

# **Ofcom Broadcast Bulletin**

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# Contents

<u>Introduction</u>	4
---------------------	---

## Standards Cases

### In Breach

<b>Music Video: Flo Rida - "Turn Around (5, 4, 3, 2, 1)"</b> <i>4Music, UK Hot 40, 15 December 2010, 14:00</i> <i>4Music, UK Hot 40, 18 December 2010, 18:00</i> <i>4Music, Today's 4Music Top 10, 5 January 2011, 18:00</i>	5
<b>Music Video: Flo Rida - "Turn Around (5, 4, 3, 2, 1)"</b> <i>MTV Base, Future Hits, 7 December 2010, 17:50</i> <i>MTV Base, The Official Urban Top 20, 17 January 2011, 19:00</i> <i>MTV Dance, Big Dance, 7 January 2011, 14:50</i>	9
<b>Play</b> <i>Five, 22 January 2011, 08:30</i>	14
<b>World of PKR</b> <i>Channel One, 22 to 31 December 2010, 00:00</i>	17
<b>Psychic Interactive</b> <i>Psychic TV, 25 January 2011, 10:30 to 11:15</i>	22
<b>The Business Show</b> <i>Hope FM, 10 March 2011, 12:00</i>	27
<u>Not in Breach</u>	
<b>The X Factor Final</b> <i>ITV1, 11 December 2010, 19:00</i> <i>(repeated 12 January 2010, 09:30)</i>	30
<b>The Live Desk</b> <i>Sky News, 1 February 2011, 09:50</i>	36
<b>Embarrassing Bodies</b> <i>Channel 4, 28 March 2010, 19:00</i>	39

## Advertising Scheduling Cases

### In Breach

<b>Breach findings table</b> <i>Code on the Scheduling of Television Advertising compliance reports</i>	48
--	----

## Fairness and Privacy Cases

### Upheld

<b>Complaint by Mr Santokh Singh</b> <i>Sikh Channel News, Sikh Channel, 1 August 2010</i>	49
---	----

### Partly Upheld

<b>Complaint by Mrs P made on her own behalf and that of other family members, and on behalf of Mr F (her son)</b> <i>Cutting Edge: My Daughter Grew Another Head and Other True Life Stories, Channel 4, 4 March and 6 June 2010 and More4, 16 May 2010</i>	54
---	----

<b>Complaint by Mr Richard Skeggs</b> <i>Balitang Europe, ABS-CBN News Channel, 13 and 20 September 2009</i>	68
---	----

### Not Upheld

<b>Complaint by Mrs Helena Skeggs</b> <i>Balitang Europe, ABS-CBN News Channel, 13 and 20 September 2009</i>	89
---	----

<b>Complaint by the Free Gaza Movement made on its behalf by Ms Alex Harrison</b> <i>Panorama: Death in the Med, BBC1, 16 August 2010</i>	102
--	-----

<b>Complaint by Ms Nadia Almada</b> <i>Ultimate Big Brother, Channel 4, 24 to 29 August 2010 and Big Brother's Big Mouth, Channel 4, 3 September 2010</i>	119
--	-----

<b>Complaint by Mr Andrew Hayman</b> <i>The Taking of Prince Harry, Channel 4, 21 October 2010</i>	131
---	-----

<b>Complaint by Mr Philip Parr</b> <i>Real Crime with Mark Austin: Gunn Law, ITV1, 18 October 2010</i>	137
---	-----

<b>Other programmes not in breach</b>	143
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## Introduction

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

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

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

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

- c) certain sections of the BCAP Code: the UK Code of Broadcast Advertising, which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
- the prohibition on 'political' advertising;
  - sponsorship (see Rules 9.16 and 9.17 of the Code for television broadcasters);
  - 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising<sup>1</sup>; and
  - the imposition of statutory sanctions in advertising cases.

The BCAP Code can be found at:

[www.bcap.org.uk/The-Codes/BCAP-Code.aspx](http://www.bcap.org.uk/The-Codes/BCAP-Code.aspx)

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

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

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

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

## Standards cases

### In Breach

#### Music Video: Flo Rida - "Turn Around (5, 4, 3, 2, 1)"

4Music, UK Hot 40, 15 December 2010, 14:00

4Music, UK Hot 40, 18 December 2010, 18:00

4Music, Today's 4Music Top 10, 5 January 2011, 18:00

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#### Introduction

4Music is a music and general entertainment channel that broadcasts music and entertainment news, the latest playlists, music based programmes and various countdown shows. The channel broadcasts mainly chart music, including pop and R&B/Urban. The channel is owned and operated by Box Television Limited ("the Licensee" or "Box Television").

