

Ofcom broadcast bulletin

Issue number 48
21 November 2005

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Introduction

Ofcom's Broadcasting Code took effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). This Code is used to assess the compliance of all programmes broadcast on or after 25 July 2005. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

The Rules on the Amount and Distribution of Advertising (RADA) apply to advertising issues within Ofcom's remit from 25 July 2005. The Rules can be found at <http://www.ofcom.org.uk/tv/ifi/codes/advertising/#content>

The Communications Act 2003 allowed for the codes of the legacy regulators to remain in force until such time as Ofcom developed its own Code. While Ofcom has now published its Broadcasting Code, the following legacy Codes apply to content broadcast before 25 July 2005.

- Advertising and Sponsorship Code (Radio Authority)
- News & Current Affairs Code and Programme Code (Radio Authority)
- Code on Standards (Broadcasting Standards Commission)
- Code on Fairness and Privacy (Broadcasting Standards Commission)
- Programme Code (Independent Television Commission)
- Programme Sponsorship Code (Independent Television Commission)
- Rules on the Amount and Distribution of Advertising

From time to time adjudications relating to advertising content may appear in the bulletin in relation to areas of advertising regulation which remain with Ofcom (including the application of statutory sanctions by Ofcom).

Standards cases

In Breach

Lost

Channel 4 and E4, various dates from August 2005

Introduction

23 viewers complained about the amount of advertising and the commercial break pattern in this imported US drama series. Ofcom also received a complaint from one of its licensees raising similar issues.

The majority were concerned at the number, frequency and placement of advertising breaks. They objected in particular to the often relatively short programme segments between commercial breaks. Many also complained about the length of the breaks and what they saw as the overall disproportionate amount of advertising. Some complained in addition about the programme starting late and finishing early.

Response

Channel 4 explained that in order to compete commercially with other terrestrial channels it was necessary to maximise the number of breaks in popular programmes, and also to take the maximum allowed amount of advertising. In the case of *Lost* the programme was scheduled in a 65 minute slot with three internal breaks.

In relation to break frequency, Channel 4 explained that its approach on inserting advertising breaks in the series had been to place these at appropriate points within the programme in line with the flow of the storyline. This had meant that, in some cases, compliance with break separation requirements had been sacrificed. The use of short centre segments had enabled it to avoid overly compressing the opening and end segments of the programme. In response to Ofcom's enquiries it had trialled placing the breaks further apart. This had led to breaks appearing very early in the programme and also very close to the programme end, because the programme itself was short (41 - 42 minutes). Following poor viewer reaction to this change, it had reverted to the original approach.

Channel 4 denied that any of the breaks within the programmes shown on Channel 4 had exceeded 3 minutes 50 seconds, the permitted maximum internal break length on the channel. On E4, this constraint did not apply and breaks had sometimes been longer, due to the inclusion of more programme promotion time, but remained within permitted limits.

Decision

The net programme length of *Lost*, without breaks, is around 41 minutes. However, it ran in a 65 minute slot on Channel 4 (22:00 to 23:05). It often only began at approximately 22:04, although billed to start at 22:00. It contained three advertising breaks, each usually of 3 minutes 50 seconds and normally ended, just before 23:00, with a longer end break of 5-7 minutes. The programme also carried programme trailers and sponsor credits, in addition to the spot advertising breaks. Taking all these elements, it is unsurprising that viewers had an impression of an excess of

commercial material. This impression would have been exacerbated by the fact that the first part of the programme consisted of a reprise of key events from the last episode and credits often lasting up to 5 minutes before the programme proper began, reducing the amount of new editorial material for each episode to only around 36 minutes.

In spite of this viewer impression, however, we note that Channel 4 had not in the course of this series exceeded the maximum number of minutes of advertising permitted in any one hour, namely 12 minutes.

The programme carried three internal breaks. This was acceptable for a programme of this scheduled duration.

In relation to break separation, Section 5.4 of Ofcom's Rules on the Amount and Distribution of Advertising (the '20 minute rule') requires that a period of at least 20 minutes should normally elapse between successive internal breaks in programmes. Ofcom interprets this as meaning that a period of 20 minutes needs to be maintained between the start of one internal break and the start of the following one. This would result in a programme section that should normally be a minimum of just over 16 minutes if the maximum 3 minutes 50 seconds (on Channels 3-5) is taken for the break. A slightly shorter interval is permitted only where the interests of viewers would be better served by taking a break earlier. This reflects the fact that licensees are also required to only insert breaks at a point where some interruption in continuity would, in any case, occur and where use of these natural breaks does not damage the integrity or value of the programme. The exception to the 20 minute rule is intended to allow an *occasional* degree of flexibility in individual programmes but does not permit routine departure from the rule across an entire series.

The rules do not specify any minimum duration of programme before the first break or between the last break and the end of the programme.

Analysis of the break patterns in the episodes complained of indicated a failure to comply with the 20 minute rule on a significant number of occasions. For instance, in the case of the 31 August 2005 episode, the separations between the first and second and second and third centre breaks (calculated on the above basis) were only 10 minutes 54 seconds and 12 minutes 53 seconds. As noted above, Channel 4 did comply with the rules on the break separations in two episodes (21 and 28 September 2005).

We acknowledge the complexities of balancing the need to insert advertising breaks only at natural break points with the need to comply with the 20 minute rule. We accept that this problem is more marked with imported drama which can sometimes be of short duration to allow for the frequency of advertising breaks taken in some other countries. However, the country of origin of a series and the peculiarities of drama do not in themselves provide a valid reason for failing to comply with a key requirement of the scheduling rules on a regular basis across an entire series. The option to take three centre breaks provided by RADA is not an absolute entitlement. It applies where this can be done whilst remaining compliant with the requirements set out in the rest of the rules.

The placement of breaks in this programme series was in breach of Rule 5.4 of the Rules on Amount and Distribution of Advertising (Period Between Breaks).

The Great American Bash

Sky Sports One, 25 July 2005, 01:00

Introduction

The Great American Bash, produced by World Wrestling Entertainment, Inc. ('WWE'), was broadcast live from the United States from 01:00 on 25 July 2005 and included a contest between two WWE characters called 'The Undertaker' and 'Mohammed Hassan'. The wrestling match was promoted as a showdown between the two characters and followed a number of previous matches between them.

The character 'Mohammed Hassan' described himself as an Arab-American and entered the ring wearing an Arab head dress. He was accompanied by masked men in combat-style clothes, who were described by the commentators as 'sympathisers'.

In the wake of the London bombings in early July, two viewers expressed concern about the way in which 'Mohammed Hassan' was depicted, and by the inclusion of footage from a previous match in which his 'sympathisers' appeared to attack 'The Undertaker'. This footage was set to a soundtrack of the Muslim call to prayer.

One of the viewers also suggested that, bearing in mind the heavy promotion for the match, children could have been watching.

Response

Sky pointed out that *The Great American Bash* was broadcast live and late at night, and was preceded by an explicit verbal and visual warning that it would contain scenes and storylines not suitable for children and some of the content might also be unacceptable to other viewers.

Sky explained that the broadcast brought together wrestlers from both the *Raw!* and *Smackdown!* strands of WWE programming. It was one of twelve such live events broadcast throughout the year by Sky, some on the Sky Sports channels, and some as pay per view events on the Sky Box Office service.

'The Undertaker' and 'Mohammed Hassan' had fought each other in a match recorded before the London bombings that was to be broadcast on Sky Sports on 8 July 2005 as part of the *Late Night Smackdown* programme. During this match 'Mohammed Hassan' was seen to invoke his 'sympathisers' to assist in defeating his opponent. Before broadcast, Sky was alerted by WWE to the sensitive nature of the material and removed footage of the contest from *Late Night Smackdown* broadcast by Sky on 8 July 2005. Sky then ensured that this content was edited out of all subsequent programmes broadcast during the weeks after 7 July 2005.

However, during the live programme from the US on 25 July 2005, the WWE ran extracts from previous contests between 'The Undertaker' and 'Mohammed Hassan' as part of the build-up to the latest bout. These extracts included footage from the contest which had been removed from the programme broadcast on 8 July 2005.

Sky said that, in view of WWE's awareness of the sensitive nature of the material removed from the programme broadcast on 8 July 2005, and the proximity of the attempted bombings of 21 July 2005, it had expected that any new match between 'The Undertaker' and 'Mohammed Hassan' would be treated more circumspectly,

and that extracts from the previous contest would not be used on this occasion. Unfortunately this was not the case, despite Sky being in regular contact with WWE about the content of their programmes.

