignored.

S4C said that it had now become apparent that the programme makers undertook surreptitious filming at Bodawen on 22 March, 29 March and 10 June 2009, both before and after S4C was approached by the programme makers for its consent to such filming. S4C said that in undertaking surreptitious filming at Bodawen prior to obtaining consent from S4C, the programme makers did not act in accordance with S4C's programme guidelines and that was a matter to be addressed between the programme makers and S4C. However, S4C said that it remained the case that prior to making the decision as to whether surreptitious filming at CCH should be undertaken, the programme makers had first-hand experience of practices which raised serious concerns regarding the standards of care at both Plasgwyn and Bodawen.

S4C said that the undercover reporter worked three shifts during December 2008 and February 2009 at Plasgwyn and Bodawen and during those shifts she experienced deficiencies in the standard of care at each of the homes. S4C said that prior to making the decision to undertake surreptitious filming the undercover reporter also discussed her experiences at CCH with CSSIW on an anonymous basis.

S4C said that it was the programme makers' view that the evidence which had been collected prior to 22 March 2009 warranted taking the step to undertake surreptitious filming on 22 March 2009.

Further comments from S4C at the request of Ofcom about the evidence collected prior to 22 March 2009 which warranted surreptitious filming

The programme makers said that the matters of concern observed by the undercover reporter included the following:

- A lady at Plasgwyn was found to have been sitting in her own faeces in a pad for hours and it had dried on her. After she was changed she was put to bed in a nappy and without clothes.
- The reporter observed residents in Plasgwyn being changed and washed in bed with wipes, but did not see any residents getting bathed.
- At Plasgwyn, all but eight residents stayed in bed and all were back in bed by 19:30.
- One lady had sores all over her which had deteriorated since the previous day.
- Both homes smelled of urine and faeces and Bodawen was shabby and dirty, the teacups were stained brown, the biscuit tin was dirty, the kitchen was dirty and untidy and staff didn't put clean aprons on before going into the kitchen.

The programme makers said, in response to the undercover reporter's observations, that CSSIW said:

- Certain toilet practices observed were unacceptable and contrary to people's dignity, and that residents should be toileted every three hours and have their pads checked and changed every three hours.
- Residents should be bathed at least twice a week or every day if requested.
- Residents should get up and interact and there should be activities at least three times a week. Residents should be put in bed and get up when they requested and 20:00 hours bed for all was early.
- Residents should not stay in bed unless really poorly. Keeping residents in bed is wrong. They would develop pressure sores, would not get any communication and would be neglected.
- The care home regulations state that all parts of the care home should be kept clean, and that there should be no urine stench, even in the morning.

The programme makers said that following further conversations with Help the Aged, Age Concern and Action on Elder Abuse, the programme makers felt that there was *prima facie* evidence of a story in the public interest, that there were reasonable grounds to suspect that further material evidence could be obtained and that they should therefore press ahead to obtain that evidence on tape in order to give the programme the necessary credibility and authenticity.

The programme makers said that as a rule they obtained consent from S4C prior to carrying out any surreptitious filming. However the offer of shifts at CCH was *ad hoc* (the reporter was sometimes given less than a day's notice when a shift was on offer)

and there was a real possibility that had the programme makers turned down the opportunity to work at CCH on 22 March 2009 that further offers would not have arisen. If that were the case the programme makers would have failed to get incontrovertible evidence on tape of the standard of care, and to portray the reality of life for some elderly residents at CCH. In these circumstances there was insufficient time for the programme makers to present their case to S4C and to allow them to provide a considered response before the opportunity to film became available.

Decision

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

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

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

- a) Ofcom first considered the complaint that Mrs Roberts and CCH had been treated unfairly in the programme as broadcast because:
 - i) Throughout the programme it was wrongly insinuated that elder abuse was practised at Bodawen and Plasgwyn.

In considering this complaint and sub-heads ii) and iii) below, Ofcom took account of Rule 7.1 of the Code, which states that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. It also had regard to 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.

Ofcom considered that the term "elder abuse" would mean different things to different people and for the purposes of this head of complaint, Ofcom had regard to the definition adopted by the World Health Organisation "a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person".

Plasgwyn

Ofcom noted that the allegations made in the programme about Plasgwyn were that Mrs X said that her mother was left in bed at Plasgwyn 24 hours a day and that the home had also wanted to change the way she was fed. In Ofcom's view, leaving a resident in bed 24 hours a day was capable of coming within the definition of elder abuse, but wanting to change the way a resident was fed was not.

In relation to the complaint that the resident was left in bed 24 hours a day, Ofcom also noted that the programme made clear that its investigation had been unable to substantiate the claim. The programme itself therefore negated the claim and Ofcom considered that the broadcaster had taken reasonable care not to present material facts in a way that was unfair to the complainants in relation to Plasgwyn.

Bodawen

Ofcom considered that the following criticisms made about Bodawen in the programme were capable of falling within the definition of elder abuse referred to above:

- residents awoken at 05:30 hours;
- resident not assisted from the toilet;
- resident told to soil her nappy;
- nightdress tied like nappy;
- use of lap straps;
- resident's claim she was hit by staff; and
- difficulty communicating.

It should be noted, that Ofcom's role was not to establish whether elder abuse had in fact occurred at Bodawen. Ofcom's role was to determine whether, in broadcasting allegations, the broadcaster took reasonable care not to present, disregard or omit material facts in a way that was unfair.

The Code recognises the freedom of broadcasters to broadcast matters of genuine public interest and seeks to ensure that, in presenting serious allegations, they take reasonable care not to do so in a way that causes unfairness to individuals or organisations. In this case, Ofcom recognised that it was in the public interest to report on allegations such as those covered by the programme, but that this needed to be consistent with the requirement of fairness and other requirements of the Code.

Ofcom noted that the programme presented a number of criticisms of the care at Bodawen and recognised that evidence for those criticisms included undercover footage and statements from the undercover reporter. Ofcom also noted that the programme makers had consulted a legal expert and CSSIW about the criticisms and that both had confirmed that, on the information provided to them, they were cause for concern. Ofcom also noted that the programme makers and S4C had undertaken an analysis of 30 pieces of undercover footage and eventually decided that there was sufficient justification to include 13 in the programme.

Ofcom also noted that the fact that Mrs Roberts and CCH rejected the allegations was made clear in a number of ways in the programme.

First, in relation to the tying of the nightdress and the use of lap straps, the programme included Mrs Roberts' direct response that these were with the consent of the families of the residents and that tying the nightdress was for personal hygiene reasons.

Secondly, the carers' responses were included in the programme: in relation to telling the resident to soil her nappy rather than take her to the toilet, the

carer said the resident asked all the time; in relation to tying the nightdress, the carer explained they had the family's permission; and in relation to the resident alleging she was hit by staff, a carer said she lied sometimes.

Finally, the programme also included the following:

"In a statement she [Mrs Roberts] said that they are committed to the welfare of the residents and that the home has a good reputation locally. And that meant that the place was 90% full most of the time".

"Care homes are inspected every year. Last July, a report was made on Bodawen Nursing Home... it said that residents were given a good standard of care and there were sufficient staff".

"As well as defending their [CCH's] record they [CCH's PR company] claimed that Cariad Care Homes were proud of the care given to their residents. They said they invested regularly in staff training for the team and improving the environment in the home. They also arranged social events to encourage the residents to live a full life".

"They insist that their priorities at all times are the health, dignity and well-being of their residents".

Ofcom considered that the above statements made clear that the complainants rejected the allegations made in the programme.

Taking into account the matters set out above, Ofcom considered that the broadcaster had taken reasonable care not to present, disregard or omit material facts from the programme in a way that was unfair to Mrs Roberts or CCH in respect of the portrayal of the issue of elder abuse and has not upheld the complaint in this respect.

- ii) The programme's legal expert commented on facts put to him without also being provided with the explanations of Mrs Roberts and the families of affected residents.

Ofcom noted that the legal expert commented upon the following practices:

- nightdress tied like a nappy;
- use of lap straps;
- difficulty communicating;
- resident not assisted from the toilet; and
- resident told to soil her nappy.

Ofcom noted that the final three practices above were put to the legal expert without explanation from Mrs Roberts. Although Mrs Roberts said that during her telephone conversation on 12 June 2009 and during her 45 minute meeting with the programme makers on the evening of 16 June 2009 she responded to all the allegations put to her in as much depth as was possible given the limited information provided to her, she did not indicate to Ofcom what exactly she had said in relation to these three practices. Furthermore, the programme makers' notes of their conversations with Mrs Roberts did not record explanations from Mrs Roberts about these three practices, other than to indicate that Mrs Roberts had said that all of the allegations were untrue.

