

Ofcom broadcast bulletin

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Contents

Introduction	3
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Standards cases

In Breach	4
Resolved	17
Not in Breach	23

Fairness and Privacy cases

Upheld in Part	25
Other programmes not in breach/outside remit	26

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).

Copies of the full adjudications for Upheld and Not Upheld Fairness and Privacy cases can be found on the Ofcom website: www.ofcom.org.uk

Standards cases

In Breach

Make Poverty History

Various broadcasters, March 31 2005, 19.58 and other times

Introduction

Make Poverty History ("MPH") is a body representing around 300 charities, celebrities and other organisations. It was set up in 2004 for the purpose of campaigning for the elimination of poverty in developing countries.

In December 2004 the Broadcast Advertising Clearance Centre (BACC) cleared an advertisement for MPH featuring a number of celebrities saying that "*somebody dies avoidably through poverty every three seconds*". A caption stated "Make Poverty History" and directed viewers to the MPH website which encouraged viewers to lobby the Prime Minister/government directly to make this a high priority on their political agenda. The advertisement ran over the Christmas period. No complaints were received by Ofcom, so we were not aware of the advertisement at that time.

On 31 March 2005, the advertisement was booked by an advertising agency to run as a "road block", i.e. simultaneously on all those commercial channels that were prepared to donate the airtime. In the event the majority of channels ran it in commercial airtime, although some ran the item in non-commercial (promotional) airtime. The item has been broadcast a number of times since that date, both as a television commercial and as a radio commercial cleared by the Radio Advertising Clearance Centre (RACC).

In the two weeks before 31 March 2005, a number of broadcasters contacted Ofcom for pre-transmission advice, expressing concerns about whether the item amounted to political advertising. Ofcom noted the broadcasters' concerns but since Ofcom does not view or clear any programmes or advertisements prior to transmission, was unable to offer any specific advice other than to remind broadcasters of their responsibility to satisfy themselves before transmission that the material was compliant and did not fall within the scope of political advertising.

Political advertising is prohibited under the terms of section 321 of the Communications Act 2003 ("the Act"), by Section 4 of the TV Advertising Standards Code of the Broadcast Committee of Advertising Practice (BCAP) ("The TV Code") and by Section 2, Rule 15 of the BCAP Radio Advertising Standards Code ("The Radio Code"). *The relevant extracts from the Act and the codes are given in full at the end of this adjudication.*

The TV Code and the Radio Code, formerly Ofcom's Advertising Standards Code and Radio Advertising Code, are now administered by the Advertising Standards Authority (ASA) and BCAP. Ofcom, however, remains responsible under the terms of the Memorandum of Understanding, between Ofcom and the ASA, for enforcing the rules on Political Advertising, namely Section 4 of the TV Code and Section 2, Rule 15 of the Radio Code.

In light of the broadcasters' concerns and having viewed the 31 March 2005

television transmission and listened to the radio advertisement, Ofcom considered there were grounds for querying whether:

- a) MPH was a body whose aims were wholly or mainly political, and as such was prohibited from advertising on television and radio under sections 321(2) and (3) of the Act and Section 4(a) of the TV Code and Section 2 Rule 15(b) of the Radio Code;
- b) the MPH advertisements, by directing viewers to the MPH website, were “directed towards a political end” in breach of section 321(2)(b) of the Act and Section 4(b) of the TV Code and Section 2 Rule 15 of the Radio Code in that they sought, in particular, to influence government policy and decision making contrary to section 321(3)(c) of the Act;
- c) it was permissible to have broadcast the MPH material on television as a programme promotion outside commercial airtime since it appeared not to comply with the definitions of programme promotions contained in Rule 1 of the Rules on the Promotion of Programmes, Channels and Related Services on Commercial Television (“Promotion Rules”), and of Rule 2.1 of the Rules on the Amount and Scheduling of Advertising (“RASA”).

Ofcom was also concerned:

- d) as to how the due impartiality requirements in Section 3.1 of Ofcom’s (ex-ITC) Programme Code (“the Programme Code”) could be met on those channels which played the item in non-commercial as opposed to commercial airtime.

In view of these concerns, Ofcom sought a response from the BACC and the RACC as to how they considered the MPH advertisements complied with the Code requirements on political advertising. Ofcom also asked those channels who ran it as a promotion in non-commercial airtime why they considered that showing the item in non-commercial airtime was compliant with the Promotion Rules, RASA and the Programme Code.

Response from the broadcasters, the BACC and the RACC

a) Is MPH a “body whose objects are wholly or mainly of a political nature”? (Section 321(2)(a) of the Act and Section 4(a) of the TV Code and Rule 15(b), Section 2 of the Radio Code).

The BACC considered that a major part of MPH’s activity was to act as a source of information and that the bulk of its activities were charitable in nature. It accepted that there may have been some political aspects to the activities of the group, but did not believe that these constituted the majority. The RACC said that they considered the aims of MPH to be awareness-raising rather than political, and that MPH broadly shared the aims of the 300-plus charities it represented. Neither body therefore considered MPH to be “wholly or mainly” political.

b) Were the advertisements “directed towards a political end”? (Section 321(2)(b) of the Act and Section 4(b) of the TV Code and Rule 15(b), Section 2 of the Radio Code)

As to whether the advertisement itself was acceptable under the rules on political advertising, the BACC said that it did not consider that it showed partiality in relation to a political or industrial controversy (Section 4(d) of the TV Code) since it merely gave factual information. It also did not believe that the MPH website to which the TV advertisement directed viewers constituted an unacceptable service under Section 3.2 of the TV Code which states:

“No advertisement may indirectly publicise an unacceptable product or

service”

The BACC took this view because the MPH homepage, whilst it had elements which had a “lobbying flavour”, was in its view, “by no means wholly or mainly political in character”. The BACC accepted that some clicks from the home page did lead to what looked more like clear “lobbying activity”, but argued that there was a limit to how far the regulation of advertising could “delve into the body of a website”. The RACC considered that the campaign had a humanitarian objective rather than being “a partisan political attempt to get laws changed...”, and that it complied with the charity rules.

c) Can the MPH material be broadcast on television as a promotion in non-commercial airtime? (Rule 1 of the Promotion Rules and of Rule 2.1 of RASA).