Sky said that it agreed that the in-programme promotional material featuring extracts from the previous contest should not have been included in the live programme. It was concerned about the use of religious imagery in the portrayal of 'Mohammed Hassan', together with the so-called 'sympathisers'. Sky had since expressed its concerns to WWE, which had confirmed that the character would not reappear as part of WWE. Sky said it would continue to work with WWE and monitor storylines as appropriate.

Decision

We accept that American professional wrestling comprises of 'wrestlers' taking part in contrived feuds and faked brawls, with ongoing storylines and characters. The programme was appropriately scheduled and a clear warning was given. We therefore do not consider that the programme was in breach of the requirements in the Broadcasting Code regarding the protection of children.

We also appreciate that the match was broadcast live from the US and that Sky may not have been aware in advance of its precise content, in particular the inclusion of footage from the previous encounter between the two characters (as explained above, Sky had not broadcast the bout itself).

However, the broadcast included a fight involving the 'Mohammed Hassan' character, whose established act included masked men in combat-style clothing, references to religious practices and the use of emotive language (for example, '*martyr*', '*sacrifice*' and '*infidel*'). We are pleased to note that this character has now been withdrawn. However we believe that his inclusion in Sky's output, given both the current environment and the context in which he appeared, in this type of programme with the use of religious and emotive references linked to militant activity, was a mistake.

Rule 2.3 states that, in applying these standards, broadcasters must ensure that material which may cause offence, for example discriminatory treatment, is justified by the context. In this case, given that this was a wrestling match for entertainment we consider that there was not adequate justification. Our concern is heightened by the fact that *The Great American Bash* was shown so soon after the events in London on 7 and 21 July 2005.

The programme was in breach of Rule 2.3 of the Broadcasting Code

Rose & Maloney

ITV 1, 26 September 2005, 21:00

Introduction

This drama follows the work of two detectives who reopen old cases to consider miscarriages of justice. In this episode, new evidence had come to light about the murder of a family on their farm and witnessed by their young son. Three viewers were concerned about the portrayal of the murders in a domestic setting four minutes after the watershed. Given this proximity to the watershed, two of the viewers felt that there should have been an announcement warning them of the content.

Response

Channel Television stated that the scene contained no graphic violence. Generally, there was very little evidence of actual violence against people in the sequence. When the woman was shot, the audience did not see this, only the reaction of the boy's grandmother. The scene was carefully filmed not to show the death of the man, as this person did not die but was in fact the instigator of this crime.

The broadcaster explained that this was the second series of *Rose and Maloney*, which had established an unremittingly dark tone. The first episode had carried a pre-transmission warning about the violent and upsetting content. However, by this third episode, the broadcaster did not believe a warning announcement was necessary given the non-graphic opening sequence.

Listing magazines had carried a description of the episode referring to the murder. Given this widely-circulated description of the plot, the inexplicit depiction of the violence and well-established dark tone of the drama, the broadcaster considered that it would have been unlikely to offend most viewers in this context.

Decision

The portrayal of actual violence in the opening sequence was unlikely to have exceeded the expectations of an audience for this post-21:00 drama. As the broadcaster states it was not, in itself, graphic.

However we were concerned that the broadcaster had not chosen to inform the audience about the potentially disturbing nature of the murders, which took place in a family home and were witnessed by a young boy. The violence erupted when the boy's grandfather was shot dead, at close range, as he went to answer the front door. Masked gunmen then burst into the house and appeared to execute, and burn the bodies of, the boy's mother and father. The tension was further heightened when the young boy was chased into the barn and subsequently heard his grandmother being shot. While not a bloody or violently explicit scene, this opening sequence was particularly disturbing and frightening.

The Broadcasting Code requires broadcasters to provide appropriate information to assist in avoiding or minimising offence. The tone of this drama would not have been immediately apparent to all those watching and this scene occurred very close to the watershed. Taking into account these factors, we consider that, given the highly emotionally charged violence from the outset, some pre-transmission information should have been provided for viewers.

The programme was in breach of Rule 2.3 (Appropriate information should also be broadcast where it would assist in avoiding or minimising offence).

Resolved

Galaxy 105

Galaxy 105, 17 September 2005, 20:00

Introduction

During the broadcast of a recorded event one of the performers addressed the crowd saying, “you lot have been fucking ace.” He then went on to say “what started as a fantasy ended with 5000 people having the time of their fucking life.”

A listener complained about the use of offensive language

Response

The station told us that the broadcast was a recording of an outside broadcast that had taken place the previous week and should have been edited before transmission, but on this occasion two expletives had been missed.

Galaxy told us that it broadcast a number of live events across the year and always tried to ensure that all the artists/DJ's that performed were mindful of their language. With the station's large commitment to broadcasting live dance & urban events, it was not always possible to get artists to adhere to its policy on language. Nevertheless, as the event was pre-recorded, the station accepted that the responsibility lay with it and had now reviewed its procedures.

Galaxy offered an apology to the complainant.

Decision

We welcome the broadcaster's comments and consider this matter resolved.

Complaint Resolved

The Show

West FM and South West Sound FM, 20 October 2005, 18:00

Introduction

Two viewers complained about the “Red Light Lottery”, in which listeners were encouraged to phone from their cars while waiting at red lights and to remain stationary when the lights turned green, receiving £5 for every car horn that could then be heard on air. Both complainants believed this was likely to encourage road rage.

Response

West Sound Radio said that the freelance presenter had neither sought nor gained its approval for the broadcast of the competition, which it considered thoughtless and “totally unacceptable.” It added that, while its own lack of awareness was no defence, the presenter had confirmed that the competition was unplanned and had been dropped into the programme on the spur of the moment, after he had found the idea on the internet. The broadcaster said that it recognised the public safety issues and had severely reprimanded the presenter, issuing him with an official warning for unauthorised and careless broadcasting. It also assured us that he would be closely monitored in the future, to avoid any similar recurrence.

Testimonials from Dumfries and Galloway Constabulary, the Scottish Executive and Strathclyde Police, had been obtained by the broadcaster. While they expressed regret concerning the competition, they acknowledged West Sound Radio stations’ ongoing contribution to the local road safety agenda, including their award winning Guardian Angel road safety campaign and membership of the A77 Safety Group.

Decision

We agree with the broadcaster’s view of the Red Light Lottery feature and we welcome the immediate action it has taken, and the assurances it has given, concerning future output. Overall the broadcaster has a good compliance record and, given it also has an established road safety agenda, on this occasion we believe this matter is resolved.

Complaints resolved

Essex FM

Essex FM, 10 March 2005, 07:40

Introduction

In response to an article in 'The Sun' newspaper and its campaign concerning the traveller community, the breakfast show presenter and his co-host made a number of disparaging remarks about travellers and their presence in the local community.

The presenter said, "Bang goes the neighbourhood; one minute you look out of your house and you're seeing beautiful fields, gorgeous meadows, next thing you know, there's a gypo camp on your doorstep... with the gypsy camps comes trouble, you're not allowed to say that apparently, but come on, seriously nothing good ever comes out of it." Other similar comments concerning travellers were made.

One listener felt that the comments were racist and offensive and likely to incite racial hatred.

Response

The station told us that the remarks were made as a reflection of the local community's main talking point of the day. The entire front page of The Sun newspaper had launched the start of a campaign to change the laws relating to travellers and the intention was to reflect the day's main subject of conversation. Essex FM noted that the presenter was careful not to use language or comments as inflammatory as those printed in the newspaper. It also told us that the comments had been made some time ago and the presenter was now aware that the traveller community is considered a race and hence the racial implications of his comments. The role and regulation of radio versus newspapers had also been discussed with him. The station also categorically stated that the broadcast was not intended to offend and it had received an assurance from the presenter that it would not happen again.

GCap Media, the station's parent company, further confirmed that, even in jest, such comments were absolutely unacceptable and were not condoned by the group management. It would do all possible to avoid further recurrence.

Decision

As set out in the Commission for Racial Equality good practice guide, *Gypsies and Travellers: The Facts*, "Gypsies and Irish Travellers are recognised ethnic groups for the purposes of the Race Relations Act (1976) identified as having a shared culture, language and beliefs". We appreciate that the issue of Travellers was of local interest; however, irrespective of whether the presenter and his co-host were aware of the social classification applied to Gypsies and Irish Travellers, the remarks were insensitive and offensive.