As a result, Ofcom had no evidence that detailed explanations were provided by Mrs Roberts in relation to the final three practices, which were then withheld from the legal expert.

In relation to the nightdress being tied around the resident, Ofcom noted that this practice was put to the legal expert in the programme as follows:

“Say there is a resident of an old people’s home who has her nightie tied around her like a nappy at night after she’s gone to bed. A nappy wrapped around her in such a way that she can’t put her hands into her own nappy. Do you think that is right?”

Ofcom noted that Mrs Roberts said that on 16 June 2009 she explained why the nightdress was tied and how it was done and that the family had consented. The programme makers’ notes of the conversation only recorded that CCH had the permission of the resident’s family to tie the nightdress.

Ofcom noted that the fact that the resident’s family had given permission for this practice did not appear to have been put to the legal expert, however, he had been informed of the reason for this practice and had given his views. As a result, Ofcom considered that the legal expert had been provided with Mrs Roberts’ explanation.

Finally, in relation to the use of lap straps, Mrs Roberts said that she gave a full explanation to the programme makers (although she did not inform Ofcom what that explanation was) and she informed them that CCH had the permission of the families to use lap straps for the two residents. The programme makers’ notes of their conversations with Mrs Roberts did not record an explanation for the use of lap straps, but did record that both lap straps were used with the permission of the families and the authorities. Ofcom also noted that S4C said that the legal expert was informed that the families had given permission for the use of the lap straps.

As a result, in relation to the use of the lap straps, Ofcom had no evidence of the explanation provided by Mrs Roberts which could have been provided to the legal expert, but was not.

In light of the above, Ofcom was satisfied that, where there was evidence that Mrs Roberts’ had provided detailed explanations for the practices, these were put to the legal expert.

Ofcom has not therefore upheld the complaint in this respect.

iii) The programme was a distortion of the truth in that:

- The programme suggested that convenience rather than medical need was the reason for leaving Mrs X’s mother in her bed for 24 hours a day and for wanting to change the way she was fed.

Ofcom noted that the following statements were made in the programme:

“We heard about the concerns of one woman ... She says that her mother is left in bed 24 hours a day. The home also wanted to change

the way she was fed. The woman believed that the home made decisions based on convenience rather than medical need.

This is the home in question. Plasgwyn Home ... It is owned by Cariad Care Homes ... We wanted to see if there was justification for the concern for the care provided at the home, so we sent one of our journalists to work as a care worker with Cariad Care Homes.

After starting at Plasgwyn, she was sent to the company's other home, Bodawen ... Here there were no people in bed all day and we were not told about the feeding arrangements".

Ofcom recognised the freedom of broadcasters to broadcast matters of public interest and that the freedom includes the right to hold opinions and to receive and impart information and ideas.

In this case Mrs X's complaint about the treatment of her mother was broadcast, as was her opinion that convenience rather than medical need was the cause. The programme also made clear that during its investigation it had not found evidence to substantiate Mrs X's complaint.

What is and is not included in a programme is a matter of editorial discretion and in this case, despite the fact that Mrs X's mother had not been resident at Plasgwyn for three or four years, the programme makers decided to include Mrs X's complaint and her opinion to explain why they had undertaken an undercover investigation into standards of care which led to the discovery of the matters included in the programme.

In Ofcom's view, individuals are entitled to express, and broadcasters are entitled to broadcast, honest expressions of opinion, provided that the information that has led the individual to arrive at that opinion is referred to or sufficiently alluded to. In this case the reasons why Mrs X had arrived at her conclusion were made clear in the programme and the programme makers even indicated that they had been unable to substantiate them.

As it was clear that the suggestion complained of was an expression of opinion rather than a statement of fact and viewers were in a position to decide whether they agreed or disagreed with it, Ofcom was satisfied material facts had not been presented in a way that was unfair to the complainants.

As a result, Ofcom has not upheld the complaint in this respect.

- The programme wrongly suggested that staff woke residents in the early hours.

Ofcom noted that it was stated in the programme:

"At 09:00 in the morning one of the residents is already fast asleep in her chair. We had seen before that some of them are woken up from a deep sleep at 05:30 in the morning. Later the same woman is asleep at the breakfast table".

Ofcom noted that S4C said that on the two night shifts worked by the reporter at Bodawen she witnessed two members of staff waking a total of six residents at 05:30 hours in the morning and had been told that the staff were expected to wake six residents before the morning shift started. Ofcom noted that Mrs Roberts said in her submission to Ofcom that there was no truth to this allegation.

As stated at decision head a) i) above, in Ofcom's view, the fact that the Mrs Roberts and CCH denied all the allegations was made clear in the programme and Ofcom considered that S4C had taken reasonable care not to present, disregard or omit material facts in relation to this allegation in a way that resulted in unfairness to the complainants.

In light of the above, Ofcom has not upheld the complaint in this respect.

- The programme suggested that the undercover reporter was not told about feeding arrangements when, in fact, she had worked a volunteer shift at Bodawen and filmed four residents at a table.

In Ofcom's view the statement in the programme "*and we were not told about the feeding arrangements*" simply indicated that the programme makers had been unable to substantiate Mrs X's complaint about feeding arrangements at Plasgwyn. As Ofcom did not consider that viewers would have interpreted the statement as a criticism of the complainants, it did not consider that the inclusion of the statement in the programme resulted in unfairness to them.

Ofcom has not therefore upheld the complaint in this respect.

- The programme alleged that a carer had assaulted a resident, resulting in her suspension. Mrs Roberts said that the allegation was withdrawn immediately before the programme was broadcast and the programme should not have reported the suspension resulting from that allegation.

Ofcom noted that the programme ended with:

"The Older People's Commissioner for Wales has asked us to send her all of our evidence. And Bodawen Home has suspended a care worker whilst the authorities investigate the complaints. But they insist that their priorities at all times are the health, dignity and well-being of their residents".

Ofcom recognised that earlier in the programme it had been reported that a resident had said that she had been hit by a staff member, but that she had later denied that anyone had hit her.

In Ofcom's view, the programme did not link the suspension of the care worker with the assault allegation.

As a result, Ofcom has not upheld the complaint in this respect.

- The programme wrongly suggested that staff entering the kitchen without blue aprons were contravening food hygiene regulations. Mrs Roberts

said that there were no such regulations and no evidence of this was included in the programme.

Ofcom noted that the parties agreed that no such allegation was made in the programme as broadcast and has not upheld the complaint in this respect.

- The programme suggested that the staff were not appropriately trained by explaining that the undercover reporter could not help a female resident off the toilet because she had received no manual handling training.

Ofcom noted that the programme stated:

“Our journalist didn’t have the right or experience to help her because she was only shadowing other workers ... She was there for 15 minutes until one of the carers helped her back to bed”.

In Ofcom’s view, the programme made clear that the reason the reporter could not assist the resident from the toilet was because she had not received the appropriate training because she was merely shadowing other workers. Ofcom did not consider that the programme suggested that other staff members had not received appropriate training.

Ofcom has not therefore upheld the complaint in this respect.

- The programme suggested that a female resident, who was said to be unable to walk, had to wait for 15 minutes before being assisted to leave the toilet.

Ofcom noted that the programme stated:

“On another night shift our journalist saw a woman who’d been left on her own on the toilet.

I’d say that common sense dictates that you don’t leave someone who can’t walk to sit on the toilet on her own. She was there for 15 minutes until one of the carers helped her back to bed”.

Ofcom noted that Mrs Roberts said in her complaint that now she knew who the resident was, she could state that this resident was able to walk and that due to problems she had with constipation it was not unusual for her to be on the toilet for 15 minutes.

Ofcom noted that S4C said that the reporter witnessed that the resident in question was left for 15 minutes before being assisted to leave the toilet and that the footage clearly showed that the resident was unable to lift herself off the toilet and that the assistance of a carer was required.

While Ofcom noted that Mrs Roberts was subsequently able to say that the resident was able to walk, it was apparent to Ofcom from the broadcast footage that the resident was calling for assistance, which was not immediately forthcoming.

In the circumstances, Ofcom considered that the programme makers had taken reasonable care not to present, omit or disregard material facts in a

way that was unfair to the complainants and has not upheld the complaint in this respect.

- b) They had not been provided with an appropriate opportunity to respond to the allegations made in the programme.