The broadcasters who had run MPH in promotional airtime said they regarded the item not as a programme promotion, but as a charitable appeal (which is permitted under Section 6 of the Programme Code).

One broadcaster however also acknowledged that the item was not a normal charitable appeal in that it did not appeal for money. However, that broadcaster believed it could be considered as an appeal, in that it appealed instead for viewers’ attention, and called for them to visit the MPH website to learn about and engage with the issue. It also considered that, although MPH was not a registered charity, it could be considered as such through its representation of a large number of registered charities. Another broadcaster said that it believed that the MPH material was essentially a charitable appeal, as it was “constituted of over 300 individual charities”, all themselves registered with the Charity Commission.

d) Whether “due impartiality” was maintained on the licensed service by broadcasting the MPH material in non-commercial television air time?

In respect of the issue of due impartiality, one broadcaster relied to a substantial degree on the BACC’s conclusion that the advertisement was neither partial nor political. It believed therefore that the underlying motivation of the campaign, namely to end world poverty, was such that there was no reasonable opposing or balancing position that could be struck. The broadcaster did not therefore consider that the impartiality requirement was a relevant consideration in this instance. Another broadcaster expressed similar views, adding that the Programme Code requirement (Section 6.2) that charities must be registered in order to be permitted to appeal on television was not relevant here, as there was in fact no appeal for funds.

Decision

It is Ofcom’s statutory duty to regulate broadcast advertising so as to ensure that the regulatory regime set out in the Act is enforced and to set standards in line with the objectives specifically set out in the Act.

Since commercial broadcasting began in the UK in the 1950’s, Parliament has made clear through successive Acts of Parliament concerning broadcast regulation, that political advertising should not be permitted on television or radio.

The legislation has not made it any part of Ofcom’s statutory duty or function to form any judgement about the merits or otherwise of such advertising campaigns. Indeed, it appears to Ofcom that the prohibition and wording in the Act is drafted in such a way so as to ensure that Ofcom cannot differentiate between what some may describe as “good politics” and “bad politics”. Rather, Ofcom must, as a matter of law, only look at whether the political

advertising rules have been complied with.

The Act makes clear that an advertisement breaches the prohibition on political advertising if it is:

- (a) an advertisement that is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature; and / or
- (b) an advertisement that is directed towards a political end.

The Act has made the statutory definition of “political advertising”, for the purposes of the prohibition, more explicit than in any previous legislation. The definition is reflected in Section 4 of the TV Code and Section 2, Rule 15 of the Radio Code which are given in full at the end of this decision. The Act gives examples of political objects and political ends, including “influencing the policies or decisions of... national governments, whether in the United Kingdom or elsewhere”: section 321(3)(a).

At the time these broadcasts were transmitted, there was an approaching General Election and broadcasters had raised concerns with us about the campaign’s possible political nature. We considered that it was therefore appropriate to investigate whether the advertiser and the advertisement passed the tests for political bodies and political advertising as laid down in the Act and the Codes. Ofcom has taken extensive and authoritative external legal advice on this matter.

We have considered MPH and its advertisements under the four heads indicated in the Introduction above.

a) Is MPH a “body whose objects are wholly or mainly of a political nature”? (Section 321(2)(a) of the Act and Section 4(a) of the TV Code and Rule 15(b), Section 2 of the Radio Code).

Note: If it is such a body, it would not be permitted to advertise on television or radio, regardless of the content of the advertisement.

i) Is MPH a “body”?

MPH describes itself on its website variously as “an assembly”, “a coalition” and “a campaign”. The coalition or assembly consists of “members” that range from “charities, campaigns, trade unions, faith groups and celebrities”. The affiliated “BOND” website (a network of more than 290 UK based voluntary organisations working in international development and development education), indicates that MPH is not led by one organisation or individual, but rather “the mobilisation consists of an Assembly of members, a number of working groups, and a Coordination Team.” Whilst this is evidently not a normal corporate structure we note that “body” is defined in the Act (Section 405) as follows:

““body” (without more) means any body or association of persons, whether corporate or unincorporate, including a firm;”

In light of this definition and the information available on the websites referred to above, we have concluded that MPH is a “body” for the purposes of the Act.

ii) Are MPH’s objects “wholly or mainly of a political nature”?

Section 321(3)(a)-(g) of the Act provide a non-exhaustive list of what may be considered to be “objects of a political nature” and “political ends” in this context. Of particular (but not exclusive) relevance here are sub-sections 321(3)(b) and (c), namely the:

“(b) bringing about changes of the law in the whole or a part of the United

Kingdom or elsewhere, or otherwise influencing the legislative process in any country or territory;

(c) influencing the policies or decisions of local, regional or national governments, whether in the United Kingdom or elsewhere”.

We note the following quotes from MPH's manifesto:

*“**MAKE POVERTY HISTORY** urges the government and international decision makers to rise to the challenge of 2005. We are calling for urgent and meaningful policy change on three critical and inextricably linked areas: trade, debt and aid.”*

“The UK Government should: fight to ensure that governments, particularly in poor countries, can choose the best solutions to end poverty and protect the environment; to end export subsidies that damage the livelihoods of poor communities around the world; make laws that stop big business profiting at the expense of people and the environment”

In particular, MPH in its manifesto explains its objectives in the three identified areas of policy change:

Trade: The UK government should, writes MPH, “fight to ensure that governments, particularly in poor countries, can choose the best solutions to end poverty and protect the environment”; should “end export subsidies”; and should pass laws to “stop big businesses profiting at the expense of people and the environment”.