However, we note that the matter was raised directly with the presenter at the time of broadcast making him aware of the inappropriateness of his comments, as well as making the distinction between print media and broadcast media. We are also satisfied that the Group takes such matters seriously and welcome the steps taken to avoid any further recurrence. We therefore consider this matter resolved.

Complaint Resolved

LBC Programme

LBC 97.3, 20 September 2005, 06:15

Introduction

During a review of the newspapers, the presenter picked up on a story about Gypsies gaining entry into a field. He went on to make a distinction between Gypsies and Travellers, saying, "nobody likes Travellers - filth, dirt, inbreeding - dreadful."

One listener complained about the broadcast.

Response

LBC told us that it agreed that the comments were inappropriate. In deriding anti-social behaviour, the presenter had sought deliberately to strike a distinction between 'gypsies' and those people who behave improperly. In doing so however, the presenter had used the term 'travellers', the term that embraces many nomadic groups who may behave quite lawfully. The Managing Director had already raised the matter with the presenter concerned and the production team and an apology had been broadcast at the same time of day as the original remark. The station offered an apology to the complainant for any offence caused to genuine travellers, as this had not been the presenter's intention.

Decision

We accept the station's explanation. We welcome the broadcaster's apology and consider the matter resolved.

Complaint Resolved

Not in Breach

German Grand Prix

ITV 1, 24 July 2005, 12:30

Introduction

ITV's coverage of the *German F1 Grand Prix* included a computer generated image of the race starting grid. The images of the cars featured their sponsor's branding. For some cars, this meant that tobacco branding was shown. While acknowledging that ITV had no control over the livery that appeared on the actual cars, a complainant considered that the inclusion of tobacco branding in the computer generated images was inappropriate.

Response

ITV said that the computer graphics were used to good effect in its F1 coverage, to give a dynamic picture and run-through of the starting grid, in a modern arcade-game style. While the images were stylised, it was important that the viewer would be able to readily pick out individual cars and drivers. For that reason, the graphics had always reflected the reality of the cars' appearance on the grid, representing the livery which included major car sponsors' names on the tail-spoiler (whether the sponsor was a tobacco company or an electronics manufacturer).

However, following the complaint ITV removed all tobacco sponsor imagery from the grid graphics used during its coverage of F1 races.

Decision

We acknowledge that ITV's use of graphics reflected the reality of the cars' appearance on the grid, where tobacco brands are regularly visible as part of the cars' livery. To this extent, the use was therefore legitimate. However, we also recognise the public policy concerns that exist with regard to tobacco promotion and therefore welcome ITV's actions.

The programme was not in breach of the (ex-ITC) Programme Code

Note

From 31 July 2005, the promotion of tobacco products (through, for example, sponsorship arrangements in sporting events) has been prohibited within the EU.

Bring your Husband to Heel

BBC2, 22 August 2005, 19:00

Introduction

This was a light-hearted series which operated on the premise that husbands can be 'trained' like dogs. To illustrate this point Annie Clayton, in the Barbara Woodhouse tradition, set about creating exercises and tasks that wives could use to improve the behaviour and habits of their spouses.

35 viewers complained that, in summary, although it was light-hearted, nevertheless the underlying message was stereotyping men, and was demeaning and offensive. Some complainants also suggested that women and minority groups would not have been treated in the same way.

Response

The BBC acknowledged that some viewers were genuinely offended by the series and in particular by what they took to be the sexist nature of its premise and content. However, it believed that it was clear the series was not to be taken seriously. They pointed out that the wife, Margaret, had to be 'trained' herself – e.g. out of her self-acknowledged habit of repeated nagging. The outcome of the series was that a satisfactory result arose in which both parties changed their habitual behaviours in equal measure.

In keeping with the premise, the BBC believed that there was much play with the canine comparison and with a range of 'battle of the sexes' stereotypes, all of which might have been seriously offensive if offered in earnest. However, the broadcaster felt it would have been apparent to most viewers from the style and tone of the series that the stereotypes were being gently set up rather than endorsed.

The BBC said that it saw no objection to a reversal of the roles in a series where the presenter happened to be male.

Decision

The battle of the sexes has always been part of British culture and tradition; one side being portrayed as having the upper hand over the other by turns, through literature and other media. This programme, set in the factual entertainment genre, was part of that tradition. It was clear from the context that the programme was not seriously proposing a demeaning view of men but was a humorous take on the popular genre of relationship self-improvement programmes aimed at both men and women.

The programme was not in breach of the Code

The decision that this programme was not in breach of the Code was confirmed on appeal

Immigration is a Time Bomb

Channel 4, 10 March 2005, 21:00

Introduction

This programme was one of three in the season 'Unwelcome Britain', editorially linked by the subject of immigration which looked at a range of issues and alternative viewpoints. It was a personal view programme, authored by journalist Rod Liddle. He examined the proposition of mass immigration and explored what he believed its impact would be on life in Britain. In particular, he suggested that certain interpretations of Islam are incompatible with the modern western democracy that characterises British Society.

43 people complained saying that:

- the programme contained misleading and inaccurate information;
- it incited hatred or was unfair towards Muslims;
- the programme was anti-Islam;
- the programme stated that Pakistani Muslims were not as moderate as Indian Muslims;
- they objected to the inclusion of interviews with BNP leader Nick Griffin and with the Dutch far right MP Geert Wilders; and
- certain statistics were used in a misleading way in the programme, in particular, the programme stated that the expected rise in immigration would be 5.1 million. However, complainants felt that this was disingenuous since this projection included figures for the children of those immigrants who would be born in the United Kingdom and so would not themselves be immigrants.

Response

Channel 4 said that the programme did not incite hatred against Muslims. It was a critical look at, what Rod Liddle believed, is the government's current open door immigration policy arguing that unrestricted mass immigration is storing up both economic and social problems for the future.

The broadcaster said the programme was not anti-Islam, and that there were many occasions in the programme where Muslims themselves spoke out against certain more radical interpretations of the faith. It also pointed out that there are occasions in the programme where individuals who come from an Islamic background are defended (e.g. a gay person; a convert to Christianity).

Channel 4 said that there was no suggestion in the programme that Pakistani Muslims were more moderate than Indian Muslims; but that there was a difference in how Islam is interpreted, between Muslims (Indian and Pakistani) who had grown up in the sub-continent, and the newer Muslim arrivals to the UK from other countries.

The broadcaster pointed out that the interview with Nick Griffin was very short and contained no racist statements. It was editorially justified in the context of a discussion on freedom of expression as a fundamental tenet of western democracy. Channel 4 also said that the inclusion of Geert Wilders was editorially justified, as he was a Dutch MP who publicly denounced Islam in the wake of the murder of a journalist and filmmaker by a 'radical Islamist', for desecrating the Koran.

Channel 4 also said that all the facts (including the statistics) in the programme are from official sources.

The broadcaster pointed to the range of programming dealing with Islam it has broadcast since the beginning of 2005 which was a clear sign that the Islamic faith and its impact on British Society were handled intelligently and thoughtfully. Such programmes served to increase the understanding of Muslims in Britain and of the Islamic faith worldwide. Its public service obligations and its history of tackling difficult and controversial subjects meant that it was imperative that it also tackled immigration in this election year.

Decision

The right for a broadcaster to impart ideas and information and the right of the viewer to receive them should only be restricted when the law requires it and it is necessary. The views expressed in this programme were provocative and capable of causing offence but, within a democratic society, it is right that a commentator should be able to express provocative opinions and that broadcasters should be able to broadcast them - as long as they meet the requirements of the Broadcasting Code.

Broadcasters are required to preserve due impartiality on subjects of political controversy like immigration. However the ex-ITC Programme Code, (the relevant Code at the time of the broadcast) does not require that personal view programmes (such as this one) should be duly impartial within the programme but that due impartiality should be normally maintained within a series dealing with different aspects of the same subject matter and, also, that broadcasters should ensure that a sufficiently broad range of views is expressed. There is no statutory requirement for due accuracy in personal view programmes of this nature. However, such programmes must respect the facts and opinions must not rest on false evidence.

Immigration is a Time Bomb was clearly set out as a personal view on the issue by Rod Liddle and was one of a series about immigration where other perspectives on the subject were presented (in the programmes *Let 'em all in*, and *Immigration on Trial*). The inclusion of interviews with far right politicians in the UK and in Holland, and the views expressed, may have offended some viewers, but was acceptable in the context of a personal view programme in such a series.