In considering this complaint, Ofcom took account of Rule 7.1 of the Code. It also had regard to Practice 7.11 of the Code, which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

In Ofcom's view an opportunity to respond can be provided in a number of different ways, by an on- or off-camera interview, a written response or simply a telephone interview. In this case, the programme makers wanted an on-camera interview with Mrs Roberts, but while she was willing to respond to the allegations off-camera, she did not wish to provide an on-camera interview without sight of the edited version prior to the broadcast of the programme. From the programme makers' notes of their conversations with Mrs Roberts, it appeared that Mrs Roberts' reason for not wishing to provide an on-camera interview at the time was that she did not trust the programme makers. However, in her complaint to Ofcom, Mrs Roberts indicated that she felt unable to provide an on-camera interview because of the lack of detail in the allegations presented to her.

Regardless of the reasons why an on-camera interview did not take place, Ofcom noted that Mrs Roberts' complaint was that the programme makers had put vague and unsubstantiated allegations to her verbally, but refused to provide details which would have enabled her to respond properly.

In Ofcom's view, where a response is sought, in order for it to be considered an appropriate opportunity to respond, programme makers should provide a summary of all material allegations to be included in the programme. There is generally no need for programme makers to set out all the evidence upon which the allegations are based or to provide access to undercover footage, unless it would be unfair not to do so.

Ofcom therefore considered first whether all material allegations had been put to Mrs Roberts.

Ofcom noted that Mrs Roberts was not given an opportunity to respond to the statements made by Mrs X about the care her mother received at Plasgwyn. However, as the programme itself made clear that the undercover reporter had been unable to confirm such practices at Plasgwyn, Ofcom did not consider that the failure to provide Mrs Roberts with an opportunity to respond resulted in unfairness to the complainants.

Ofcom noted that the programme makers said that all the other allegations made in the programme were put to Mrs Roberts by telephone on 12 June 2009 and again during a meeting between the programme makers and Mrs Roberts on the evening of 16 June 2009.

Mrs Roberts said that on 12 June 2009 not all the allegations were put to her, but that she tried to answer those that were put to her on that occasion with the limited information provided.

Mrs Roberts said that on the evening of 16 June 2009 she had a 45 minute meeting with the programme makers and answered most of the allegations in as much depth as was possible bearing in mind the very limited disclosure that was made. Mrs Roberts did not suggest that on this occasion all material allegations made in the programme were not put to her.

Ofcom was therefore satisfied that all material allegations made in the programme were put to Mrs Roberts prior to broadcast.

Ofcom noted Mrs Roberts' concern that without further detail about the various allegations she was unable to investigate and respond fully to them. Ofcom therefore considered whether Mrs Roberts was given sufficient information about the allegations to be able to respond properly.

In relation to the lap straps and the tying of the nightdress, Ofcom noted that Mrs Roberts was able to identify the residents and provided a proper response.

In relation to the allegation of a carer sleeping on the nightshift, Mrs Roberts said she responded to this allegation and had informed the programme makers that if a staff member was found sleeping on duty he or she would be disciplined.

In relation to the allegation that residents were woken at 05:30 hours, Mrs Roberts explained in her submissions to Ofcom that this was not the practice of CCH. She also said that as some residents went to bed at 18:00 hours some would be awake at 05:30 hours and that carers may have those residents dressed and taken downstairs for their own safety or because they wished to do so. Ofcom considered that Mrs Roberts could have provided this explanation to the programme makers without having to know the identity of the residents concerned.

In relation to the allegation that a resident was told to soil her nappy instead of being helped to the toilet, Ofcom considered that Mrs Roberts had sufficient information either to explain why in certain circumstances this may occur, or to state that this was unacceptable and perhaps a disciplinary matter.

In relation to the allegation that a resident was not assisted from the toilet for 15 minutes, Ofcom noted that once Mrs Roberts knew who the resident was, she was able to provide an explanation. However, Ofcom also noted that in her complaint Mrs Roberts had explained that it was not unusual for residents to need that amount of time on the toilet and why. Ofcom considered that Mrs Roberts could have provided such an explanation to the programme makers without having to know the identity of the resident concerned.

In relation to the allegation that a resident had complained that she had been struck by a carer, Ofcom considered that Mrs Roberts would have been able to respond that this was unacceptable and a disciplinary matter without knowing the identity of the carer or resident concerned. However, Ofcom noted that Mrs Roberts became aware, prior to broadcast, of the carer against whom this allegation was made and that she suspended her until the allegation was withdrawn on 22 June 2009.

In light of the matters set out above, in Ofcom's view the programme makers provided a sufficient summary of all material allegations to be included in the programme for Mrs Roberts to be able to properly respond and it was not

necessary to provide Mrs Roberts with further details of the allegations or sight of the undercover footage.

As a result, Ofcom has not upheld the complaint in this respect.

Privacy

Ofcom considered the complaints of unwarranted infringement of privacy in the making and broadcast of the programme.

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

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

Ofcom considered Mrs Roberts' complaints of unwarranted infringement of privacy in the making and broadcast of the programme (entertained as heads c) and g) consecutively).

c) Unwarranted infringement of Mrs Roberts' privacy in the making of the programme

In considering this head of complaint, Ofcom had regard to Practices 8.5, 8.9 and 8.11 of the Code. Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person's consent or be otherwise warranted. Practice 8.9 states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme. Practice 8.11 deals with doorstepping which is the filming or recording of an interview or an attempted interview with someone without prior warning and which is a legitimate means for programme makers to obtain interviews in certain circumstances. It states that doorstepping should not take place unless:

- a request for an interview has been refused; or
- it has not been possible to request an interview; or
- there is good reason to believe that an investigation will be frustrated if the subject is approached openly; and
- it is warranted to doorstep.

Ofcom considered whether Mrs Roberts had a legitimate expectation of privacy in the circumstances. Ofcom noted that when the doorstepping took place Mrs Roberts was at her home and that although her home was close to her place of work, her place of work was a private care home and it was her day off. It further noted that Mrs Roberts had already provided the programme makers with her response, in writing and via a face to face meeting, to the substantive issues raised by them.

Ofcom took the view that in such circumstances, Mrs Roberts would not have expected a camera crew to approach her without notice requesting an interview intended for broadcast. Ofcom therefore concluded that Mrs Roberts had a legitimate expectation of privacy in this instance.

Ofcom then considered the broadcaster's competing right to freedom of expression and the public interest and whether, in the circumstances, the intrusion into Mrs Roberts' private life that the doorstepping represented was warranted.

Ofcom first noted that Mrs Roberts had declined the invitation to be interviewed on camera. It therefore did not have to consider whether the programme makers were unable to request an interview or whether the investigation would be frustrated.

Ofcom then considered whether the method of doorstepping was warranted. To this end, Ofcom noted that Mrs Roberts had already conducted a face to face interview with the programme makers off-camera and had provided written responses to them. It therefore considered that the programme makers were in possession of Mrs Roberts' response to the substantive issues raised by them. In such circumstances, Ofcom did not see what further information in the public interest the programme makers would have uncovered by doorstepping the complainant.

In light of the above, Ofcom concluded that the broadcaster's right to freedom of expression did not outweigh Mrs Roberts' right to privacy and did not justify the intrusion into Mrs Roberts' private life that the doorstepping constituted. As a result, the actions of the programme makers in doorstepping her amounted to an unwarranted infringement of Mrs Roberts' privacy.

Ofcom has therefore upheld the complaint in this respect.

g) Unwarranted infringement of Mrs Roberts' privacy in the programme as broadcast

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

Given Ofcom's conclusion that the recording of the footage of Mrs Roberts in the circumstances set out at head c) above unwarrantably infringed her privacy, Ofcom considered that Mrs Roberts would have had a legitimate expectation that such footage would not be broadcast without her consent.

As Mrs Roberts did not consent to the broadcast of the footage, Ofcom then considered the broadcaster's competing right to freedom of expression, the public interest and the audience's right to receive information and ideas without unnecessary interference. Ofcom considered whether, in the circumstances, there was a sufficient public interest to justify the intrusion into Mrs Roberts' private life by the broadcast of the footage.

Ofcom noted that the justification provided by S4C in its submissions was that there was a public interest in providing evidence of the programme makers' attempts to provide the owners of Bodawen with a right of reply regarding the unacceptable practices experienced by the reporter.