4Music broadcast a music video by the artist Flo Rida for the song "Turn Around (5, 4, 3, 2, 1)". This video was broadcast at various times before the watershed, including at 14:00 and 18:00. The video was set in Rio de Janeiro in Brazil and included images of female dancers wearing both carnival dress and revealing thong bikinis. The dancers were shown dancing in a carnival style in the streets and dancing on the beach in their swimwear. While doing so they were shown bending over with their buttocks to camera, and repeatedly shaking and playfully slapping their buttocks. Ofcom noted that throughout the four minute video there were almost 20 very close up shots of the dancers' buttocks (both while they were wearing carnival dress and while dancing in their bikinis on the beach). During the video a female dancer, who was wearing a thong bikini (and not carnival dress), was shown dancing very closely up against Flo Rida and touching his naked upper body. While she danced in this manner, Flo Rida was shown miming repeatedly slapping the female dancer on her buttocks in a playful manner. The song in the music video included the following lyrics:

*"All types of magic lose the clothes, gotta party like this yo girl, make yo booty go stupid girl, so hot that I love them curves, off top shawty<sup>1</sup> mark my words.*

*Oh-oh baby, you want some more baby?  
I love the way you do it cos you do it so crazy,  
I'm counting down, so turn around, 5,4,3,2,1, gotta make that booty go."*

Ofcom received three complaints from viewers who were concerned about the broadcast of this music video. One of the complainants described the video as "extreme crudeness and filth" and another said "I was shocked to see women in thongs and bras gyrating and basically dry humping men in this video". Another complainant said that the video was a "sexist and offensive video which mostly comprises women in thong bikini bottoms acting in a pornographic manner". All of the complainants were concerned that the video was broadcast before the watershed and "at the time when children are most likely to watch TV". One complainant said "...this objectification of women at such an early time and on a channel that appeals to young people really concerns me."

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<sup>1</sup> A colloquial term for an attractive woman (source: Urban dictionary)

In light of the complaints made about this music video, Ofcom asked Box Television to provide comments on how this broadcast complied with Rule 1.3 of the Code:

Rule 1.3: “Children must also be protected by appropriate scheduling from material that is unsuitable for them.”

## **Response**

Box Television apologised for any offence that was caused to particular viewers. It stated, however, that the music video did comply with Rule 1.3 of the Code.

The Licensee said that Flo Rida is a popular R&B artist who has achieved chart success in the UK in the last two years. It said that the video starts with Flo Rida boarding a plane on his way to Rio de Janeiro. It continued that “as the music starts there are many shots of Rio, establishing that the video is set in the ‘Carnival City’, placing the dancing and attire featured in the video in that specific context”.

Box Television added that “as with many RnB and pop videos, this video could be said to contain a sexual tone and innuendo. However, whilst the video features female dancers wearing thong bikinis and Carnival attire, synonymous with Brazilian Carnival, there is no nudity, inappropriate touching of the dancers or explicit sexual display”.

The Licensee stated that “whilst we believe that the video is suitable for pre-watershed transmission in the UK Hot40 on 4Music, we placed a scheduling restriction so that it would not play in the pre-school (0700 – 1000) Breakfast Fix”.

## **Decision**

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”.

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected.

In performing its duties, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”<sup>2</sup>. The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998, which is the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority.

In reaching a decision in this case, Ofcom acknowledged the paramount importance attached to freedom of expression in the broadcasting environment. In particular, broadcasters must be permitted to enjoy the creative freedom to explore controversial and challenging issues and ideas, and the public must be free to view

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<sup>2</sup> Section 3(4)(g) of the Act

and listen to those issues and ideas, without unnecessary interference. The Code sets out clear principles and rules which allow broadcasters freedom for creativity, and audiences freedom to exercise viewing and listening choices, while securing the wider requirements in the Act.