The programme dealt with a series of uncomfortable issues and did so in a way which was provocative, but not racist or anti Islamic. A distinction was made between those Muslims with more 'radical' views and those with moderate interpretations of Islam.

The statistics used in the programme were from the Government's Actuaries Department. The projected figure of a 5.1 million increase in the UK population consists of an estimate of just over 3.5 million immigrants in the next 30 years plus the impact of deaths and births. On the first occasion this figure was used, the fact that it included migrants and their children was stated - although the distinction could have been made more clearly. The figure was thereafter used without qualification as a figure for the projected number of immigrants. However, on balance, despite the lack of clarity, as this figure was used correctly in the first instance and so set the scene for its use later in the programme, and as the argument of the programme did not rest upon this, we do not find the way this statistic was used breached the requirement that facts should be respected.

The programme was not in breach of the Code

Fairness and Privacy Cases

Upheld in Part

Complaint by Professor David Green

Inside Out, BBC1 (West Midlands), 1 November 2004

Summary: Ofcom has upheld part of this complaint of unfairness.

Professor David Green, Principal of University College Worcester ("UCW") complained that he and the student body of UCW were treated unfairly in the programme as broadcast. The item looked at the alleged anti-social activities of students from UCW and included an interview with Professor Green. Professor Green complained that the portrayal of the students was exaggerated, unrepresentative and unfair, and complained that his interview was conducted and edited unfairly. He further complained that he was misled about the nature of the programme.

Ofcom concluded that there was unfairness to Professor Green since he had not been properly informed, prior to his interview, about the subject matter of the programme. However, Ofcom found no grounds to uphold the rest of his complaint.

Introduction

This item was part of a regional topical magazine programme. Entitled *Living with the Student Menace* it examined the behaviour of University College Worcester ("UCW") students and local residents' concerns that UCW students were responsible for noise, drunken behaviour and vandalism.

Professor David Green, Principal of UCW, complained that he and the student body of UCW were treated unfairly in the programme as broadcast.

Complaint

Professor Green's case

UCW students

In summary Professor Green complained that:

- a) the programme portrayed an exaggerated, sensationalist and unrepresentative picture of how the students of UCW were viewed by local residents;
- b) the programme ignored the findings of an independent survey of residents' views and instead portrayed a 'monolithic attitude' of hostility from local residents;
- c) the programme suggested, in the absence of evidence, that students have been involved in violent acts of vandalism;

- d) the programme-makers failed to interview the police or local councillors to substantiate these allegations;
- e) the use of a news reporter lent the programme a 'spurious' objectivity, and the views of residents supportive of students, as illustrated by a BBC radio phone-in the next morning, were not included in the programme; and,
- f) the President of the Student Union was interviewed but this interview was not used in the programme.

Professor Green

In summary Professor Green complained that:

- a) his interview was unfairly conducted, with questions about noise and high jinks rather than the serious allegations made;
- b) he was not given an opportunity to correct the assertions made in the programme and the producer attempted to coach him into saying "it is not a crime to be drunk in your bed"; and,
- c) his interview was unfairly edited, making it appear that he was not answering the specific allegations of the residents interviewed, nor the general assertion of the programme.

The BBC's case

UCW students

The BBC responded that:

- a) problems involving UCW students had received regular coverage in the local newspaper, in spite of initiatives by UCW to tackle the problem, and had been corroborated by the programme-makers' conversations with the UCW press office, local police, fire service, councillors and residents. The commentary reported accurately the extent and location of the problem and put in context the contributions of residents;
- b) the independent survey mentioned by Professor Green was carried out over a wider area and was part of a feasibility study linked to the business case for college growth. The programme made an editorial choice to confine itself to one topic rather than widen the brief to debate whether the college should expand and apply to become a university;
- c) the programme did not accuse students of violent crime and the script made this clear;
- d) various interests and organisations were consulted during programme research and information from the police and councillors was based on residents' complaints which were included in the programme;

- e) the BBC radio phone-in gave an opportunity for all sides to air their views but nothing said contradicted the programme's statement that "students aren't always your ideal neighbour"; and,
- f) the President of the Student Union's interview was not used because she was not as good an interviewee as Professor Green, who had made the same points more effectively.

Professor Green

The BBC responded that:

- a) Professor Green's interview was conducted fairly and questions were put to him about vandalism, allowing him the opportunity to correct such assertions. Prior to the interview the programme makers had informed the UCW press office that the item would be examining the impact the planned expansion of the college might have on the city while looking at the problems some residents had with student behaviour;
- b) Professor Green suggested during an on-the-record research conversation that it was not a crime to be drunk in bed. He was given an opportunity to repeat this and chose not to; and,
- c) Professor Green's interview was edited fairly and his contribution addressed the concerns raised by residents.

Professor Green's response

UCW students

In summary Professor Green commented that:

- a) the BBC's case confirmed that the programme had made no attempt fairly and accurately to reflect the diversity of views of the residents of Worcester about the expansion of UCW;
- b) the BBC did not reflect the views of elected councillors and their response dismissed the independent survey of local opinion;
- c) the footage used implied that students were involved in violent crime, both in the scripting and in the pictures used of a brick through a smashed car window and broken van wing mirror; and,
- d) the BBC chose not to broadcast material from the President of the Students' Union or any of the other students interviewed.

Professor Green

In summary Professor Green commented that:

- a) it was not true that the BBC made UCW aware that the main focus of the story was to be alleged anti-social behaviour by UCW students. On the contrary the producer had repeatedly requested information on the expansion and development of UCW as a whole and had expressed particular interest in the positive impact on Worcester and its residents of this expansion; and,
- b) he did not have any on-the-record discussion with the producer prior to the interview. The BBC's case confirmed that both he and the UCW press officer were misled by the producer throughout the filming process. The editorial choice mentioned in the BBC's submission to "confine itself to one topic rather than to widen the brief to debate whether the college should expand" was never conveyed to UCW.

BBC's response

UCW students

In summary the BBC responded that:

- a) the programme stated that the vast majority of students were well behaved but reflected the concerns of the residents the programme-makers met; nothing in the audience responses after transmission suggest viewers in Worcester felt the item had been unfair;
- b) the programme-makers did talk to a local councillor during the research process and he identified problems with anti-social behaviour and residents' concerns in his ward;
- c) it was clear from the script, and the accompanying images, that the behaviour discussed involved vandalism not serious or violent crime; and
- d) the decision to use the student interviews carried out in the street, rather than those carried out at UCW, was a legitimate and justifiable editorial choice.

Professor Green

In summary the BBC responded that:

- a) Professor Green's suggestion that he thought the item would be concentrating on the positive impact of expansion was surprising since an email from the UCW press officer specifically discussed measures the college

was taking to deal with anti-social behaviour by students rather than giving the details of supporters of expansion. At no point in the filmed interview, including in the informal conversation with the reporter recorded while cutaway shots were taken, did Professor Green express surprise at, or complain about, a line of questioning being included or excluded. The thrust of the questioning concerned student behaviour and relations with residents and followed the outline provided by the producer in his pre-interview email; and,

- b) it was unclear whether Professor Green denied speaking to the producer prior to interview or accepted he did but disputed the status of the call. The producer pressed for an informal phone conversation in order to discuss the item with Professor Green. The producer's understanding was that Professor Green was aware that the phone call was part of the programme's research and therefore that the item would be discussing anti-social behaviour. This conversation provided Professor Green with the opportunity to satisfy himself regarding the thrust of the item and areas to be covered.

Decision

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

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

UCW students

Ofcom found that:

- a) the picture of student behaviour presented was placed very firmly in a particular area of Worcester which lies between the town centre and UCW. This was achieved by means of both the script and reporter's piece to camera, and the portrayal was therefore fairly represented within that context. The programme also made clear that the majority of students were well-behaved;
- b) the programme did present a picture of hostility towards students from local residents, but this was attributed to residents living in the particular area of Worcester under examination;
- c) the programme did suggest that students were involved in acts of serious vandalism but made no suggestion that students had carried out acts of violence against people. The programme made clear that the complaints regarding vandalism were allegations against students and were not proven;

- d) the programme did not include interviews with elected local councillors or the police but this was a matter of legitimate editorial choice;
- e) the choice of presenter was a matter for the programme-makers and news presenters are not precluded from presenting current affairs programmes; the representation of residents' views has been dealt with above; and,
- f) the exclusion of the interview with the President of the Student was a matter of editorial choice. Further, the viewpoint of UCW as a whole was represented by the interview with Professor Green.