In circumstances where the owners of Bodawen had already replied to the allegations and the presenter stated in the programme that Mrs Roberts “*declined an interview*” and that the owners of Bodawen had “*refused to be interviewed*”, Ofcom could see no public interest in broadcasting the footage of Mrs Roberts declining to provide further responses on camera. While Ofcom recognised that from a journalistic point of view, the footage carried the message more strongly than the narrative alone could have done, it did not consider that the broadcaster’s right to freedom of expression or the viewers’ right to receive the information contained in the footage justified the intrusion into Mrs Roberts’ private life. Ofcom therefore found that Mrs Roberts’ privacy was unwarrantably infringed in the programme as broadcast.

Ofcom has therefore upheld the complaint in this respect.

Ofcom then considered the complaints of unwarranted infringement of privacy in the making and broadcast of the programme made on behalf of the three residents.

d) to f) Unwarranted infringement of the privacy of the three residents in the making of the programme

In considering these heads of complaint, Ofcom had regard to Practices 8.5 and 8.9 of the Code, as set out above, as well as Practices 7.14, 8.13 and 8.22. 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 unless warranted. Practice 8.13 states that surreptitious filming or recording should only be used where it is warranted and Practice 8.22 states that vulnerable persons should not be questioned about private matters without the consent of a person with primary responsibility for their care, unless it is warranted to proceed without consent.

Ofcom first considered whether the residents had a legitimate expectation of privacy in the circumstances in which they were observed by the reporter and surreptitiously filmed. Ofcom noted that Bodawen was home for each of the residents and that they were elderly and required significant care and assistance, in particular, with their most personal activities. In Ofcom’s view, each of the residents would have had a strong and legitimate expectation of privacy while in their own home, whether undertaking everyday activities or being assisted with more intimate and personal activities.

Ofcom considered that there was an intrusion into their privacy by the undercover reporter filming them in their home in very private situations without their knowledge or consent.

Having found an intrusion into the residents’ privacy, Ofcom then went on to consider whether the intrusion was warranted.

Ofcom took the view that, prior to filming, the undercover reporter applied for and successfully secured work with CCH by misrepresentation and deception, as the sole purpose of obtaining the position was to observe standards of care at Bodawen and Plasgwyn on behalf of the programme makers. In this regard, Ofcom noted that under Practice 7.14 (which is cross-referred to in section 8 of the Code covering privacy) programme makers should not normally obtain material through misrepresentation or deception, although it may be warranted if

it is in the public interest and the material cannot reasonably be obtained by other means.

Ofcom noted that the programme makers were investigating standards and quality of care at CCH's homes, which was clearly a story in the public interest. Ofcom considered that in order to obtain evidence of standards and quality of care at Plasgwyn and Bodawen, the programme makers would have required access to the home.

Ofcom took the view that given the strong public interest in the subject matter, together with the need for the programme makers to gain access to the home as the only viable way to gather evidence, the programme makers were justified in using misrepresentation and deception in this instance.

In order to establish whether the surreptitious filming/intrusion of privacy was warranted, Ofcom considered, in accordance with Practice 8.13 of the Code, the following points.

Prima facie evidence of a story in the public interest

Ofcom took the view that the issue of standards of care in care homes for the elderly is in the public interest. It therefore had to consider whether prima facie evidence existed in such a story. Ofcom noted that the programme makers drew their evidence from three sources before entering the CCH homes. First, the account given by Mrs X, a daughter of a former resident at one of CCH's homes in 2004. Second, accounts given by ex-employees of CCH homes. Third, the disciplinary action taken against a member of staff at a CCH home in November 2004, which was dealt with by the Nursing Council in February 2008.

Ofcom had concerns that an appreciable period of time had passed from the residency of Mrs X's mother at Plasgwyn until the start of the investigation by the programme makers into CCH's homes at Plasgwyn and Bodawen. However, it also considered that the programme makers had the benefit of two further, and more recent, sources of information that, together with Mrs X's account, provided them with reasonable grounds to suspect that a sub-standard level of care was being administered in CCH's homes.

For these reasons, Ofcom concluded that in this particular set of circumstances, the cumulative nature of the sources of information amounted to prima facie evidence of a story in the public interest.

Reasonable grounds to suspect that further material evidence could be obtained

Ofcom took the view that the programme makers had reasonable grounds to believe that further material evidence could be obtained on the basis of the material they had gathered prior to the reporter's first visit to Plasgwyn.

Necessary to the credibility and authenticity of the programme

Ofcom took the view that it would have been very difficult for the programme makers to have carried out an effective investigation into the standards of care at CCH's care homes if it had given CCH prior warning of filming at Bodawen. Ofcom therefore considered that, in this instance, surreptitious filming was a method which would help to ensure that the material it obtained was both credible and authentic.

In the light of the above, Ofcom's view was that there was a strong public interest justification in reporting on the matters observed at CCH's homes, particularly given they were entrusted with the care of the elderly.

Ofcom then carefully weighed the vulnerable and elderly residents' rights to privacy against the public interest served by the observation and surreptitious filming of their care in the circumstances.

As stated above, Ofcom considered that the residents had a strong and legitimate expectation that they would not be observed or surreptitiously filmed in their home and that there was an intrusion into their privacy by the undercover reporter's actions.

However, Ofcom also considered that an investigation into the quality of care provided by those responsible for the elderly was one that was certainly in the public interest. It also considered that the investigation could not have succeeded in showing the actual practices at care homes operated by CCH without surreptitious filming. It concluded that although these competing rights were finely balanced, that the ultimately the strong public interest outweighed the legitimate expectation of privacy held by the three residents.

Ofcom has therefore not upheld heads d) to f) of the complaint in this respect.

h) to j) Unwarranted infringement of the privacy of the three residents in the broadcast of the programme

Ofcom considered the complaint that the surreptitiously filmed footage of the residents was broadcast without consent. In considering these heads of complaint, Ofcom had regard to Practice 8.6 of the Code, as set out above, as well as Practices 8.14 and 8.21 which state that material gained by surreptitious filming and recording should only be broadcast when it is warranted and that where a programme features a vulnerable person in a way that infringes privacy consent must be obtained from a person in *loco parentis* and, wherever possible, the individual concerned, unless it is warranted to proceed without consent.

As set out above, Ofcom considered that the residents had a legitimate expectation of privacy while in their home and in the private circumstances in which they were depicted in the programme and noted that neither they nor their families consented to the broadcast of the footage of them.

Ofcom noted that footage of the residents that was broadcast showed them in distressing and sensitive circumstances. However, the broadcaster had taken steps to obscure their identities and Ofcom considered that no features of the residents were shown which would have enabled viewers to identify them, save for their clothing and voices. Furthermore, Ofcom took the view that only those who knew the residents well might have been able to identify them. Ofcom therefore found that there was an intrusion into the residents' legitimate expectation of privacy, albeit a limited intrusion, due to the nature of the material broadcast.

Ofcom then considered the broadcaster's competing right to freedom of expression, the public interest and the audience's right to receive information and ideas without unnecessary interference and whether in all the circumstances there was sufficient public interest to warrant the intrusion into the residents'

private lives that the broadcast footage of them represented. Ofcom considered whether what was revealed in the broadcast of the surreptitiously filmed footage of the residents was sufficiently serious to justify the broadcast of the footage and whether there was some other means available to achieve that end. In Ofcom's view the issues raised by the broadcast of the surreptitiously filmed footage of the residents were serious and raised legitimate matters of public interest about the care of the vulnerable and elderly and it was not clear to Ofcom how that point could have been made by other means so as to render the broadcast of the surreptitiously filmed footage unnecessary.

In conclusion, Ofcom considered that given the identity of the residents had been obscured to all but those who knew them well, the intrusion into the residents' legitimate expectation of privacy in the programme as broadcast was limited.

Ofcom considered that the considerable public interest in bringing to public attention the issues raised in the programme outweighed the limited intrusion into the residents' privacy that the programme as broadcast represented.

Ofcom has not therefore upheld heads h) to j) of the complaint in this respect.

Accordingly Ofcom has not upheld the complaints of unfair treatment or the complaints of unwarranted infringement of privacy in the making and broadcast of the programme as broadcast in respect of the three residents. Ofcom has upheld the Mrs Roberts' complaint of unwarranted infringement of privacy in the making and broadcast of the programme.

Not Upheld

Complaint by Mr Jordan Cunliffe made on his behalf by Ms Janet Cunliffe

Real Crime: Murder of a Father, ITV1, 23 August 2010

Summary: Ofcom has not upheld this complaint of unfair treatment by Mr Jordan Cunliffe, made on his behalf by Ms Janet Cunliffe.

On 23 August 2010, ITV1 broadcast a documentary about the murder of Mr Garry Newlove in 2007. The programme included interviews with Mr Newlove's family and reconstructions of events to tell how he was kicked and punched to death in front of his daughters by a gang of drunken youths who he had confronted over vandalism to his wife's car.