Ofcom has also had regard to the fact that music videos are an artistic and creative medium, which can and do sometimes contain challenging content which some may find offensive. As part of our consideration we took into account that music videos from the Urban and R&B genre are well known for including mild sexual content and innuendo and are not generally aimed at a younger child audience. However, while music videos must have room for innovation and creativity, Ofcom does have a statutory duty with regard to all programmes, including music videos (whatever the genre), to ensure that under eighteens are protected and to enforce generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and/or harmful material.

#### Suitability for children

With regards to Rule 1.3, Ofcom had to consider first whether this broadcast material was unsuitable for children. We took into consideration that although the video was set in Rio de Janeiro and aimed to express the spirit of a Brazilian carnival, the majority of shots were of female dancers in revealing thong bikinis, rather than carnival dress. The video included images of the dancers dancing in a very provocative manner, such as repeatedly shaking their bare buttocks to camera, bending over to camera and playfully slapping their bare buttocks. In addition the dancers were shown dancing closely up against the rapper Flo Rida and touching his naked chest while he repeatedly mimed slapping one dancer on the buttocks. The video also included around 20 close up and intrusive shots of the female dancers' buttocks, some of which were when they were bent over or had their legs apart as part of their dancing. Therefore for much of the video the dancers' faces could not be seen. Ofcom also considered that some of the lyrics of the song "*Turn Around (5, 4, 3, 2, 1)*" contained some sexual innuendo (for example, "*Oh-oh baby, you want some more baby? I love the way you do it cos you do it so crazy...*").

In Ofcom's view, the cumulative effect of the repeated close up images of the female dancers' buttocks, together with some of the provocative dancing and actions in the video, resulted in the video's imagery conveying a highly sexualised theme.

The fact that these images were mainly shown while the dancers were wearing bikinis on the beach, rather than in traditional carnival dress, increased the sexualised nature of the imagery and detracted from the editorial justification put forward by the broadcaster for the inclusion of these images.

Given the above, it is Ofcom's view that the content of this particular music video was not suitable for children. Ofcom therefore went on to consider whether this material was appropriately scheduled so as to provide adequate protection to children from viewing this unsuitable material.

#### Scheduling

As part of our consideration, we took into account Box Television's comments that the video was set in Rio de Janeiro and the various shots of the city would have established that the video was set in the 'Carnival City'. We noted that Box Television also considered that these images would have placed "the dancing and attire featured in the video in that specific context". In particular, Box Television argued that "whilst the video features female dancers wearing thong bikinis and Carnival attire,

synonymous with Brazilian Carnival, there is no nudity, inappropriate touching of the dancers or explicit sexual display”.

In Ofcom’s view, while the material did not contain any explicit sexual images, it nevertheless conveyed a highly sexualised theme for the reasons set out above. Further, it is our view that this particular video contained more sexualised images, and in particular close up and intrusive shots of the dancers’ bare buttocks, than would normally be expected in a music video of this genre, broadcast at a time when children were likely to be watching.

Ofcom noted Box Television did place a scheduling restriction on this particular music video so that it would not be broadcast in the pre-school slot between 07:00 and 10:00. We therefore took into account that this video would not have been shown at a time when younger children were likely to have been in the audience. We also took into account that very few children were actually watching at the times complained about. This was indicated by audience figures obtained by Ofcom which found that during the broadcast dated 15 December 2010, approximately 12,000 children between the ages of 4 and 15 years old were watching the programme that featured the video, 2,000 of which were between the ages of 4 and 9 years old. The 18 December 2010 broadcast had approximately 2,000 children watching and the 5 January 2011 broadcast had a child audience of approximately 6,000 viewers (none of which were between the ages of 4 and 9 years old).

However, Ofcom noted that this particular music video was broadcast at various times throughout the day, including at times when children would have returned home from school. In particular, for the broadcast dated 15 December 2010 almost a quarter of the total audience was made up of children.

In light of the above factors, it is Ofcom’s view that given the sexualised nature of the content, as set out above, and that the video was broadcast at times when children would have returned home from school and therefore were likely to have been watching television, we considered that the editorial nature of the video and the time restriction set by the broadcaster were not sufficient factors to provide adequate protection to prevent children from viewing this material. We therefore concluded that the material breached Rule 1.3.