Accordingly Ofcom did not find that the students of UCW had been unfairly treated in the programme as broadcast.

Professor Green

In considering the conduct of Professor Green's interview, Ofcom examined a copy of the full unedited recording. Ofcom found that:

- a) Professor Green was not interviewed about simple noise and high jinks at the time and, although individual cases and complaints were not put to him, he was provided with an opportunity to address the broad thrust of the serious allegations made by the programme. Accordingly Ofcom did not find that in these respects Professor Green's interview had been unfairly conducted.

However, Ofcom then addressed the issue of whether Professor Green had been made aware of the focus of the programme, and whether he had thereby been given an opportunity to provide informed consent to his participation in the programme. Ofcom considered the background correspondence between UCW and the BBC. Ofcom found that:

(i) prior to Professor Green's interview, UCW was provided with a list of interview question areas. First on this list was "The expansion of the College with particular reference to the Castle Street site and the impact this will have on the city". This was followed by question areas concerning the problems some residents claimed to have had with student behaviour and what the College was doing in response. It was reasonable therefore, that Professor Green would have understood the expansion of the College to be the main subject of the programme;

(ii) Ofcom noted that the BBC's submission in response to the complaint stated that: "The programme made an editorial choice to confine itself to one topic [ie student behaviour] rather than widen the brief to debate whether the college should expand and apply to become a university". This conflicted with the account of the programme given to Professor Green in the email outlining interview question areas. It is unclear when this editorial choice was made, but in any event it does not appear to have been conveyed to Professor Green at any time. The fact that he did not express concern during the interview does not necessarily support the BBC's contention that he had been informed that the final programme would focus on student behaviour. This was a time when the focus of his attention would have been on addressing the individual questions put to him.

Accordingly, Ofcom found that Professor Green was not properly informed about the nature of the programme, which resulted in him appearing in a programme without being given the opportunity to provide informed consent. There was therefore unfairness to Professor Green in the programme as broadcast.

- b) Ofcom found no evidence of coaching. The conduct of the interview did not unfairly curtail Professor Green's ability to address the allegations made about UCW students. Accordingly Ofcom did not find that in these respects Professor Green's interview had been unfairly conducted; and,
- c) the editing of the programme, including the commentary which preceded Professor Green's interview, made it clear that he was addressing the broad thrust of the programme's allegations rather than any individual cases. Accordingly Ofcom did not find that Professor Green's interview had been unfairly edited.

Ofcom has directed the BBC to broadcast a summary of the adjudication.

Complaint by Mr Neil Morgan

Watchdog, BBC1, 7 September 2004

Summary: Ofcom has not upheld nine complaints made about unfair treatment and infringement of privacy for the reasons given below. In one case, Ofcom has found that the programme was unfair to Mr Morgan:

- It was fair to identify Mr Neil Morgan when looking at the activities of Atlantic Property Limited. Mr Morgan was inextricably linked to the actions of Atlantic both in practice and as one of the company's two shareholders.
- It was fair to describe Mr Morgan as being "elusive" given the difficulties experienced by tenants and bailiffs when they sought to contact Mr Morgan.
- The tone of the programme was fair to Mr Morgan and was in keeping with its established style.
- The programme's use of photographs of Mr Morgan, was fair. It did not portray him in a criminal light.
- It was not necessary for programme makers to include Mr Morgan's explanation as to why Atlantic was unable to repay tenant deposits. They were not relevant when looking at the property company and Mr Morgan's dealings with the tenants featured in the programme. After viewing the item, Ofcom noted that the programme makers had included Mr Morgan's explanation for non-payment of deposits.
- The programme was unfair to Mr Morgan when it stated "not a single penny" of the County Court Judgements against Mr Morgan and Atlantic had been paid. Ofcom found that Watchdog programme makers were aware that Mr Morgan had paid some of the money owed to ex-tenants, through documentation provided to Watchdog by Mr Morgan. Given that the programme makers could not prove this material was false or did not relate to the CCJ debts, it was unfair for the programme to unequivocally state that "Not a single penny" had been paid of the CCJs.
- The programme was fair in its handling of Atlantic's tenancy agreement.
- Mr Morgan was given a reasonable amount of time and information to respond to the programme prior to broadcast.
- Mr Morgan's privacy was not infringed by a Watchdog researcher sitting outside his house.
- The use of the photographs of Mr Morgan did not infringe Mr Morgan's privacy as they were already in the public domain.

Introduction

This edition of the BBC's consumer affairs programme included a report that looked at the complaints of three people about their tenancies. Each had rented properties through Atlantic Property Limited ("Atlantic"), a company of which Mr Morgan is a director. Mr Morgan's practices and his tenancy agreement were criticised. It was

stated that he liked to “hang on” to people’s money and that tenants had difficulties in contacting him. Extracts from a statement from Mr Morgan were included in the programme and photographs of him were shown during the report.

Mr Morgan complained that he was treated unfairly in the programme and that his privacy was unwarrantably infringed in both the making and broadcast of the programme.

The Complaint

Mr Morgan’s case

In summary, Mr Morgan complained as follows:

Fairness

a) Atlantic was a limited company, liable for the debts owed in the cases referred to in the programme. Although he was a director of Atlantic, he was not personally liable for its debts. The repeated references to him personally owing people money were unfair;

b) the report criticised him personally and portrayed him as an elusive criminal, both in terms of the words used and the tone in which they were used. An assurance given to Mr Morgan’s solicitors by the programme makers that it would not be alleged that Mr Morgan was dishonest was not adhered to.

Mr Morgan stated that he was not difficult to find, as was evident by the fact that the programme-makers contacted him without difficulty. In any event, it was Atlantic that owed people money, not himself, so there was no need for tenants or former tenants to find him personally. Nor did the report include his response to allegations about his addresses. He told the programme makers that Atlantic’s mail address was legitimate and that all correspondence was answered;

c) the programme’s portrayal of him was compounded by the use of photographs of him, which were selected to portray him in the worst possible light. The shots were manipulated to show him as a criminal figure, with his head down, walking away quickly;

d) the report focused on selective facts and failed to give the true context of the situation. Had the facts been fairly presented, to show that Atlantic’s problems were caused by non-payment by other tenants, the story would have evaporated, leaving only a story of a company experiencing trading difficulties. The report did not make clear that, instead of choosing to shut the company down, as he could have done, Mr Morgan had tried to rescue the situation and had been paying tenants back with his own money;

e) the report alleged that “not a single penny” of County Court Judgements (“CCJs”) against Atlantic in favour of tenants had been repaid, when this was not the case. The programme-makers had evidence, prior to broadcast, to show that Mr Morgan had been paying people back personally from some time prior to the programme’s involvement;

f) the report did not include his response to allegations about the tenancy agreement used by Atlantic. He had advised the programme-makers that the agreement which was drafted by lawyers, had been upheld by the Courts and that it

was fully explained before tenants signed it. Mr Morgan also informed Ofcom that the tenancy agreement had been upheld by the High Court in a case that was heard after the *Watchdog* broadcast. The opinion of the expert who appeared on the programme and criticised the agreement was simply that: the opinion of a lawyer;

g) he was not given a proper opportunity to respond to the allegations made in the report. Although the report was being planned for some months, he was only given two working days' notice of the broadcast. Despite this, he fully cooperated with *Watchdog* and provided extensive, compelling evidence to disprove their story of deliberate dishonesty in advance of the broadcast. An invitation to take part in an interview was only given at the last minute. He did not take it up, as he feared he would be ambushed, since the programme makers appeared not to have considered the material he had provided to them.

Privacy

h) Mr Morgan stated that, on 24 August 2004, a reporter from the programme sat outside his house during the day and followed people leaving the house. This unwarrantably infringed his privacy in the making of the programme; and,

i) still photographs of him were used in the programme. This unwarrantably infringed his privacy in the programme as broadcast.