Ms Cunliffe, the mother of Mr Cunliffe, one of the youths convicted of Mr Newlove's murder, complained to Ofcom that her son was treated unfairly in the programme as broadcast.

In summary, Ofcom found that the broadcaster had taken reasonable care to ensure that the programme did not present, disregard or omit material facts in a way that was unfair to Mr Cunliffe, either in relation to the portrayal of the attack on Mr Newlove or in relation to the damage to Mrs Newlove's car.

Introduction

On 23 August 2010, ITV1 broadcast an episode of its *Real Crime* series. This programme, entitled *Murder of a Father*, concerned the murder of Mr Garry Newlove in Warrington in 2007. The programme used interviews with Mr Newlove's widow and three daughters and dramatic reconstructions of events to tell how Mr Newlove was kicked and punched to death in front of his daughters by a gang of drunken youths who he had confronted over vandalism to his wife's car.

The programme described how events started with a group of youths smashing glass on Mrs Newlove's car and said that Mr Newlove went out to confront the youths, was surrounded by them and was hit in the back, which made him fall to the ground. The programme said that the gang started hitting and kicking him while he was on the ground. The reconstruction showed Mr Newlove's face covered in blood and one of his daughters said:

"I saw my dad laying on the floor in a pool of blood, his head was just smashed up, his eyes were all bulged up. He was just full of blood – everywhere".

The programme explained that Mr Newlove went into a coma and that he died two days later after his life support system was switched off. Five youths were tried for the murder of Mr Newlove, three of whom were convicted in 2008 and sentenced to life imprisonment.

Ms Cunliffe, the mother of Mr Cunliffe, one of the youths convicted of Mr Newlove's murder, who was aged 16 at the time of his conviction, complained to Ofcom that her son was treated unfairly in the programme as broadcast.

The Complaint

Mr Cunliffe's case

In summary, Ms Cunliffe complained on behalf of Mr Cunliffe that he was treated unfairly in the programme as broadcast in that he was portrayed unfairly because:

- a) The programme suggested that Mr Cunliffe repeatedly kicked Mr Newlove in the head and that, having suffered massive injuries to his face, Mr Newlove was left in a pool of blood.

By way of background, Ms Cunliffe said that while Mr Cunliffe was present, at the trial the court heard that, even though Mr Cunliffe was not wearing any shoes, he had no injuries to his hands or feet and therefore could not have inflicted any kicks or blows. The court also heard that Mr Newlove's injuries were not consistent with a beating and that he died from "a single unique injury" to his neck, otherwise "he would have walked home unaided with no other injury and in no need of medical attention". Mr Cunliffe was convicted of murder under the law of joint enterprise¹, even though he was at the time registered blind and could not see the crime, let alone be a part of it.

- b) Mr Cunliffe was wrongly shown to have been involved in smashing the windscreen of Mrs Newlove's car.

By way of background, Ms Cunliffe said that this never happened and that on the night in question a mini digger was vandalised on the street by another youth who received a three month suspended sentence in March 2008 for the damage. On sentencing him, the magistrate said that his actions were the catalyst for Mr Newlove's death. The youth convicted of the offence was not known to Mr Cunliffe nor was he part of his unit of friends.

ITV's case

In summary, ITV Broadcasting Limited ("ITV"), the licensee responsible for the compliance of the programme on behalf of the ITV Network, responded to Ms Cunliffe's complaint that Mr Cunliffe was treated unfairly in the programme because he was unfairly portrayed as follows:

- a) In relation to the suggestion that Mr Cunliffe repeatedly kicked Mr Newlove in the head, ITV said that it did not believe that the programme suggested that Mr Cunliffe or anyone else repeatedly kicked Mr Newlove in the head. ITV said that Mr Newlove was depicted as having been repeatedly kicked while he was on the ground (both in the reconstruction and in the interviews with his daughters), but no details were given as to where on his body he was kicked.

ITV said that the programme's depiction of the attack was consistent with the account given by Mr Newlove's daughters in their interviews and with the comments made by the sentencing judge.

¹ Joint enterprise refers to the situation where two or more people are involved in a crime and are held jointly liable for that crime. It enables entire groups of people to be prosecuted for murder when there is no evidence who inflicted the fatal blow and allows someone to be convicted of murder if they foresaw that another member of the group might kill or inflict serious harm.

ITV said that the programme did suggest that Mr Newlove was left “in a pool of blood” after the attack. ITV said that this was Ms Danielle Newlove’s account of the state of her father when she found him and that it was clear to viewers that this was her subjective description of her father’s state when she found him lying in the road. ITV said that the reconstruction did not show Mr Newlove lying in a pool of blood, but depicted him with blood on his face and that the presence of blood at the scene was consistent with the judge’s comments.

ITV said that different versions of events were given by the defendants and witnesses at the trial. During sentencing, the judge himself said he could not be sure who delivered the fatal kick. ITV said it was for this reason that no specific role in the attack was ascribed to Mr Cunliffe or the other defendants in the programme. ITV also said that it would not have been clear to viewers which of the boys in the reconstruction was intended to be Mr Cunliffe. However, ITV said that all three of the defendants were convicted of being involved in the attack so it was not unfair to suggest in the programme that they had all kicked and punched Mr Newlove.

- b) In relation to the suggestion that Mr Cunliffe was involved in smashing the windscreen of Mrs Newlove’s car, ITV said that Mr Cunliffe was not “shown to have been involved in smashing the windscreen of Mrs Newlove’s car” and that no damage was shown to the car windscreen at all or to any specific part of the car. ITV said that the reconstruction included the sound of broken glass, some glass on the ground beside the car and made reference to an attack on the family’s car.

ITV said that there were discrepancies in accounts of what damage was done to the car and to a digger parked outside the house and this was why no further details were given in the programme about the damage. However, ITV said that it was widely accepted that the attack on the Newloves’ car was what prompted Mr Newlove to go out and challenge the group of youths in the street. ITV said that this was also reflected in the sentencing judge’s comments.

ITV said that, in these circumstances, it was not unfair to refer to the damage to the car in the programme, or to exclude the fact that a digger was also vandalised.

ITV said that it was not unfair to suggest that Mr Cunliffe and the other defendants were involved in the vandalism. ITV said that, as was reported at the time, Mr Stephen Sorton gave evidence that he pushed his hand through the broken glass of the digger’s vandalised wing mirror and that one of the other defendants kicked the Newloves’ car. ITV said that because of the conflicting accounts of the vandalism, no specific role in it was ascribed to Mr Cunliffe or the other defendants in the programme.

ITV said that even if the programme was proved to be inaccurate in its portrayal of the vandalism to Mrs Newlove’s car, this would not result in any unfairness to Mr Cunliffe given his conviction and sentence for Mr Newlove’s murder.

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 transcript of the programme as broadcast, both parties' written submissions and supporting documentation.

- a) Ofcom first considered the complaint that Mr Cunliffe was portrayed unfairly in the programme as broadcast because it suggested that he had repeatedly kicked Mr Newlove in the head, that Mr Newlove had suffered massive injuries to his face and had been left in a pool of blood.

Ofcom considered whether the broadcaster's actions were consistent with its obligation to avoid unjust or unfair treatment of individuals in programmes as set out in Rule 7.1 of the Ofcom Broadcasting Code ("the Code"). In particular, Ofcom had regard to Practice 7.9, which states that broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom noted that the programme was a documentary about the murder of Mr Newlove and the effect it had on his family. It was said to be the first time that Mr Newlove's *"wife and daughters had spoken about what happened that fateful night"* and the story was told from their perspective. Although the programme was not primarily about the three youths who were convicted of murdering Mr Newlove, it identified them by name and photograph, included some previous history about them and explained that they were given life sentences with varying minimum terms. However, the programme did not distinguish between the parts played by the individual youths in the reconstructions of events and none of the three actors was specifically identified as Mr Cunliffe.

Ofcom noted that the reconstruction did not show Mr Newlove being kicked in the head and, while all of his daughters referred to him being kicked, none mentioned that he was kicked in the head. One of Mr Newlove's daughters did say *"his head was just smashed up"*, Mrs Newlove said that in hospital his head was *"horrendous"* and the reconstruction showed blood on and injuries to Mr Newlove's face. Ofcom also noted that the reconstruction did not show Mr Newlove lying in a "pool of blood", although one of his daughters describing the scene said *"I saw my dad laying on the floor in a pool of blood ... he was just full of blood"*.