### **Breach of Rule 1.3**

## In Breach

### Music Video: Flo Rida - "Turn Around (5, 4, 3, 2, 1)"

MTV Base, *Future Hits*, 7 December 2010, 17:50

MTV Base, *The Official Urban Top 20*, 17 January 2011, 19:00

MTV Dance, *Big Dance*, 7 January 2011, 14:50

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#### Introduction

MTV Base and MTV Dance are both music and general entertainment channels. MTV Base primarily broadcasts music videos and lifestyle programmes from the urban music scene, including hip hop, rap and contemporary R&B. MTV Dance broadcasts music videos and lifestyle shows from the dance scene, including current and classic dance anthems. The two services are owned and operated by MTV Networks Europe ("the Licensee" or "MTV Networks").

Both MTV Base and MTV Dance broadcast a music video by the rapper and singer Flo Rida for the song "*Turn Around (5, 4, 3, 2, 1)*". This video was broadcast at various times before the watershed on both channels, including at 17:50 and 19:00. The video was set in Rio de Janeiro in Brazil and included images of female dancers wearing both carnival dress and revealing thong bikinis. The dancers were shown dancing in a carnival style in the streets and dancing on the beach in their swimwear. While doing so they were shown bending over with their buttocks to camera, and repeatedly shaking and playfully slapping their buttocks. Ofcom noted that throughout the four minute video there were almost 20 very close up shots of the dancers' buttocks (both while they were wearing carnival dress and while dancing in their bikinis on the beach). During the video a female dancer, who was wearing a thong bikini (and not carnival dress), was shown dancing very closely up against Flo Rida and touching his naked upper body. While she danced in this manner, Flo Rida was shown miming repeatedly slapping the female dancer on her buttocks in a playful manner. The song in the music video included the following lyrics:

*"All types of magic lose the clothes, gotta party like this yo girl, make yo booty go stupid girl, so hot that I love them curves, off top shawty<sup>1</sup> mark my words.*

*Oh-oh baby, you want some more baby?  
I love the way you do it cos you do it so crazy,  
I'm counting down, so turn around, 5,4,3,2,1, gotta make that booty go."*

#### MTV Base

Ofcom received two complaints from viewers about the broadcast of this music video on MTV Base. The complainants said that the content of the music video "was effectively soft porn" and was broadcast "far too early". Both complainants were concerned about young children viewing this content.

#### MTV Dance

Ofcom received a complaint from a viewer about the broadcast of this music video on MTV Dance. The complainant was concerned that the music video was broadcast

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<sup>1</sup> A colloquial term for an attractive woman (source: Urban dictionary)

before the watershed. The complainant said that the video was “rude and ladies shaking their rear-end provocatively should not be promoted by MTV”. The complainant also described the material as “filthy” and “too explicit for daytime TV”.

In light of the complaints made about this music video, Ofcom asked MTV Networks to provide comments on how this broadcast complied with Rule 1.3 of the Code:

Rule 1.3: “Children must also be protected by appropriate scheduling from material that is unsuitable for them.”

## **Response**

### MTV Base

MTV said that it did not consider that the music video breached Rule 1.3. It stated that “MTV Base is a niche channel with the main audience being 16 – 34 year olds and its mission statement is to successfully recreate the music and lifestyle of the urban music scene, traversing hip hop, rap, contemporary RnB and big beats”.

The Licensee stated that “the setting for the video is a beach in Rio de Janeiro and features the artist dancing with a group of women in bikinis and carnival attire. The central premise of the material is that the artist travels to Brazil in order to inspire the local performers to dance in an exuberant manner expressing the spirit of carnival”. It added that “the nature of carnival dancing could in itself be perceived as provocative, but is in essence theatre inspired... [and] the dances have strong historical roots in African dance and the more modern Caribbean influence”. MTV continued that “in contemporary dance these African/Latin American traditions have blended and have filtered down into popular culture with particular influence on the Urban, RnB and Dancehall scenes featured on MTV Base, whose audience is comprised of a more culturally diverse viewership than other mainstream channels”.

With regard to Rule 1.3, MTV said that “we do not perceive that the dancing portrayed within it [the video] was an expression of sex” but rather the dancers were “portrayed as Copa Cabana girls, happy to dance, to be confident in their bodies and to celebrate the Brazilian party lifestyle”. It added that “it is common to see these dance styles in today’s realm of entertainment shows like *Strictly Come Dancing*”, and given the “niche nature of MTV Base” it did not consider that this material required a post watershed slot.