The BBC's case

In summary the BBC responded as follows:

Fairness

a) although Mr Morgan drew a distinction between himself and Atlantic in his complaint, in reality he made no such distinction. According to the accounts for 2003, Mr Morgan is the "ultimate controlling party" of Atlantic. He dealt personally with the people who featured in the programme. In the circumstances, it was fair to refer to him as being responsible for their mistreatment;

b) the programme did not allege stealing or dishonesty by Mr Morgan, as his solicitors had been assured it would not. However, the statement in the report that Mr Morgan "likes to hang on to people's money" was justified. It was borne out by the numerous CCJs against Atlantic and six against Mr Morgan personally. In addition, once contacted by the programme-makers, Mr Morgan wrote to Mr Chris Brett, one of the former tenants featured in the report, and sent him a cheque in partial settlement of his claim. He was therefore still "hanging on" to some of Mr Brett's money. Another person featured in the report, Ms Sophie Brito, obtained a CCJ against Atlantic for money owed to her but had not received payment. Mr Morgan's claim to the programme makers that the CCJs in the cases to be featured were default judgements, made without the court hearing from either party, was not true. He had himself included in the documents provided to the programme-makers copies of defence statements made in Ms Brito's case;

c) the portrayal of Mr Morgan in the programme as elusive was also justified, since tenants were unable to find him. His registered office address is a mail forwarding address, as is the home address listed for him at Companies House. There is therefore no legitimate office address and his real home address is not listed on any official documents, despite a legal requirement to list his usual residential address on Companies House documents.

- d) Mr Morgan's argument that he has been treated badly by other tenants, who owe him money, was not relevant to the complaints of the tenants featured in the report. Although Mr Morgan sought to portray himself as a struggling businessman, he is, according to the Company Appointments register, a director or secretary of 20 separate companies at just one address. He also uses at least three other addresses;
- e) at the time of the broadcast, there was no evidence that Mr Morgan had made payments personally to anyone other than Ms Katie Watt and Mr Phil Kemp, two of the former tenants featured in the report, before the involvement of the programme-makers;
- f) the statement provided by Mr Morgan for the programme contained a number of questionable points and was treated by the programme makers with caution. In the opinion of the expert property lawyer who appeared on the programme, Mr Morgan uses a particularly oppressive tenancy agreement; and,
- g) the programme makers sent letters and faxes to Mr Morgan on 31 August 2004, four working days before the broadcast. His first reply was dated 1 September 2004. There were numerous exchanges between Mr Morgan and the programme makers, which clearly set out the allegations to be made. The communications from Mr Morgan demonstrate that he was completely familiar with the cases to be featured. He therefore took up several opportunities to respond to the points the report would be making.

Privacy

- h) As regards infringement of privacy in the making of the programme, a researcher did park on the public highway near Mr Morgan's house, but made no attempt to enter his property; and,
- i) As regards infringement of privacy in the programme as broadcast, the programme makers avoided giving any information that would identify Mr Morgan or his home. He was not filmed or photographed by the programme-makers, nor did the programme reveal any personal information about him. The still photographs used were taken by a freelance photographer seven years earlier and one of them had been published in a local paper in 1997.

There was therefore no infringement of Mr Morgan's privacy in the making or the broadcast of the programme.

Decision

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

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

In the circumstances of this case the Fairness Committee found the following:

a) It was apparent from the material before the Committee that Mr Morgan was inextricably linked to the activities of Atlantic. As a director and as one of only two shareholders it was, in the Committee's view, reasonable for the programme to identify Mr Morgan when looking at the activities of Atlantic.

However, the Committee noted that the programme referred to Mr Morgan as "Neil Morgan of Atlantic Property Limited". In the circumstances, it was likely to have been clear to viewers that when the programme referred to money owed to tenants, Mr Morgan did not owe the money personally, but was acting in his capacity as director of Atlantic.

b) The Committee considered that it was reasonable for the programme to describe Mr Morgan as being "elusive", as this appeared to be the case in practice. Tenants and bailiffs acting on behalf of the courts had had difficulty finding Mr Morgan to reclaim assets. In addition Mr Morgan's usual residential address could not be found on Companies House documentation, as is required. It was the Committee's view that this inability to locate Mr Morgan, when required, supported the programme's description of Mr Morgan as "elusive" and did not amount to unfairness, notwithstanding the fact that the programme-makers had themselves been able to find Mr Morgan.

The Committee noted that the programme did not describe Mr Morgan as dishonest. However, it did state that Mr Morgan liked to "hang on to people's money" and raised concerns about his treatment of tenants. In the Committee's view this was legitimate in light of the personal testimony provided by some of Mr Morgan's former tenants, referred to in the programme, and the evidence before the Committee that Mr Morgan and Atlantic were the subject of many County Court Judgements.

In the Committee's view the programme did not portray Mr Morgan as a criminal in either the words used or the tone of the presentation. The tone of the programme's presentation of matters was in keeping with the established style of the programme and likely to be well known to viewers. In the Committee's view, and given the legitimate concerns raised about Mr Morgan's treatment of at least some of his former tenants, the tone and presentational style was unlikely to have materially affected viewers' understanding of Mr Morgan's actions in a way which was unfair to him.

c) The Committee had no evidence that the photographs of Mr Morgan included in the programme had been manipulated to depict him in a criminal light. In the Committee's view the presentation of the photos appeared to be straightforward and unlikely, in itself, to have led to viewers reacting critically to Mr Morgan.

d) In the Committee's view the programme-makers took all reasonable steps to ensure that they had considered all material facts. In relation to Mr Morgan's complaint that the programme failed to include his explanation as to why Atlantic had been unable to repay tenant deposits, the Committee took the view that the programme made sufficient reference to this when it stated: "Neil Morgan says this is all being caused by dishonest tenants. He says he is owed more than £100,000 this year alone". After viewing the programme the Committee was satisfied that the programme makers were under no obligation to include such reasons for financial difficulties as they were not relevant when relating Mr Morgan and Atlantic's dealings with Mr Kemp and Ms Watt, Mr Brett and Ms Britto.

e) Mr Morgan complained that the programme had said "not one single penny"

of the CCJ's against the company had been paid. He said this was untrue and therefore amounted to unfairness. The Committee agreed with Mr Morgan for the following reasons:

The context within which the phrase was made was not sufficiently clear to indicate whether the phrase referred to any of the outstanding CCJs or only the tenants featured in the show who had sought CCJs against Mr Morgan and Atlantic. It was the Committee's opinion that based on the statement as it was heard, a viewer would have been likely to have come away with the impression that "not one single penny" had been paid either to the tenants featured who had a CCJ against Mr Morgan or any of the outstanding CCJs.

Documentation provided by the broadcaster showed that the programme makers had been aware that Mr Morgan had paid some of the debts owed to ex-tenants prior to broadcast: "We are aware that you have repaid some ex-tenants from your personal account in Jersey; however the people featured in our film are still awaiting payment" (fax from Alex Loughran, Watchdog Producer to Mr Morgan, 2 September 2004).

As the programme makers could not prove that these payments made by Mr Morgan to ex-tenants were not for CCJs, it was inaccurate for them to say so emphatically that "not one single penny" had been paid to anyone who had won a CCJ against Mr Morgan. The Committee therefore concluded that the inclusion of such a statement was unfair to Mr Morgan.

f) Mr Morgan complained that the report did not include his response to allegations about the tenancy agreement used by Atlantic. After viewing the programme and transcripts, the Committee found that programme did refer to Mr Morgan's response, stating: "As for his tenancy agreement, he claims he used it for years without complaint". The programme-makers were not obliged, in the interests of fairness to include all his comments, and in the Committee's view this fairly represented his position about this.

g) The Committee was satisfied that the programme makers did give Mr Morgan a reasonable amount of time to respond and that the information provided to him did accurately inform him of the likely nature and content of the programme. When coming to this conclusion the Committee noted that Mr Morgan was told about the three cases and was well aware of the facts involved in each. The Committee also noted that Mr Morgan was not only first alerted about the programme on 31 August 2004 and the programme was recorded on 6 September 2004 but also, he was able to respond to the programme makers by the 1 September 2004 with what appeared to be a well argued, thoughtful, detailed and informed case.

Privacy

The line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy, the Committee will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted?

h) With regard to the making of the programme, the Committee considered that the actions of the programme's researcher in waiting on a public road outside Morgan's property did not amount to an infringement of Mr Morgan's privacy. When reaching this decision the Committee noted that Mr Morgan's property was not entered and the researcher remained in a public place. No events or actions of an

inherently private nature were filmed and Mr Morgan provided no convincing evidence that third parties were followed when leaving his property.

i) With regard to the programme as broadcast, the Committee considered that the programme did not disclose any information that was not already in the public domain. Mr Morgan was not filmed or photographed by the programme-makers, nor did the programme disclose any personal information about him.