Ofcom considered that, from the information contained in the programme, viewers were likely to have concluded that a gang of youths, one of whom was Mr Cunliffe, had repeatedly kicked Mr Newlove and that some of the blows had been to his head, that Mr Newlove had suffered injuries to his face and that there was a lot of blood.

Ofcom noted that these were relatively fine distinctions, that the allegations presented were of a serious nature and that ITV did not seek to rely solely on the precise wording of the complaint, but instead addressed the issues.

Ofcom therefore proceeded to consider whether Mr Cunliffe was unfairly portrayed because the programme suggested that he was one of a gang of youths who had repeatedly kicked Mr Newlove, some of which blows were to his head, that Mr Newlove suffered injuries to his face and there was a lot of blood.

Ofcom recognised that Mr Cunliffe denied that he kicked Mr Newlove and disputed the suggestion that Mr Newlove suffered massive injuries to his face and was left in a pool of blood. However, Ofcom's role was not to establish whether Mr Cunliffe kicked Mr Newlove or the nature of the injuries suffered, but to determine whether, in broadcasting the programme, the broadcaster took reasonable care not to present, disregard or omit material facts in a way that was unfair to Mr Cunliffe.

Ofcom noted that the programme makers relied upon the recollections of the Newlove family and the comments made by the judge in sentencing the three youths convicted of Mr Newlove's murder. Ofcom noted that the Newlove family had first-hand knowledge of the events described and that their broadcast testimonies were consistent and tended to corroborate one another.

Ofcom recognised that there would have been evidence in Mr Cunliffe's defence to the effect that he played no part in the events that night. However, he was convicted, along with two other defendants, by the jury. The judge made clear at the sentencing stage the findings he had made and which he took into account for the purposes of sentencing. At the sentencing hearing, the judge said:

"You've all been convicted of the murder of Garry Newlove. You were three of a gang who attacked him on the 10th August because he had the courage to remonstrate with you. ... You hit Garry Newlove and put him to the ground and kicked him. I cannot tell from the evidence how many times he was kicked, but I'm sure that all three of you used violence against him and didn't simply encourage others to do so. ... There was only one fatal kick and I do not know who delivered it. ... I sentence you on the basis, Cunliffe, that you did not start the attack, but joined in and although I accept that you were not wearing shoes, you kicked Garry Newlove when he was on the ground. I'm sure of that from Miss Cassidy's evidence. ... As for you, Sorton and Cunliffe, the DNA evidence of blood on clothing shows that you were both there. ... There's no evidence that you [Cunliffe] started the violence against Garry Newlove, but you joined in when Garry Newlove was on the ground".

Given these factors, Ofcom concluded that the allegation that a gang of youths, one of whom was Mr Cunliffe, had repeatedly kicked Mr Newlove, was based on credible evidence provided by first-hand witnesses and corroborated by the judge's sentencing comments. In light of this, Ofcom found that the broadcaster had taken reasonable care in relation to the allegation and that it was not unfair to Mr Cunliffe for the programme to have portrayed him as part of a gang that kicked Mr Newlove many times resulting in his death.

In relation to the suggestion that Mr Newlove was kicked in the head, received facial injuries and that there was a lot of blood, Ofcom noted that these suggestions arose as a result of the recollections of the Newlove family who, as stated above, had first-hand knowledge of the events described. Ofcom concluded that the suggestions were based on credible evidence provided by first-hand witnesses and, in light of this, Ofcom considered that the broadcaster had taken reasonable care to satisfy itself that material facts were not presented, omitted or disregarded in a way that was unfair to Mr Cunliffe.

As a result, Ofcom has not upheld the complaint in this regard.

- b) Ofcom next considered the complaint that Mr Cunliffe was portrayed unfairly because he was wrongly shown to have been involved in smashing the windscreen of Mrs Newlove's car.

In considering this head of the complaint, Ofcom took account of Rule 7.1 and had regard to Practice 7.9 of the Code, as outlined in decision head a) above.

As set out at decision head a) above, the reconstruction scenes in the programme used three actors to represent the three youths convicted of murdering Mr Newlove, however they were depicted as a group and none was identified as a particular defendant.

Ofcom noted that the programme did not show any individual youth smashing the windscreen of Mrs Newlove's car and no reference was made in the programme to a smashed windscreen that night. Mrs Newlove said in the programme:

"We'd heard noise which was usual, but then we'd heard glass being smashed which kind of then your kind of heckles go up and thinking oh god what have they done now? And then I heard a thud against my car and that's when I thought there's something really going on that's not, you know, they're attacking my car again. I'd already had a broken windscreen mirror, so I really didn't want to, you know, what are they doing again?"

In the reconstruction, a group of youths was shown around Mrs Newlove's car, there followed the sound of breaking glass and glass was shown on the ground beside the car. Ofcom considered that viewers were likely to have concluded that one of the youths had broken some glass on Mrs Newlove's car.

Ofcom noted that Mr Cunliffe said that he was not involved in smashing the windscreen of Mrs Newlove's car and that the catalyst for the events that night was vandalism to a mini digger two doors away from the Newloves' house, an incident with which he had no involvement.

Ofcom noted that the judge, in sentencing the three youths, said:

"On 10 August there was more trouble in Station Road North. It started when a digger was smashed and you, Sorton, were involved with the damage to the digger as the glass fragments show. When his wife's car had been damaged as well, Garry Newlove went to deal with what was happening. He did so because the car was damaged and because his family was upset".

Ofcom also noted that ITV said that there were discrepancies in accounts of what damage was done to Mrs Newlove's car and the digger, but that the defendant Mr Stephen Sorton gave evidence that he had pushed his hand through the broken glass of the digger's vandalised wing mirror and that one of the other defendants kicked Mrs Newlove's car.

From the information provided to Ofcom it appeared that Mrs Newlove's car was damaged that night, with descriptions of a "thud" and a "kick" being given. Nobody appeared to have suggested that glass on Mrs Newlove's car had been broken, although it seemed to be accepted that glass was broken on the digger.

However, in Ofcom's view, the material fact was that Mrs Newlove's car was damaged by youths on the night in question. The damage provoked Mr Newlove to go into the street to remonstrate with the youths and it resulted in his death.

Ofcom considered that, while it may have been inaccurate for the programme to have suggested that the vandalism to Mrs Newlove's car involved broken glass rather than a kick, that inaccuracy was unlikely to have materially affected viewers' understanding of Mr Cunliffe in a way that was unfair to him.

As a result, Ofcom has not upheld the complaint in this respect.

Accordingly, Ofcom has not upheld the complaint made by Ms Cunliffe on behalf of Mr Cunliffe of unfair treatment in the programme as broadcast.

Other Programmes Not in Breach

Up to 28 February 2011

Programme	Transmission Date	Broadcaster	Categories	Number of complaints
10 O'Clock Live	03/02/2011	Channel 4	Religious/Beliefs discrimination/offence	2
10 O'Clock Live	11/02/2011	Channel 4	Due impartiality/bias	1
118 118 sponsorship credits		ITV1	Generally accepted standards	2
4thought.tv	29/01/2011	Channel 4	Sexual material	1
4thought.tv	21/02/2011	Channel 4	Sexual orientation discrimination/offence	1
Aberdeen V Celtic	01/02/2011	ESPN	Race discrimination/offence	6
Alan Carr: Chatty Man	07/02/2011	Channel 4	Generally accepted standards	1
Ant and Dec's Push the Button	19/02/2011	ITV1	Generally accepted standards	5
Ant and Dec's Push the Button	12/02/2011	ITV1	Competitions	2
Ant and Dec's Push the Button	12/02/2011	ITV1	Generally accepted standards	1
Ant and Dec's Push the Button	26/02/2011	ITV1	Crime	1
Aviva's sponsorship of Marchlands	03/02/2011	ITV1	Gender discrimination/offence	1
Aviva's sponsorship of Marchlands	27/01/2011	ITV1	Generally accepted standards	1
Aviva's sponsorship of Marchlands	27/01/2011	ITV1	Harm	1
Aviva's sponsorship of Wild At Heart	23/01/2011	ITV1	Advertising content	1
Aviva's sponsorship of Wild at Heart	13/02/2011	ITV1	Generally accepted standards	2
Aviva's sponsorship of Wild at Heart	06/02/2011	ITV1	Harm	1
Baking Made Easy	07/02/2011	BBC 2	Crime	1
Balls of Steel	08/02/2011	4Music	Disability discrimination/offence	1
BBC News	23/02/2011	BBC 1	Violence and dangerous behaviour	1
BBC News	10/02/2011	BBC News Channel	Animal welfare	1
Big Top 40 Show	20/02/2011	Metro Radio	Offensive language	1
Blue Bloods (trailer)	30/01/2011	Sky Sports	Violence and dangerous behaviour	1
Blue Peter	25/01/2011	BBC 1	Race discrimination/offence	1
Blue Peter	22/02/2011	BBC 1	Religious/Beliefs discrimination/offence	1
Breakfast	23/02/2011	BBC 1	Generally accepted standards	1
Breakfast With Badger & Emma	16/02/2011	The Wave 96.4FM	Generally accepted standards	1
Brian Moore	19/02/2011	Metro Radio	Offensive language	1
Bride On The Run competition	16/02/2011	Real Radio North West	Competitions	7
Brit Awards 2011 coverage	16/02/2011	BBC Radio 1	Drugs, smoking,	1