The Licensee added that the “dancers are at all times clothed and although the clothing may be scant – it is not inappropriate dress for beach attire or carnival”. The Licensee stated that the dancing did not “go as far as to be a portrayal of explicit sexual behaviour”, “the lyrics are not overtly sexual and mainly pertain to dancing”, and there is “no explicit sexual content and there is no inappropriate contact between the male and female subjects”.

MTV provided Ofcom with some child audience figures for the programmes complained about which indicated that approximately 1,000 children between the ages of 4 and 15 years old were watching on those occasions. It also stated that the MTV Base audience is “generally not of a young age”.

MTV added that “this particular genre of music and the provocative style of dancing is evident in most of the creative output of this genre and in all popular music”. It referred to previous Ofcom decisions in relation to videos which contained some

sexual overtones, such as 'Ayo Technology' by 50 Cent and 'Not Myself Tonight' by Christina Aguilera, which were both not upheld by Ofcom.

MTV said that "in all of our decision making processes we consider previous judgements made by Ofcom through the Bulletins as well as any investigations MTV has been involved in". MTV also said that it "is mindful of the present debate on this topic [sexualisation of children] and pays particular attention to its role in this discussion and continues to pay due care to its responsibilities whilst trying not to censor creative expression".

### MTV Dance

In addition to the points above, MTV said that it did not consider that the music video breached Rule 1.3. It stated that "MTV Dance is a niche channel and its main audience being 16 – 34 year olds". It stated that the "channel's aim is to capture the music and lifestyle of the Dance and Clubbing scene and it covers current and classic dance anthems". It informed Ofcom that the video was last played on 7 January 2011, after which it came off the MTV Dance playlist.

MTV's response also provided Ofcom with some child audience figures for the programme complained about which indicated that approximately 1,000 children between the ages of 4 and 15 years old were watching at that time. It also stated that "the MTV Dance audience (similar to MTV Base) is generally not of a young age".

### **Decision**

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that "persons under the age of eighteen are protected".

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected.

In performing its duties, Ofcom must have regard to the need for standards to be applied "in the manner that best guarantees an appropriate level of freedom of expression"<sup>2</sup>. The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998, which is the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority.

In reaching a decision in this case, Ofcom acknowledged the paramount importance attached to freedom of expression in the broadcasting environment. In particular, broadcasters must be permitted to enjoy the creative freedom to explore controversial and challenging issues and ideas, and the public must be free to view and listen to those issues and ideas, without unnecessary interference. The Code sets out clear principles and rules which allow broadcasters freedom for creativity, and audiences freedom to exercise viewing and listening choices, while securing the wider requirements in the Act.

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<sup>2</sup> Section 3(4)(g) of the Act

Ofcom has also had regard to the fact that music videos are an artistic and creative medium, which can and do sometimes contain challenging content which some may find offensive. As part of our consideration we took into account that music videos from the Urban and RnB genre are well known for including mild sexual content and innuendo and are not generally aimed at a younger child audience. However, while music videos must have room for innovation and creativity, Ofcom does have a statutory duty with regard to all programmes, including music videos (whatever the genre), to ensure that under eighteens are protected and to enforce generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and/or harmful material.

#### Suitability for children

With regards to Rule 1.3, Ofcom had to consider first whether this broadcast material was unsuitable for children. We took into consideration that although the video was set in Rio de Janeiro and aimed to express the spirit of a Brazilian carnival, the majority of shots were of female dancers in revealing thong bikinis, rather than carnival dress. The video included images of the dancers dancing in a very provocative manner, such as repeatedly shaking their bare buttocks to camera, bending over to camera and playfully slapping their bare buttocks. In addition the dancers were shown dancing closely up against the rapper Flo Rida and touching his naked chest while he repeatedly mimed slapping one dancer on the buttocks. The video also included around 20 close up and intrusive shots of the female dancers' buttocks, some of which were when they were bent over or had their legs apart as part of their dancing. Therefore for much of the video the dancers' faces could not be seen. Ofcom also considered that some of the lyrics of the song "*Turn Around (5, 4, 3, 2, 1)*" contained some sexual innuendo ( for example, "*Oh-oh baby, you want some more baby? I love the way you do it cos you do it so crazy...*").