Debt: Unpayable debts of the world's poorest countries should be cancelled, by fair and transparent means.

Aid: Donor countries need to give more than they presently give to poor African countries (at least \$50 billion more per year), and need to set a timetable for spending 0.7% of national income on aid. The aid which is given must “be made to work more effectively for poor people”

MPH's website also encourages visitors to email the Prime Minister, Tony Blair using the MPH template to encourage him to amongst other things:

“use his international leadership to deliver crucial changes on trade justice, debt and aid”.

The site contains campaigning messages such as:

“Just imagine the effect when Tony Blair and Gordon Brown get thousands of emails in one day, every one asking them to do what they can to drop the debt, which will transform the lives of millions of people. Think what the 8 leaders of the G8 will feel when they all receive a hundred thousand text messages thanking them for increasing their Aid Budgets next year”

The BOND website contains a list of questions and answers for people considering becoming members of MPH. For example:

Question 1 - “Why do we need to force government to make poverty history?”

Answer 10 – “We intend to make so much noise this year that the Government cannot ignore our demands, and organisations joining MPH will help to do that”.

Answer 11 – in relation to how getting involved with MPH fits in with organisations' charitable objectives – “Political campaigning: The MPH coalition is advocating change to national public policy, which means that the common activities carried out by members charities as part of the campaign should remain incidental or ancillary to

their charitable purposes. Your involvement in the coalition can be very light...

Influencing policies relating to trade, debt and aid cannot in Ofcom's view be reasonably described as objectives which are not political in nature.

There is, in our view, no escaping the fact that MPH has expressly characterised itself in its manifesto as an organisation which seeks to achieve important changes to the policies of the UK government and those of other western governments. Furthermore, MPH's manifesto clearly urges, "the UK government...[to].. make laws...". Lord Woolf (*R v Radio Authority ex parte Bull* (1998)) states that when a regulatory authority approaches the question: what is the nature of a body's activities, and in particular whether they are to be regarded as objects which are "wholly or mainly political", he would expect the regulator to do "no more than examine its [the organisation's] statement of its objects". In Ofcom's view, there is no doubt that the objects in MPH's manifesto (its "statement of objects") are wholly or mainly political.¹

It should be further noted that Lord Woolf goes on to say that "objectives which are ancillary to a principal objective which is political are also political even though they would otherwise not be political". So, to promote, for instance, awareness of global poverty might not in itself be a political object, but where it is used to bring pressure upon a government so as to change its policy, the object of awareness-raising becomes political.

In our judgement as outlined above, MPH's objects fall squarely within the definition of "political objects" in section 321(3) of the Act, Note 2 to Section 4 of the TV Code and Rule 15(b), Section 2 of the Radio Code.

On the basis of all this information and for the reasons given above, we have reached the unavoidable conclusion that MPH is a body whose objects are "wholly or mainly" political as defined under the Act. MPH is therefore prohibited from advertising on television or radio, as long as it is considered to fall within this definition.

b) Were the advertisements "directed towards a political end"? (Section 321(2)(b) of the Act and Section 4(b) of the TV Code and Rule 15(b), Section 2 of the Radio Code)

The BACC (see Broadcaster response above) has argued that the content of the television advertisement was purely factual, and therefore could not be political as it showed no partiality. As for the reference to the MPH website, the BACC argued, quoting Section 3.2 of the TV Code, that there was no indirect promotion of an unacceptable service. It regarded the website as acceptable because there was no obviously political message on the homepage, and that it was necessary to move some clicks away from the homepage to find "lobbying" content. In an opinion requested by the advertising agency, the agency's legal advisers took a similar view, stating:

"as Rule 4(b) addresses the content of these commercials, the content of the

¹ In this respect, it should be noted that even if it were to be argued that MPH does not have "wholly" political objects, the threshold test proposed by Lord Woolf in the 1996 Appeal Court decision "*R v Radio Authority ex parte Bull 1998*" is that for a body to be considered to be "wholly or mainly" political, its objects must be more than 75% of a political nature. On the basis of the information we have seen, this threshold would be easily passed by MPH.

MPH website is irrelevant...".

The RACC also argued that the radio advertisement was not directed towards a political end.

We conclude that these arguments are flawed. Moreover, they miss the main point of the relevant sections of the TV and Radio Codes and the Act which have been worded very widely so that even if the content of a broadcast advertisement as transmitted is not in itself political it may nevertheless be an advertisement "directed towards" a political end. The word "towards" clearly implies that if the advertisement has political objectives (as defined by the Act) then the advertisement itself is caught.

Since the only call to action in this case is to visit the MPH website, and since the MPH website is fundamentally about supporting the lobbying and campaigning objectives of MPH, we consider that the advertisements are indeed "directed towards a political end".

c) Can the MPH material be broadcast on television as a promotion in non-commercial airtime? (Rule 1 of the Promotion Rules, and of Rule 2.1 of RASA).

As stated above, the broadcasters contended that the MPH material could be regarded as a charitable appeal, and as such could be broadcast in non-commercial airtime under the terms of Section 6 of the Programme Code. However, MPH is not a registered charity nor does Ofcom consider that satisfactory evidence has been produced (as required by the Programme Code) that it has "charitable status". It therefore does not fall under section 6 of the Programme Code (regarding charities). It should be noted that organisations that are established to pursue political purposes (for instance, advocating changes in law or public policy) cannot be charities.

One broadcaster believed that the material could be viewed as appealing for viewers' attention rather than funds and therefore was permitted to be promoted under the Code section dealing with charitable appeals and publicity for charities. However, as stated above, this section only applies to bodies which are either registered charities or have charitable status. In this case, MPH is neither. The "support" that is sought by them is 'lobbying support' for a political campaign.

We do not therefore consider that the MPH material used in non-commercial television airtime falls within the meaning of a "charitable appeal".