Not Upheld

Complaint by Mrs Shamim Sheeraz

Car Wars 3, BBC 1, 3 November 2004

Summary: Ofcom has not upheld this complaint of unwarranted infringement of privacy in both the making and broadcast of an edition of *Car Wars*, broadcast by the BBC on 3 November 2004.

Mrs Sheeraz complained that her privacy and that of her children was unwarrantably infringed in that she and her children were filmed without consent and that footage was subsequently broadcast without consent.

With regard to the making of the programme, Ofcom took the view that the incident happened in a public place and was filmed from the public footpath. The actions of Mrs Sheeraz and her children were not of an inherently private nature and as such they did not have a reasonable expectation of privacy in the circumstances. Ofcom also accepted the BBC's submission that, given the nature of the incident, it had not been possible to seek permission prior to filming.

With regard to the programme as broadcast, Ofcom considered that the actions were sufficiently in the public domain to justify being included in the programme without the programme-makers first seeking her consent to broadcast the footage. Ofcom also considered that sufficient steps had been taken to conceal the identity of Mrs Sheeraz and her two children and it was unlikely that they would have been identifiable to a wide audience.

In all the circumstances, Ofcom found that there was no infringement of Mrs Sheeraz's privacy and that of her children, in either the making or broadcast of the programme.

Introduction

This programme followed 'Operation Acclamer', a police investigation into organised car crime. As part of the investigation the police had concentrated on finding Mr Cameron Sheeraz who was believed to be responsible for a car 'cloning' scam.

The programme included footage of Mr Sheeraz as he was arrested outside his home. It showed Mr Sheeraz in the process of reversing his car to take one of his daughters to school when the arrest was made. During the course of this, his wife, Mrs Shamim Sheeraz appeared from the house to remonstrate with the police, at this point their youngest daughter also appeared. The elder daughter could be heard to be in a state of distress as she was taken out of the car and brought back into the house.

Mrs Sheeraz complained that her privacy and that of her children was unwarrantably infringed in both the making and broadcast of the programme.

Complaint

Mrs Sheeraz's Case

In summary, Mrs Sheeraz complained that her privacy and that of her children was

unwarrantably infringed in both the making and broadcast of the programme in that she and her children were filmed without consent and that footage was subsequently broadcast without consent. She stated that she and her children were identifiable from the footage included in the programme.

She said that the incident was of a private nature, particularly as her children had been in a state of shock and distress, and in the circumstances they had a reasonable expectation of privacy. She also said that her husband's actions did not justify broadcasting footage of her and her children.

The BBC's Case

In summary, the BBC responded as follows:

It was not necessary to seek consent for filming as an arrest, as an act of law against an individual, is an inherently public event. Further, the arrest took place in a public place in full view of passers by and the camera operators remained on the public footpath throughout the arrest. In any event, obtaining permission in advance of filming would not have been an option as surprise was the key to the success of the police operation.

In order to record what was a public event, the camera operators had no choice but to film those who were incidentally involved, including the children. However, it was clear from the footage that Mrs Sheeraz's elder child, who was in the car, was already distressed at seeing her father being arrested. There were no grounds for concluding that the filming added to the distress of the children.

The BBC said that every effort was made to avoid adding to the children's distress by concealing their identity in the programme as broadcast. Further, as the children were both very young, and the programme was shown after the watershed, it was unlikely to have been seen by any of their peers.

With regard to the filming of and broadcast of footage of Mrs Sheeraz, the BBC said that she appeared on camera because, without warning, she walked swiftly out of the house to where filming was taking place. Her face was entirely obscured in the programme as broadcast.

Decision

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

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

In Ofcom's view the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted?

Whether or not an event, action or information is in the public domain must be considered on a case by case basis according to all the relevant facts. The fact that it occurs in a public place is not necessarily sufficient in itself to determine that it is in the public domain. With specific regard to the making of this programme, Ofcom took the view that the incident happened in a public place and it appeared from the broadcast footage that it was filmed from the public footpath. Further, the actions of Mrs Sheeraz and her children were not of an inherently private nature and as such they did not have a reasonable expectation of privacy in the circumstances. Ofcom also accepted the BBC's submission that, given the nature of the incident, it had not been possible to seek permission prior to filming. Any prior contact with either Mr or Mrs Sheeraz would have been likely to have jeopardised the police operation.

In Ofcom's view it was clear from footage of the event that Mrs Sheeraz's eldest child was already in a state of distress when filming began and there was no evidence to suggest that the filming itself added to either child's distress.

Ofcom therefore found that there was no infringement of Mrs Sheeraz's privacy or that of her children, in the making of the programme. In these circumstances Ofcom did not need to consider whether or not the filming was warranted in light of Mr Sheeraz's actions.

With specific regard to this programme as broadcast, Ofcom considered that the actions were sufficiently in the public domain to justify being included in the programme without the programme-makers first seeking Mrs Sheeraz's consent to broadcast the footage. Ofcom also considered that sufficient steps had been taken to conceal the identity of Mrs Sheeraz and her two children, including 'blurring' their faces where necessary. It was unlikely that they would have been identifiable to a wide audience.

Ofcom therefore found that there was no infringement of Mrs Sheeraz's privacy and that of her children, in the programme as broadcast. In these circumstances Ofcom did not need to consider whether or not the broadcast of the footage was warranted in light of Mr Sheeraz's actions.

Complaint by Mrs B A Awcock

Airport, BBC1, 28 April 2005

Summary: Ofcom has not upheld this complaint of infringement of privacy.

Mrs Awcock complained that her privacy was infringed in the broadcast of the programme in that footage of her was broadcast without her consent and without her being notified (something which the programme-makers had promised to do).

Ofcom considered that Mrs Awcock's actions were sufficiently in the public domain to justify being included in the programme without the programme-makers first needing to seek Mrs Awcock's consent to broadcast the footage. Ofcom also considered that Mrs Awcock was not engaged in any activity which might be considered intrinsically private and as such she had no reasonable expectation of privacy in the circumstances. Further, having viewed the untransmitted material, Ofcom noted that Mrs Awcock appeared to be fully aware of the filming, engaged with the programme-makers and raised no objection to filming or broadcast of the footage. In these particular circumstances, it was reasonable for the programme-makers to assume that Mrs Awcock consented to filming and broadcast of the footage.

Ofcom concluded that Mrs Awcock's privacy was not infringed in the broadcast of the programme.

Introduction

This fly-on-the-wall documentary looked at the people who work at a major international airport. In this episode, a car was shown parked illegally outside the Arrivals building. It was claimed (by the passenger) that the driver (Mrs Awcock) was collecting her daughter and would only be a few minutes. Mrs Awcock eventually returned with her daughter, however, by then, she had received a parking ticket from traffic warden, Ms Nikki Taylor.

The Complaint

Mrs B A Awcock's case

In summary, Mrs Awcock complained that her privacy was infringed in the broadcast of the programme in that footage of her was broadcast without her consent and without her being notified (something the programme-makers had promised to do).

The BBC's case

In summary the BBC responded that Mrs Awcock was filmed in a public place and was aware that the programme-makers were following the traffic warden, Ms Taylor, as she carried out her duties. She was also aware that the programme-makers were from the programme *Airport* and did not object in any way to the filming.

Mrs Awcock was interviewed and freely gave her views on the parking and signage at Heathrow. The producer then told her "we have filmed the whole thing" and asked for her name and telephone number so that the programme-makers had a record of who she was and could inform her when the sequence would be shown. At the time Mrs Awcock seemed indifferent to the further contact she was offered. The BBC maintained there was nothing in the untransmitted footage of the incident to support

Mrs Awcock's claim that the programme-makers said they would contact her to give her the choice of whether the footage would be shown or not. The BBC provided the untransmitted footage in support of their case.

The BBC acknowledged they had failed to contact Mrs Awcock prior to transmission to inform her of the date of transmission, for which they apologised during a phone conversation with the complainant.

Decision

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

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

In Ofcom's view, whether or not an event, action or information is in the public domain must be considered on a case by case basis according to all the relevant facts. The fact that it occurs in a public place is not always sufficient in itself to determine that it is in the public domain and there may be circumstances where people can reasonably expect privacy even in a public place. However, in the particular circumstances of this case Ofcom considered that Mrs Awcock's actions were sufficiently in the public domain to justify being included in the programme without the programme-makers first needing to seek Mrs Awcock's consent to broadcast the footage. Ofcom also considered that Mrs Awcock was not engaged in any activity which might be considered intrinsically private and as such she had no reasonable expectation of privacy in the circumstances.