			solvents or alcohol	
Bum Bum Bhole	06/02/2011	Star Gold	Product placement	1
Celebrity Are You Smarter Than A 10 Year Old?	13/01/2011	Sky 3	Generally accepted standards	1
Celebrity Juice	24/02/2011	ITV2	Nudity	1
Century of Warfare	17/02/2011	Discovery History	Materially misleading	1
Channel 4 News	07/02/2011	Channel 4	Due impartiality/bias	1
Channel 4 News	16/02/2011	Channel 4	Crime	1
Channel 4 News	20/02/2011	Channel 4	Due accuracy	1
Channel promotion	29/01/2011	Clubland TV	Nudity	1
Choice FM	10/02/2011	Choice FM	Offensive language	1
Coach Trip	21/02/2011	Channel 4	Generally accepted standards	1
Coach Trip	21/02/2011	More 4	Animal welfare	1
Comedy Rocks with Jason Manford	28/01/2011	ITV1	Disability discrimination/offence	1
Coronation Street	21/02/2011	ITV1	Generally accepted standards	1
Dambusters	02/02/2011	ITV4	Race discrimination/offence	1
Dance India Dance - Bangla	19/01/2011	Zee Cafe	Under 18s in programmes	
Dancing on Ice	23/01/2011	ITV1	Race discrimination/offence	2
Dancing on Ice	13/02/2011	ITV1	Competitions	3
Dancing on Ice	27/02/2011	ITV1	Competitions	1
Dancing on Ice	13/02/2011	ITV1	Outside of remit / other	1
Dancing on Ice	20/02/2011	ITV1	Violence and dangerous behaviour	1
Daybreak	27/01/2011	ITV1	Generally accepted standards	2
Daybreak	02/02/2011	ITV1	Due accuracy	2
Daybreak	15/02/2011	ITV1	Materially misleading	1
Daybreak	01/02/2011	ITV1	Gender discrimination/offence	1
Deal or No Deal	04/02/2011	Channel 4	Sexual material	2
Dirty Talk	10/02/2011	Dirty Talk	Participation TV - Harm	1
Doctors	02/02/2011	BBC 1	Generally accepted standards	1
Doctors	08/02/2011	BBC 1	Generally accepted standards	1
EastEnders	28/01/2011	BBC 1	Generally accepted standards	1
EastEnders	18/02/2011	BBC 1	Generally accepted standards	2
EastEnders	15/02/2011	BBC 1	Generally accepted standards	1
EastEnders	17/02/2011	BBC 1	Generally accepted standards	1
EastEnders	21/02/2011	BBC 1	Generally accepted standards	1
EastEnders	25/02/2011	BBC 1	Generally accepted standards	1
Emmerdale	24/02/2011	ITV1	Religious/Beliefs	1

			discrimination/offence	
Emmerdale	17/02/2011	ITV1	Race discrimination/offence	1
Everyday is Payday competition	18/02/2011	Key 103	Competitions	1
Football Focus	19/02/2011	BBC 1	Generally accepted standards	1
Forgotten Heroes	09/02/2011	BBC 1	Violence and dangerous behaviour	1
Geoff Lloyd's Hometown Show	26/01/2011	Absolute Radio	Religious/Beliefs discrimination/offence	1
Glee	20/02/2011	Channel 4	Generally accepted standards	1
Glory Daze (trailer)	12/02/2011	E4	Sexual material	1
Glory Daze (trailer)	13/02/2011	Film 4	Sexual material	1
Got to Dance	25/01/2011	Sky1	Competitions	1
Got to Dance	06/02/2011	Sky1	Voting	1
Great TV Mistakes	26/02/2011	BBC 3	Sexual material	1
Harry Hill's TV Burp	12/02/2011	ITV1	Sexual material	1
Harveys' sponsorship of Coronation Street		ITV1	Religious/Beliefs discrimination/offence	1
Heston's Mission Impossible	22/02/2011	Channel 4	Harm	3
Holby City	22/02/2011	BBC 1	Offensive language	1
Hollyoaks	10/02/2011	Channel 4	Generally accepted standards	1
Horrid Henry	16/02/2011	CITV	Animal welfare	1
Human Planet	17/02/2011	BBC 1	Violence and dangerous behaviour	1
Human Planet	17/02/2011	BBC 1	Generally accepted standards	1
I Shot the Sheriff	05/02/2011	Vintage TV	Generally accepted standards	1
In Good Company	16/02/2011	Film 4	Offensive language	1
Inside Out (Yorkshire & Lincolnshire)	24/01/2011	BBC 1	Scheduling	1
ITV News	04/02/2011	ITV1	Generally accepted standards	1
ITV News	08/02/2011	ITV1	Generally accepted standards	1
ITV News	18/02/2011	ITV1	Materially misleading	1
ITV News	23/02/2011	ITV1	Due impartiality/bias	1
James Whale	21/02/2011	LBC 97.3 FM	Competitions	1
Jeff Randall Live	23/02/2011	Sky News	Age discrimination/offence	1
Jonny Craig - "I Still Feel Her"	29/01/2011	Scuzz	Sexual material	1
Joop's sponsorship of Law and Order		FX	Sexual material	1
Justin Lee Collins: Turning Japanese	27/01/2011	Channel 5	Sexual material	3
Justin Lee Collins: Turning Japanese	10/02/2011	Channel 5	Animal welfare	1
Ken Bruce	22/02/2011	BBC Radio 2	Disability discrimination/offence	1
Koffee with Karan	13/02/2011	Star Plus	Sexual material	1
Let's Dance for Comic Relief	19/02/2011	BBC 1	Sexual material	2
Let's Dance for Comic Relief	19/02/2011	BBC 1	Voting	1

Let's Dance for Comic Relief	26/02/2011	BBC 1	Generally accepted standards	2
Live: Celebrity Who Wants to be a Millionaire?	27/12/2010	ITV2	Participation TV - Misleadingness	2
Loose Women	22/02/2011	ITV1	Gender discrimination/offence	2
Loose Women	23/02/2011	ITV1	Gender discrimination/offence	1
Loose Women	25/02/2011	ITV1	Sexual material	1
Lorraine	28/01/2011	ITV1	Gender discrimination/offence	1
Macleans' sponsorship of Dancing on Ice	30/01/2011	ITV1	Materially misleading	1
Mad Dogs	10/02/2011	Sky1	Disability discrimination/offence	1
Mark Martin	24/02/2011	Forth One	Generally accepted standards	1
Mary Portas: Secret Shopper	02/02/2011	Channel 4	Crime	1
Mary Portas: Secret Shopper	02/02/2011	Channel 4	Generally accepted standards	1
MasterChef New Zealand	16/02/2011	Watch	Product placement	1
Michael McIntyre's Comedy Roadshow	12/02/2011	Comedy Central	Generally accepted standards	2
Midsomer Murders	11/02/2011	ITV1	Violence and dangerous behaviour	1
Midsomer Murders	21/02/2011	ITV1	Offensive language	1
Midsomer Murders	22/02/2011	ITV1	Violence and dangerous behaviour	1
Midsomer Murders	22/02/2011	ITV1	Offensive language	1
Monsters Inside Me (trailer)	13/02/2011	Discovery	Generally accepted standards	1
Mrs. Brown's Boys	21/02/2011	BBC 1	Offensive language	1
New You've Been Framed!	12/02/2011	ITV1	Generally accepted standards	2
New You've Been Framed!	18/02/2011	ITV2	Under 18s in programmes	1
News	17/02/2011	Channel 5	Generally accepted standards	1
News	08/02/2011	Channel 5	Harm	1
News analysis	10/01/2011	Press TV	Due impartiality/bias	1
Newsbeat	08/02/2011	BBC Radio 1	Sexual material	1
Newsnight	01/02/2011	BBC 2	Race discrimination/offence	3
Nick Ferrari	26/01/2011	LBC 97.3 FM	Race discrimination/offence	1
Not Going Out	10/02/2011	BBC 1	Generally accepted standards	1
Oops TV	04/02/2011	Sky 2	Offensive language	1
Oops TV	09/02/2011	Sky 2	Offensive language	1
Oops TV	16/02/2011	Sky 2	Offensive language	1
Oops TV	18/02/2011	Sky 2	Offensive language	1
Overnight	23/01/2011	LBC 97.3 FM	Sexual orientation discrimination/offence	1
Poirot	15/02/2011	ITV3	Generally accepted standards	1
Premier League Football	14/02/2011	Sky Sports 1	Race discrimination/offence	1