A promotional item, in non-commercial airtime, which is not a "charity appeal" must meet the following criteria:

- It must not be an: "item of publicity broadcast on behalf of someone other than the licensee in breaks in or between programmes, apart from public service announcements, charity appeals broadcast free of charge and information to viewers broadcast in accordance with an Ofcom requirement" (definition of paid-for advertising in RASA, Rule 2.1);
- It should: "promote programmes, events and strands being shown by that licensee,...or make reference to any other channel or related service (such as a website) provided by the licensee". (the Promotion Rules, Rule1); and
- And it should *"provide information of value to viewers....."* (the Promotion rules, Rule 1).

We do not consider that the MPH material complies with the first or second criteria, or that it is likely to qualify as “information of value to viewers” as normally applicable to programme promotions and trailers.

We conclude therefore that the MPH material does not qualify as a promotion permitted to run in non-commercial television airtime.

d) Whether “due impartiality” was maintained on the licensed service by broadcasting the MPH material in non-commercial television air time? (Section 3.1 of the Programme Code)

We note the points made in d) of the Broadcaster Response above and accept that the broadcasters were entitled to take into account the clearance of the advertisement by the BACC as a non-partial and non-political item (although we have subsequently concluded that the clearance was, in this instance, flawed). We are also sympathetic to the view that editorial in programming that is ultimately pro-humanitarian does not necessarily require an opposing view to be broadcast to establish impartiality. This is especially the case if the opposing view would have to take a possibly irrational approach, such as arguing that the eradication of poverty is not a desirable goal.

In terms of the actual content of the item as broadcast, we therefore do not consider the Programme Code to have been breached, on this occasion, in respect of due impartiality.

However, as explained above, MPH is a wholly or mainly political body. As such, while the eradication of world poverty may not itself be a matter of political or industrial controversy or current public policy, the manner in which it is achieved could certainly be considered to be so, as is evidenced by the increasing number of voices which have recently been raised questioning MPH's methods.

We would caution against any automatic future assumption that there is no need to establish due impartiality on methods advocated concerning the eradication of poverty.

Conclusion

It is Ofcom's duty to ensure that the provisions put in place by Parliament are enforced. Ofcom has no discretion as to whether or not to intervene in cases where, having taken into account all relevant considerations, it is clear that the particular body concerned has wholly or mainly political objects and/or its advertisements are “political” within the meaning of the Act.

Taking these points into account, and for the reasons stated above, we have concluded that:

- a) MPH is a body whose objects are wholly or mainly of a political nature and the inclusion in broadcast services of the MPH advertisements therefore breached Section 4(a) of the TV Code and Section 2, Rule 15 of the Radio Code. MPH as currently constituted is therefore not entitled to advertise on television or radio;
- b) The MPH advertisements are directed towards a political end and are in breach of Section 4(b) of the TV Code and of Section 2, Rule 15(b) of the

Radio Code; and

- c) The broadcast of the MPH material as a promotion in non-commercial television airtime is in breach of Rule 2.1 of RASA and Rule 1 of the Promotion Rules.

While there are few who would disagree with MPH's ultimate goal – the eradication of world poverty - having considered all the evidence, we do not consider it a marginal conclusion that MPH is a body which is wholly or mainly political. The information needed to reach this conclusion is very clearly in the public domain and unequivocal.

See over for extracts from the relevant legislation and codes

Extracts from the relevant legislation and codes

Communications Act 2003, Section 319(1), & (2)(g)

(1) It shall be the duty of OFCOM to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives.

(2) The standards objectives are-

(g) that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services

Communications Act 2003, Sections 321(2) and (3)

(2) For the purposes of section 319(2)(g) an advertisement contravenes the prohibition on political advertising if it is-

(a) an advertisement which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature;

(b) an advertisement which is directed towards a political end; or

(c) an advertisement which has a connection with an industrial dispute.

(3) For the purposes of this section objects of a political nature and political ends include each of the following-

(a) influencing the outcome of elections or referendums, whether in the United Kingdom or elsewhere;

(b) bringing about changes of the law in the whole or a part of the United Kingdom or elsewhere, or otherwise influencing the legislative process in any country or territory;

(c) influencing the policies or decisions of local, regional or national governments, whether in the United Kingdom or elsewhere;

(d) influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the United Kingdom or of a country or territory outside the United Kingdom;

(e) influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;

(f) influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy;

(g) promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends.

TV Advertising Standards Code, Section 4

POLITICAL AND CONTROVERSIAL ISSUES

No advertisement:

(a) may be inserted by or on behalf of any body whose objects are wholly or mainly of a political nature

(b) may be directed towards any political end

(c) may have any relation to any industrial dispute (with limited exceptions)

Note to 4(c):

The Broadcasting Act 1990 specifically exempts public service advertisements by or on behalf of a government department from the prohibition of advertisements having 'any relation to any industrial dispute'.

(d) may show partiality as respects matters of political or industrial controversy or relating to current public policy

Notes to Section 4:

(1) The purpose of this prohibition is to prevent well-funded organisations from using the power of television advertising to distort the balance of political debate. The rule reflects the statutory ban on 'political' advertising on television in the Broadcasting Act 1990.

(2) The term 'political' here is used in a wider sense than 'party political'. The rule prevents, for example, issue campaigning for the purpose of influencing legislation or executive action by legislatures either at home or abroad. Where there is a risk that advertising could breach this rule, prospective advertisers should seek guidance from licensees before developing specific proposals.

Radio Advertising Standards Code, Section 2, Rule 15

Political, Industrial and Public Controversy

The effect of the Communications Act is to require Ofcom to ensure that:

a) No advertisement shows undue partiality in matters of political or industrial controversy or relating to current public policy; and

b) No advertisement is broadcast by, or on behalf of, any body whose objects are wholly or mainly of a political nature, and no advertisement is directed towards any political end.

Ofcom will determine whether an ad or a proposed ad is 'political'. The term 'political' here is used in a wider sense than 'party political'. The prohibition includes, for example, issue campaigning for the purposes of influencing legislation or executive action by local, or national (including foreign) governments.