Further, having viewed the untransmitted material, Ofcom noted that Mrs Awcock appeared to be fully aware of the filming, engaged with the programme-makers and raised no objection to filming or broadcast of the footage. In these particular circumstances, it was reasonable for the programme-makers to assume that Mrs Awcock consented to filming and broadcast of the footage.

In Ofcom's view it was unfortunate that the BBC failed to notify Mrs Awcock of the transmission date as they had promised on this occasion. However, for the reasons stated above Ofcom concluded that Mrs Awcock's privacy was not infringed in the broadcast of the programme.

The complaint of infringement of privacy was not upheld.

Other programmes not in breach/out of remit

19 October – 1 November 2005

Programme	TX Date	Channel	Category	Complaints
A Place in Greece	12/10/2005	Channel 4	Language	2
A Very Social Secretary	20/10/2005	Channel 4	Offence	2
America's Next Top Model	30/08/2005	Living	Offence	1
Atomic Train	08/10/2005	Five	Scheduling	1
Bam Bam Breakfast Show	08/09/2005	Kiss 100 FM	Offence	1
BBC News	14/10/2005	BBC1	Offence	1
BBC News	18/10/2005	BBC1	Offence	2
BBC News 24	05/09/2005	BBC News 24	Offence	1
BBC Radio 4	08/09/2005	BBC Radio 4	Offence	1
BBC Radio 5 Live	10/10/2005	BBC Radio 5 Live	Offence	2
BBC World	21/10/2005	BBC World	Offence	2
Blessed	21/10/2005	BBC1	Offence	1
Boot Sale Treasure Hunt	24/10/2005	ITV1	Offence	1
Brum	16/10/2005	CBeebies	Offence	1
Casualty	11/10/2005	BBC1	Offence	1
Casualty @ Holby City	24/10/2005	BBC1	Offence	2
Channel 4 News	18/10/2005	Channel 4	Offence	1
Come Dine with Me	14/09/2005	Channel 4	Language	1
Coronation Street	09/10/2005	ITV1	Religious Offence	1
Coronation Street	10/11/2005	ITV1	Offence	1
Coronation Street	17/10/2005	ITV1	Offence	3
Coronation Street	21/10/2005	ITV1	Offence	1
Coronation Street	25/10/2005	ITV1	Language	1
Coronation Street	23/10/2005	ITV1	Offence	1
dick and dom in da bungalow	01/10/2005	BBC1	Offence	1
dick and dom in da bungalow	08/10/2005	BBC1	Offence	1
Dirty Tricks	14/10/2005	Channel 4	Language	1
Dispatches: The Hurricane that Shamed..	31/10/2005	Channel 4	Offence	1
Dr Who	16/04/2005	BBC1	Offence	3
Eastenders	14/10/2005	BBC1	Offence	1
Eastenders	23/10/2005	BBC1	Violence	1
Emmerdale	02/10/2005	ITV1	Offence	1
Emmerdale	17/10/2005	ITV1	Offence	3
Emmerdale	26/10/2005	ITV1	Offence	1
Five Live	19/10/2005	BBC Radio 5 Live	Offence	1
Frank Skinner Show	29/09/2005	ITV1	Offence	3
Friday Night With Jonathan Ross	14/10/2005	BBC1	Offence	4
Garden School	21/10/2005	BBC2	Language	1
Gladiator	23/10/2005	Five	Violence	1
GMTV	19/10/2005	ITV1	Impartiality	2
GMTV	21/10/2005	ITV1	Offence	1

Ground Control	13/10/2005	Five	Language	1
Gypsy Wars	25/09/2005	BBC3	Impartiality	1
Home and Away	17/10/2005	Five	Offence	1
House Auction	18/10/2005	Channel 4	Offence	1
ITV News	06/10/2005	ITV1	Offence	1
ITV News	19/10/2005	ITV1	Offence	1
Jack Dee Live at the Apollo	19/09/2005	BBC1	Religious Offence	1
Jack Dee Live at the Apollo	17/10/2005	BBC1	Offence	2
James O'Brien	23/09/2005	LBC97.3	Offence	1
Jamie's Great Escape	12/10/2005	Channel 4	Offence	1
Jamie's Great Escape	20/10/2005	Channel 4	Offence	1
Jamie's Great Escape	25/10/2005	Channel 4	Offence	1
Jamie's Great Escape	27/10/2005	Channel 4	Offence	1
Jericho	16/10/2005	ITV	Offence	1
Jonathan Ross	22/01/2005	BBC1	Offence	1
Jonathan Ross	01/10/2005	BBC1	Offence	1
Kate Moss: Fashion Victim?	03/10/2005	Sky One	Offence	1
Key 103 Radio	07/08/2005	Key103	Offence	1
London Today	18/10/2005	ITV1	Offence	1
London Tonight	14/10/2005	ITV1	Offence	1
Lost	16/10/2005	Channel 4	Violence	1
Love Soup	11/10/2005	BBC1	Offence	2
Mike Reid Live and Uncensored	22/10/2005	Men and Motors	Offence	1
MTV	16/10/2005	MTV	Offence	1
MTV Base	21/10/2005	MTV	Offence	1
National Television Awards	26/10/2005	ITV1	Language	1
National Television Awards	26/10/2005	ITV1	Violence	2
Neighbours	19/10/2005	BBC	Scheduling	1
Nick Ferrari	14/09/2005	LBC97.3	Offence	1
Nip/Tuck	25/10/2005	Sky One	Offence	1
Parkinson	16/10/2005	ITV1	Offence	1
Parkinson	15/10/2005	ITV1	Offence	1
Pope Joan	22/10/2005	BBC2	Religious Offence	1
Race Swap	17/10/2005	Five	Offence	1
Radio 1	25/07/2005	BBC	Offence	2
Real Families	11/10/2005	ITV1	Offence	3
Richard and Judy	10/10/2005	Channel 4	Language	1
Rock FM	20/10/2005	97.4 Rock FM	Offence	1
Rogue Traders	20/10/2005	BBC1	Offence	1
Room 101	19/10/2005	BBC2	Offence	1
Rose & Maloney	26/09/2005	ITV1	Advertising	1
Scrapheap Challenge	23/10/2005	Channel 4	Offence	1
Setanta Sport	16/10/2005	Setanta Sport	Offence	1
Should I Worry About...	27/09/2005	BBC1	Offence	1
Soccer AM	15/10/2005	Sky Sports	Offence	1
Spoons	14/10/2005	Channel 4	Offence	2
Swinging	19/10/2005	Five	Offence	1
Tales From the Green Valley	21/10/2005	BBC2	Language	1

Talksport	07/10/2005	Talksport	Offence	1
Talksport	11/10/2005	Talksport	Religious Offence	1
Talksport	12/10/2005	Talksport	Offence	1
Talksport	14/10/2005	Talksport	Offence	1
Talksport	14/11/2005	Talksport	Offence	1
TBN Europe	30/10/2005	TBN Europe	Offence	1
The Archers	02/10/2005	BBC Radio 4	Language	1
The Chris Moyles Show	12/08/2005	BBC Radio 1	Offence	1
The Gadget Show	17/10/2005	Five	Offence	1
The Gibley Boys	20/10/2005	ITV1	Offence	1
The Hits	27/10/2005	The Hits	Sexual Portrayal	1
The Secret of My Success	18/09/2005	Five	Sexual Portrayal	1
The West Wing	25/10/2005	Channel 4	Offence	1
The Wright Stuff	19/10/2005	Five	Offence	3
The X Factor	31/10/2005	ITV1	Offence	1
This Morning	21/10/2005	ITV1	Offence	3
This Morning	20/10/2005	ITV1	Offence	1
This Morning	26/10/2005	ITV1	Offence	1
Trailer	24/10/2005	Five	Offence	1
Trisha Goddard	24/10/2005	Five	Offence	1
Vibe FM	12/10/2005	Vibe 101	Offence	1
War at the Door	17/10/2005	BBC1	Offence	1
Weakest Link	18/10/2005	BBC2	Offence	1
What Not to Wear	25/10/2005	BBC1	Religious Offence	1
Wife Swap	03/10/2005	Channel 4	Offence	1
Wife Swap	24/10/2005	Channel 4	Misleading	1
Will and Grace	25/10/2005	Channel 4	Scheduling	1
Will and Grace	26/10/2005	Channel 4	Scheduling	1
You've Been Framed	22/10/2005	ITV1	Language	1