Press Preview	22/02/2011	Sky News	Generally accepted standards	1
Programme	16/01/2011	Brick FM Community Station	Sexual orientation discrimination/offence	1
Promotion of The Wanted	n/a	Global Radio	Commercial communications on radio	1
QI	18/02/2011	BBC 1	Offensive language	1
Question Time	24/02/2011	BBC 1	Race discrimination/offence	1
Radio Hafren	14/01/2011	Radio Hafren	Offensive language	1
Rastamouse	31/01/2011	CBeebies	Race discrimination/offence	12
Red Light Lounge	30/01/2011	RedLightZone1	Participation TV - Harm	1
Regional News and Weather	15/02/2011	BBC 1	Outside of remit / other	1
Reporting Scotland	18/02/2011	BBC 1 Scotland	Violence and dangerous behaviour	1
Richard Keys and Andy Gray	14/02/2011	Talksport	Premium rate services	1
Robbie Dee	19/01/2011	CFM Radio	Generally accepted standards	1
Rome Wasn't Built in a Day		Channel 4	Offensive language	1
Sabki Labli Bebo	13/01/2011	Star Plus	Violence and dangerous behaviour	1
Sabki Labli Bebo	09/02/2011	Star Plus	Violence and dangerous behaviour	1
Shameless	15/02/2011	Channel 4	Animal welfare	7
Shameless	26/01/2011	Channel 4	Generally accepted standards	1
Shameless	08/02/2011	Channel 4	Generally accepted standards	1
Simpsons	02/02/2011	Channel 4	Drugs, smoking, solvents or alcohol	1
Skins	24/02/2011	E4	Sexual orientation discrimination/offence	1
Sky 1 promotion for House	09/02/2011	Sky Living	Materially misleading	1
Sky News	02/02/2011	Sky News	Race discrimination/offence	1
Sky News	08/02/2011	Sky News	Animal welfare	1
Sky News	21/02/2011	Sky News	Crime	1
Soundbite Christian O'Connell Breakfast Show	06/02/2011	Absolute 80's	Generally accepted standards	1
Spaced (trailer)	04/02/2011	E4	Offensive language	1
Spaced (trailer)	06/02/2011	More 4	Offensive language	1
Steve Allen	01/02/2011	LBC 97.3 FM	Generally accepted standards	1
STV News at Six	02/02/2011	STV	Due accuracy	1
Sunrise	16/02/2011	Sky News	Generally accepted standards	1
Super Scoreboard	06/02/2011	Clyde 1	Religious/Beliefs discrimination/offence	1
Take Me Out	12/02/2011	ITV1	Generally accepted standards	1
Tennis	30/01/2011	BBC 1	Offensive language	2
Tennis	28/01/2011	BBC 2	Offensive language	1

Tetley Bitter's sponsorship of ITV4 programming	13/02/2011	ITV4	Gender discrimination/offence	1
That Sunday Night Show	13/02/2011	ITV1	Offensive language	36
That Sunday Night Show	27/02/2011	ITV1	Offensive language	1
The Alan Brazil Sports Breakfast	03/02/2011	Talksport	Generally accepted standards	1
The Alan Brazil Sports Breakfast	08/02/2011	Talksport	Due impartiality/bias	1
The BRIT Awards 2011	15/02/2011	ITV1	Violence and dangerous behaviour	28
The BRIT Awards 2011	15/02/2011	ITV1	Sexual material	11
The Chase	n/a	ITV1	Competitions	1
The Children	23/01/2011	Sky Movies Sci-Fi & Horror	Violence and dangerous behaviour	1
The Chris Moyles Show	17/02/2011	BBC Radio 1	Offensive language	1
The Elephant: Life After Death (trailer)	14/02/2011	Channel 4	Generally accepted standards	1
The Elephant: Life After Death (trailer)	n/a	Channel 4	Generally accepted standards	1
The Garfield Show	18/02/2011	Boomerang	Offensive language	1
The Jeremy Kyle Show	08/02/2011	ITV1	Generally accepted standards	2
The Jeremy Kyle Show	08/02/2011	ITV2	Generally accepted standards	1
The Jeremy Kyle Show	16/02/2011	ITV1	Generally accepted standards	1
The Jeremy Kyle Show	24/02/2011	ITV1	Generally accepted standards	1
The Million Pound Drop Live	11/02/2011	Channel 4	Competitions	1
The Million Pound Drop Live	12/02/2011	Channel 4	Competitions	1
The Million Pound Drop Live	19/02/2011	Channel 4	Age discrimination/offence	1
The Million Pound Drop Live	19/02/2011	Channel 4	Competitions	1
The Million Pound Drop Live	12/02/2011	Channel 4	Age discrimination/offence	1
The Moral Maze	09/02/2011	BBC Radio 4	Race discrimination/offence	1
The Morning Line	05/02/2011	Channel 4	Due impartiality/bias	1
The National Lottery: In It to Win It	05/02/2011	BBC 1	Competitions	1
The National Lottery: Secret Fortune	12/02/2011	BBC 1	Sexual material	1
The One Show	23/02/2011	BBC 1	Race discrimination/offence	1
The Promise	06/02/2011	Channel 4	Generally accepted standards	1
The Promise	06/02/2011	Channel 4	Materially misleading	1
The Real Housewives of Orange County	01/02/2011	ITV2	Sexual material	1
The Secret Caribbean with Trevor McDonald	02/02/2011	ITV1	Materially misleading	1
The Secrets of Westminster Abbey	19/01/2011	More 4	Religious/Beliefs discrimination/offence	1
The Vanessa Show	07/02/2011	Channel 5	Materially misleading	7
The Vanessa Show	11/02/2011	Channel 5	Nudity	1
The Weakest Link	25/02/2011	BBC 1	Generally accepted standards	1

The Wright Stuff	22/02/2011	Channel 5	Race discrimination/offence	2
The Wright Stuff	24/02/2011	Channel 5	Race discrimination/offence	1
The Wright Stuff	02/02/2011	Channel 5	Generally accepted standards	1
The Wright Stuff	28/02/2011	Channel 5	Offensive language	1
The X Factor / Britain's Got Talent	n/a	ITV1	Transgender discrimination/offence	1
This Morning	18/02/2011	ITV1	Generally accepted standards	36
This Morning	31/01/2011	ITV1	Nudity	1
This Morning	10/02/2011	ITV1	Generally accepted standards	1
This Morning	11/02/2011	ITV1	Sexual orientation discrimination/offence	1
This Morning	11/02/2011	ITV1	Sexual orientation discrimination/offence	1
Today	22/02/2011	BBC Radio 4	Race discrimination/offence	1
Tool Academy	07/02/2011	E4	Generally accepted standards	11
Tool Academy	21/02/2011	E4	Animal welfare	1
Tool Academy (trailer)	21/02/2011	E4	Offensive language	1
Top Gear	06/02/2011	BBC 2	Race discrimination/offence	1
Top Gear	06/02/2011	BBC 2	Generally accepted standards	1
Top Gear	13/02/2011	BBC 2	Race discrimination/offence	1
Top Gear	13/02/2011	BBC 2	Crime	1
Top Gear	20/02/2011	BBC 2	Generally accepted standards	2
Top Gear	23/02/2011	BBC 2	Offensive language	1
Top Gear	24/02/2011	BBC 3	Offensive language	1
True Stories: My Kidnapper	23/02/2011	More 4	Violence and dangerous behaviour	1
Truth Behind Kerbala 2010	09/12/2010	Ummah Channel	Generally accepted standards	1
UEFA Europa League	17/02/2011	Channel 5	Drugs, smoking, solvents or alcohol	1
Waterloo Road	09/02/2011	BBC 1	Under 18s in programmes	1