Particular care is required where advertising mentions any government, political party, political movement or state-specific abuse, so as not to break the spirit of these rules, which are intended to prohibit lobbying or electioneering on politically controversial or partisan issues.

c) No advertisement has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of, a government department).

Ofcom, the ASA and BCAP will normally regard having "any relation to any industrial dispute" to be in furtherance of, or expressing partiality in relation to, such a dispute. Announcements about resumption of normal working following agreement between management and unions, or concerned with public safety during a strike, are acceptable. 'Industrial dispute' includes strikes, walkouts and withdrawals of labour by workers; lock-outs by employers; disputes between managements and differences between rival trade unions.

Rules on the Amount and Scheduling of Advertising, Rule 2.1

Advertising Items 2.1

For the purposes of calculating advertising time the following are deemed to be advertising items:

(a) all items of publicity broadcast on behalf of someone other than the licensee in breaks in or between programmes, apart from public service announcements, charity appeals broadcast free of charge, announcements required by the BSC and information to viewers broadcast in accordance with an ITC requirement;

(b) publicity by the licensees themselves except information to viewers about or in connection with programmes.

Rules on the promotion of programmes, channels and related services on commercial television, Rule 1

ITC licensees may, outside advertising time, and subject to the following rules,

- promote programmes, events and strands being shown by that licensee, and*
- make reference to any other channel or related service (such as a website) that they provide.*

Trail for Drawn Together

MTV Base, May 2005, various times pre-Watershed

Introduction

20 viewers, many of them young people, complained about a trailer for the MTV spoof reality series *Drawn Together*. The trailer featured an animation of two men and two women in a Jacuzzi. The women (one black and one white) were shown kissing each other while the men looked on. One of the male character's nipples became erect as he watched.

The animation was accompanied by a song that contained the lyrics "I've got a mayonnaise mama on my licking hole". The viewers complained that the sexual content of the trailer was inappropriate for the times of broadcast pre-watershed. Some viewers objected to the showing of a homosexual kiss.

Response

MTV said that when it considered placing a restriction on the trailer, it took into account all the issues raised by the complainants. The broadcaster said that it agreed that some elements referred to in the viewer complaints warranted the imposition of a timing restriction but others did not.

MTV had not aired the trailer during the after-school spot or during weekend mornings. It felt that a restriction was needed due to the male's nipples becoming erect and the brief close up of tongues at the end of the trailer. MTV believed that the restriction satisfied the (ex-ITC's) Programme Code Family Viewing Policy because:

- both elements were very brief and there was no overt sexual activity beyond the kiss;
- whilst nipple elongation is an indication of sexual arousal, MTV felt that its inclusion in the trail was very brief, attention was not drawn to it in the animation, and its treatment was comedic rather than sexual or erotic; and
- as a cartoon, the trailer was quite divorced from reality.

Overall, MTV felt the sexual behaviour was sufficiently limited and inexplicit for the recommended scheduling restriction to be sufficient, and it did not consider a post-watershed restriction necessary.

MTV did not consider that the following elements of the trailer were offensive or required any time restriction:

- the homosexual nature of the kiss – MTV said that although many viewers are offended by homosexual kissing on television, it did not believe this type of content warranted a restriction on the basis of its homosexual nature alone;
- "I've got a mayonnaise mama on my licking hole" – the lyrics of the song as a whole and the visual content of the trailer made it clear that the line could only mean "a white woman is kissing me on the mouth". The language was only crude in as far as it referred to a mouth as a "licking hole" which MTV did not consider warranted a timing restriction. Whilst some viewers may have

inferred the line to refer to a sexual act involving mayonnaise, or a sexual act other than a kiss, this required a leap of imagination not justified by the words.

Decision

We acknowledge MTV's comments about the individual aspects of the trailer but were concerned about the cumulative effects of the visuals and the song when the trailer was viewed as a whole. We consider that the overall tone of the trailer was, although comedic, unremittingly sexual. While appreciating the steps MTV had taken to ensure that the trailer was appropriately scheduled, we do not agree that restricting the trailer from solely the 'after school' slot and weekend mornings was sufficient. Such a restriction would not prevent the material being broadcast during the afternoon at the weekends –a time when young children can be expected to be watching unsupervised.

We consider that the trailer was unsuitable for broadcast when young children were likely to be available to view.

The trailer was in breach of 1.4(iii) of the Programme Code (trailers and Programme Promotions)

Resolved

Yasmin

Channel 4, 13 January 2005, 23:51

Introduction

This drama explored what it means to be Asian, Muslim and British in the 21st century and following the attacks on America on 11 September 2001. It unfolds from the viewpoint of Yasmin - a confident and Westernised woman working in Britain while simultaneously trying to live within her own traditional culture. A viewer complained that a photo used in one scene, allegedly of the massacre of Palestinians by Israeli forces, was actually of the Halabja massacre of Kurdish people. She said that this was offensive to Kurdish people.

Response

Channel 4 said that the production company had recognised in post-production that the photo was not what the dialogue stated it to be, so the image was disguised for the theatrical release of the film. Unfortunately the same edit required in the television version, which was broadcast on Channel 4, was inadvertently overlooked.

The producer apologised to the complainant and confirmed that the error would be rectified for future transmissions and Channel 4 took immediate action to do so.

Channel 4 said that it had no intention of causing offence and had taken steps to rectify the mistake.

Decision

Following the detailed background research that the producers undertook for over a year, it is certainly regrettable that a photograph of the Halabja massacre came to be used as a prop in the drama.

Given that action had been taken to rectify the mistake for theatrical screenings, similar steps clearly should have been taken before the drama was broadcast on television. However, we accept that the photograph was shown extremely briefly and that the imagery was not explicit.

We welcome Channel 4's apology and action to obscure the image in any repeat of the broadcast version. In the circumstances, we consider the matter resolved.

Complaint resolved

Parklife trailer

Paramount Comedy, 26 July 2005, 16:00

Introduction

A viewer was concerned about a trailer for the channel which showed a young boy apparently using a blowpipe to subdue an old lady before stealing her handbag.

Response

The broadcaster explained that this was a live action continuity bumper created as part of its *Parklife* season. It was a light-hearted summer-themed series intended to subvert typical summer scenes in a quirky, cartoon fashion. The trailer presented a tongue-in-cheek situation, far removed from reality, and was not meant to be offensive.

However, in light of the reaction received from viewers, Paramount had decided to withdraw this particular ident.

Decision

We welcome the action taken by the channel and consider the matter resolved.

Complaint resolved

Father of the Pride

Sky One, 6 & 27 March, 3 April 2005, 19:30

Introduction

This new animation series started on Sunday 6 March 2005. Four viewers complained that the sexual content and innuendo in these editions was unsuitable for younger viewers. Three of these viewers also objected to the language used. Specific examples quoted by the complainants included *"bitch"* and *"pissed"*. Ofcom also noted further examples such as *"balls"*, *"crap"* and *"slutty sister"*. Two viewers said that the trailers for the series had led them to believe that this series was suitable for all the family.

Response

Sky explained that this series was based on the 'Siegfried & Roy' big cat shows in Las Vegas. The animation provided a humorous glimpse of the off-stage antics and family life of the performing lions and their friends. Its humour was similar to the *Shrek* movies, with a cheeky and edgy approach to comedy.

The broadcaster felt that the implied sexual references were common in this genre of family programming and were justified in this context, given their inexplicit nature. Sky considered that the language was defensible in the context of the story and not a frequent occurrence.

However, Sky agreed that, if the series were to be repeated, it would either be scheduled from 20:00 or, if it was scheduled at 19:30, further information would be provided for viewers in order to assist in avoiding or minimising any offence.

Decision

Sky One's programming on a Sunday at this time attracts a broad audience, including children. In context and where appropriate, programmes may contain mildly offensive language or themes of a more adult nature, but this should not be a frequent occurrence and the treatment should be inexplicit.

The style of this new series would have attracted younger viewers, given its animated treatment of appealing animals - over 25% of the audience for the first episode comprised of children.

Parents, some having believed from trailers that the series was suitable for younger children, were understandably concerned to find that there were aspects of this animation that were questionable for younger viewers.

We welcome the fact that Sky has now addressed these concerns and will take adequate steps to signal the content when repeating the series. Given this action, we believe the issues have been satisfactorily dealt with and the matter is now resolved.

Complaints resolved

Cruising

five, 4 June 2005, 23:20

Introduction

This 1980 film starred Al Pacino as an undercover cop investigating a serial killer on the New York gay scene. A viewer complained about two virtually imperceptible clips of anal penetration. He believed that the BBFC (British Board of Film Classification) had required these scenes to be cut for the film to obtain an 18-rating.

Response

Five explained that this version had been transmitted in error. The scenes were so brief that they were imperceptible without freeze-framing and they had not been picked up when the film was received from the distributor. The broadcaster was aware that the BBFC had required edits but, on checking at normal viewing speed, these scenes had not been visible and it had been assumed that this was the edited version.

The broadcaster assured us that it would now be alert to the possibility that very brief cuts required by the BBFC should be checked thoroughly. Five was also looking at any other precautions that might reasonably be taken to prevent similar mistakes occurring in future.

Decision

Given the extreme brevity of the pictures, very few viewers would have been aware of these scenes if they had not watched the film using a frame-advance mechanism. However the Programme Code does advise broadcasters to use the BBFC video classifications as a guide when transmitting films. In this case, an unintentional error was made. Taking into account the broadcaster's actions, we consider that appropriate steps have been taken to avoid any similar occurrence.

Complaint resolved

Spin City

Paramount Comedy 11 June 2005, 16:00

Introduction

A viewer complained that this programme contained the words “*bastard*” and “*bitch*” which were unsuitable for broadcast at a time when children could have been watching.

Response

The broadcaster apologised and said that it would usually edit both of these words out of daytime versions of programming, unless they were properly justified by the context. In this instance, the unedited post-watershed version was shown as a result of a system error. The broadcaster said that it had revised its processes to prevent a recurrence of the error.

Decision

The language complained of was unsuitable for broadcast in this context at that time of day. However, in view of the action taken by the broadcaster as a result of the complaint, we consider the matter resolved.

Complaint resolved

Channel 4 News

Channel 4, 14 February 2005, 19:00

Introduction

A viewer complained that a graphic within the bulletin incorrectly stated that three animal rights protestors had been arrested at the Waterloo Cup, a hare-coursing event. Although there had been a correction given three days later, this erroneously stated that both animal rights protestors and coursing supporters had been arrested. The complainant pointed out that no animal rights protestors had been arrested.

Response

Channel 4 said that a report in the bulletin had correctly stated that three arrests had been made at the Waterloo Cup. However later in the programme, as part of a round-up of news headlines, it was incorrectly stated that that three animal rights protestors had been arrested. This statement was broadcast inadvertently and had been caused by an incorrect reading of a wire copy by a producer.

Once alerted by a complaint to the fact that the reference to the arrests was incorrect, a Channel 4 News reporter spoke to the Duty Inspector in the Lancashire Police Control Room. The Duty Inspector stated that he did not have a note of the exact number arrested but that the people had been a "mixture of both pro-hunt and anti-hunt". As a result of this information from the police, a correction/clarification was made.

It now transpired that in fact no animal rights protestors were arrested at the time. However Channel 4 had acted in good faith by broadcasting the information received from the police, which was believed at the time to be a correct reflection of the position. After the lapse of time since the original broadcast, it was felt that another on-air correction would be disproportionate.

Decision

We accept that Channel 4 broadcast the inaccuracy inadvertently. The news wire copy (which Channel 4 provided to us) was capable of being misread and, having been alerted to the problem, Channel 4 had taken responsible steps to verify the information. In these exceptional circumstances, we consider the matter resolved.

Complaint resolved

Not in Breach

Least Haunted

BBC2 Wales, 1 April 2005, 21:00

Introduction

This was a drama that took the form of a documentary/studio presentation programme purporting to explore matters related to the paranormal. On-location correspondents investigating 'haunted woods', a 'haunted house' and a 'séance' sent reports back to the studio. As the drama progressed a series of 'unnatural' things began to happen. These events eventually descended into chaos and, eventually one of the reporters appeared to have been killed 'live on TV' by a supernatural creature in the woods.

One viewer was offended by the programme's content, considering it disturbing and unnecessary. They believed no prior warning about the shocking nature of its content was given.

Response

The BBC said that the programme was trailed extensively and was described as a drama. The people in the 'studio' and 'on location' were actors, not reporters and there was no attempt to make the studio resemble a BBC Wales news or current affairs studio. The slot was one usually devoted to drama. Many viewers would also have been mindful of the date of transmission - April 1.

The programme was broadcast after the watershed. Things didn't turn seriously unpleasant, in dramatic terms, until close to the end. The relatively brief spell of intensity was brought to an end by a return to the studio, where the presenter remained calmly in control and gently chided anyone who might, even for a moment, have thought what they had seen was real.

Decision

The difficulty with a drama that purports to be a real factual programme is how it presents itself to the audience. Obviously in order for the programme to seem as real as possible, it is difficult to give any announcement at the start which might 'give the game away'. However there is also a possibility that some viewers might be at risk from being taken in by the story, believing it to be real. In order to assess whether the BBC had managed to balance this difficult equation we looked at a number of factors.

It was clear that this programme was publicised as a drama and was broadcast post-watershed in a slot that is usually reserved for dramas. The programme did not use the kind of studio set that is familiar to viewers of BBC2 Wales. The 'presenters' and 'reporters' were actors, not regular BBC Wales' personnel known for presenting factual programmes.

We believed, therefore that there were sufficient 'clues' that the play was fictional. As

far as the final scenes were concerned, in which a 'reporter' was attacked in the woods, while possibly harrowing for some viewers, we do not believe they went beyond the general expectations of an audience watching a post-watershed drama.

The programme was not in contravention of the Code

Fairness and Privacy Cases

Where a complaint is not upheld there is only a note of the outcome. For a copy of a full adjudication, whether the complaint is upheld or not, go to Ofcom's website at www.ofcom.org.uk/bulletins/ or send a stamped addressed envelope to: Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA.

Upheld in part

Complaint by Mr Jon Sheldon

Kid Gang, Five, 3 February 2004

Ofcom has upheld a complaint of infringement of privacy from Mr Sheldon about *Kid Gang*, a fly on the wall documentary made by Shine productions for Five which observed a group of North London teenagers over their summer holiday. The programme examined the group's dynamics, relationships and behaviour. During the course of filming the programme-makers recorded an incident that involved a fight at a skate park. The complainant, Mr Jon Sheldon, was shown trying to defuse the situation and dissuade the boys from fighting.

Mr Sheldon complained that he was filmed without his permission and the footage was included in the programme without his consent, despite making it clear to the programme-makers that he did not wish to take part in the programme.

Ofcom's Fairness Committee considered that although the incident happened in a public place, the circumstances were such that Mr Sheldon had a reasonable expectation of privacy and that filming the incident without his permission amounted to an infringement of his privacy in the making of the programme. However, the Committee accepted Five's submission that it had not been possible to seek Mr Sheldon's permission prior to the incident, because of its sudden violent nature. In these circumstances the infringement of Mr Sheldon's privacy when obtaining the footage was warranted. This part of the complaint was not upheld.

With regard to the programme as broadcast, the Committee considered that Mr Sheldon's actions and words, which were specifically directed at the boys, were not sufficiently in the public domain to justify being included in the programme without the programme-makers first seeking his consent to broadcast the footage. The Committee considered that it should have been sufficiently clear to the programme-makers from Mr Sheldon's words and actions that he did not want to be included in the programme. The Committee therefore found that Mr Sheldon's privacy was infringed in the programme as broadcast. Further, the Committee was not satisfied that the public interest in examining the lives of young people, their behaviour, social interaction, and the role of authority was, on balance, sufficient to warrant this infringement of Mr Sheldon's privacy. This part of the complaint was upheld.

Other programmes not in breach/out of remit

10 August – 23 August

Programme	Trans Date	Channel	Category	No of complaints
8 Out of 10 Cats	15/07/2005	Channel 4	Offence	1
Arab News Network	17/05/2005	Satellite & Cable	Offence	1
Asianet	07/08/2005	Asianet	Offence	1
Bad Lads Army	04/08/2005	ITV1	Offence	2
Bad Lads Army	11/08/2005	ITV1	Language	1
BBC Breakfast News	08/08/2005	BBC1	Offence	1
BBC News	14/07/2005	BBC1	Offence	1
BBC Radio 5 Live	21/08/2005	BBC1	Misleading	1
BBC Radio Scotland	20/07/2005	BBC1	Offence	3
Beverly Hills Cop	18/06/2005	ITV1	Scheduling	1
Big Brother 6	12/08/2005	Channel 4	Offence	3
Big Daddy	02/05/2005	BBC1	Offence	1
Big Game TV	11/08/2005	ITV2	Offence	1
Blue Peter	05/08/2005	BBC1	Offence	1
Brainteaser	01/08/2005	Five	Offence	1
Britain's Worst Neighbour	14/08/2005	Five	Offence	1
Capital FM	18/08/2005	Capital FM	Offence	1
Cash in the Attic	12/08/2005	BBC1	Language	1
Cathouse	03/08/2005	Five	Offence	1
Channel 4 News	05/08/2005	Channel 4	Offence	1
Channel 4 News	08/08/2005	Channel 4	Offence	1
Channel U	30/06/2005	Channel U	Offence	1
Channel U	23/07/2005	Channel U	Offence	1
Coronation Street	18/07/2005	ITV1	Offence	1
Coronation Street	25/07/2005	ITV1	Offence	1
Coronation Street	05/08/2005	ITV1	Offence	1
Coronation Street	01/08/2005	ITV1	Violence	1
Coronation Street	15/08/2005	ITV1	Offence	1
Coronation Street	19/08/2005	ITV1	Offence	1
Dispatches	25/07/2005	Channel 4	Impartiality	1
Dispatches	08/08/2005	Channel 4	Offence	1
Dispatches: Supermarket Secrets	28/07/2005	Channel 4	Misleading	1
Dispatches: Supermarket Secrets	01/08/2005	Channel 4	Offence	1
Don't Panic, I'm Islamic	19/06/2005	BBC2	Offence	1
Dream Team	20/11/2004	Sky One	Sexual Portrayal	1
Eastenders	12/08/2005	BBC1	Offence	1
Eurotrash	01/08/2005	Channel 4	Offence	1
Extras	11/08/2005	BBC2	Offence	1
Feather Boy	01/08/2005	BBC2	Offence	1
Five News	18/08/2005	Five	Religious Offence	1
Fox News	05/07/2005	Fox News	Offence	1
GMTV	17/08/2005	ITV1	Offence	1

GMTV	19/08/2005	ITV1	Offence	1
Grumpy Old Men	27/05/2005	BBC2	Offence	1
Hollyoaks	10/08/2005	Channel 4	Offence	1
Hollyoaks	12/08/2005	Channel 4	Offence	2
ITV News	03/08/2005	ITV1	Offence	1
ITV News	17/08/2005	ITV1	Accuracy	1
ITV News	18/08/2005	ITV News	Offence	1
ITV News	19/08/2005	ITV1	Offence	1
ITV News	22/08/2005	ITV1	Offence	1
ITV West News	11/07/2005	ITV	Other	1
Jack Dee Live at the Apollo	19/08/2005	BBC1	Offence	1
Jerry Springer - The Opera	08/01/2005	BBC2	Religious Offence	2
Journeys From the Centre of the Earth	30/07/2005	BBC2	Religious Offence	1
Kerrang Radio	03/08/2005	Kerrang!	Offence	1
Key 103 Radio	07/08/2005	Key 103	Offence	1
Murder Investigation Team	25/07/2005	ITV1	Offence	1
My Family	03/08/2005	UK Gold	Offence	1
Mythbusters	01/08/2005	Discovery	Offence	1
Newsnight	01/08/2005	BBC1	Impartiality	1
Property People	31/07/2005	BBC2	Language	1
Quiz TV	04/08/2005	Quiz TV	Offence	1
Quiz TV	05/08/2005	Quiz TV	Offence	1
Quiz TV	16/08/2005	Satellite & Cable	Misleading	1
Quiz TV	22/08/2005	Quiz TV	Offence	1
Radio 5 Live-Sports Coverage	21/08/2005	BBC Radio 5 Live	Religious Offence	1
Record of the Year 2004	04/12/2004	ITV1	Misleading	1
Redstone FM 87.7	06/07/2005	Redstone FM 87.7	Language	1
Richard and Judy	04/03/2005	Channel 4	Offence	1
Sad To Be Gay	09/08/2005	BBC2	Offence	2
Scrubs	28/07/2005	Satellite & Cable	Language	1
Signal 1	17/08/2005	Signal 1	Misleading	1
Silent Witness	15/08/2005	BBC1	Offence	1
Sky News	06/04/2005	Sky News	Impartiality	1
Sky News	22/07/2005	Sky News	Accuracy	1
Sky News	29/07/2005	Sky News	Offence	1
Sky News	05/08/2005	Sky News	Offence	1
Sky Sports	08/08/2005	Sky Sports	Offence	1
South Park	30/07/2005	Paramount	Sexual Portrayal	1
T4	16/08/2005	Channel 4	Offence	2
Talksport	27/07/2005	Talksport	Offence	1
Talksport	08/08/2005	Talksport	Misleading	1
Talksport	05/08/2005	Talksport	Religious Offence	1
Tasamin's Weekends	31/07/2005	UKTV Food	Offence	1
The Apprentice	15/02/2005	BBC2	Language	1
The Apprentice	03/08/2005	BBC2	Offence	1

The Four Feathers	28/07/2005	Channel 4	Religious Offence	1
The House of Obsessive Compulsives	01/08/2005	Channel 4	Offence	1
The Mark Steel Lectures	04/11/2004	BBC2	Religious Offence	1
The Simpsons	15/08/2005	Sky One	Offence	1
The Sport Show	06/08/2005	Channel 4	Offence	1
The Wright Stuff	15/07/2005	Five	Advertising	1
The X Factor	16/08/2005	ITV1	Offence	1
The X Factor	20/08/2005	ITV1	Offence	1
This Morning	15/08/2005	ITV1	Offence	3
Today Programme	12/08/2005	BBC Radio 4	Language	1
Tonight with Trevor McDonald	15/11/2004	ITV1	Impartiality	1
Tonight with Trevor McDonald	12/05/2005	ITV1	Offence	1
Top Gear	31/07/2005	BBC2	Offence	2
Top of the Pops	24/07/2005	BBC2	Offence	1
Trouble in Store	02/08/2005	BBC1	Offence	1
Ultimate Super Villains	17/08/2005	Sky One	Violence	1
Warlords	31/07/2005	Channel 4	Accuracy	1
Where the Heart Is	07/08/2005	ITV1	Offence	1
With Honors	11/08/2005	Sky Movies 4	Language	1
X Men	28/05/2005	ITV1	Offence	1
You are what you eat	17/08/2005	Channel 4	Accuracy	1