In Ofcom's view, the cumulative effect of the repeated close up images of the female dancers' buttocks, together with some of the provocative dancing and actions in the video, resulted in the video's imagery conveying a highly sexualised theme.

The fact that these images were mainly shown while the dancers were wearing bikinis on the beach, rather than in traditional carnival dress, increased the sexualised nature of the imagery and detracted from the editorial justification put forward by the broadcaster for the inclusion of these images.

Given the above, it is Ofcom's view that the content of this particular music video was not suitable for children. Ofcom therefore went on to consider whether this material was appropriately scheduled so as to provide adequate protection to children from viewing this unsuitable material.

#### Scheduling

As part of our consideration, we took into account MTV's comments that the editorial premise of the video was that Flo Rida travels to Brazil in order to inspire the local performers to dance and express the spirit of carnival. As part of this, Ofcom recognises that carnival dancing is theatre inspired and has historical and cultural roots. Ofcom also took into account that the video did not contain explicit sexual content. In particular MTV argued that the video did not contain any images of "inappropriate contact between the male and female subjects".

In Ofcom's view, while the material did not contain any explicit sexual images, it nevertheless conveyed a highly sexualised theme for the reasons set out above.

Further, it is our view that this particular video contained more sexualised images, and in particular close up and intrusive shots of the dancers' bare buttocks, than would normally be expected in a music video of this genre, broadcast at a time when children were likely to be watching.

Ofcom noted that both MTV Base and MTV Dance are dedicated music channels specialising in urban and dance music, and that neither channel is aimed at children. We also took into account that the channels do not attract a large child audience and that very few children were actually watching at the times complained about. This was indicated by audience figures obtained by Ofcom which found that 1,000 or fewer children between the ages of 4 and 15 years old were watching at the times in question. However, Ofcom noted that this particular music video was not given a time restriction on either channel and therefore it would have been broadcast at various times throughout the day.

In light of the above factors, it is Ofcom's view that given the sexualised nature of the content, as set out above, and that the video was broadcast at times when children would have returned home from school and therefore were likely to have been watching television, the broadcast of this video on these two services was not sufficient to provide adequate protection to prevent children from viewing this material. We therefore concluded that the material breached Rule 1.3.

### **Breach of Rule 1.3**

## In Breach

### Play

*Five*<sup>1</sup>, 22 January 2011, 08:30

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#### Introduction

*Play* is part of Channel 5's *Milkshake* strand of programmes aimed at young children. The programme comprises clips of children having fun in a range of environments.

The episode broadcast on 22 January 2011 contained a three minute sequence showing several young children playing near a campsite in a large pond and stream near a weir. The water was of varying depths but on several occasions came up to the children's waists. There was no evidence at all on screen of the children being supervised by adults while they played in the water. The narrator's introduction included an explanation of the clip:

*"It's raining. What can you do in the rain? Ethan is going to see how wet he can get. Liam is too. And so is Daniel. Jay and Luke can't wait to join the fun."*

Ofcom received two complaints from viewers who were concerned that the item could encourage children watching the programme to copy this activity in potentially dangerous bodies of water.

We therefore considered whether this programme raised issues against Rule 1.13 of the Code. This states that:

"Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful...must not be featured in programmes primarily for children unless there is strong editorial justification."

We asked Channel 5 Broadcasting Limited ("Channel 5") how the programme complied with this Rule.

#### Response

Channel 5 said it "one of the main objectives of this series of *Play* was to show outdoor activity in a variety of locations and to encourage children to play outside" and confirmed that it "carefully considered the footage prior to broadcast". It added that there had been "numerous communications praising the series".

The broadcaster did, however, "fully understand that children may sometimes copy behaviour they see on television" and took particular care when deciding to include the footage. It took into account that "*Play* is a programme aimed at pre-school children who it is believed would normally have a carer with them when they were outdoors, particularly when they were away from their homes and likely to encounter a pond."

Channel 5 assured Ofcom that it never would want to encourage activities that place children in danger and on this occasion, did not believe it had done so. However, in

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<sup>1</sup> The name of the Five service was changed to Channel 5 on 14 February 2011

the light of the complaints received by Ofcom, it said that any future broadcasts of the programme would contain the following continuity announcement before transmission:

“In this episode of Play, the children are playing in the campsite pond. Remember to always take care near water and make sure you have a grownup nearby”.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”.

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected.

Rule 1.13 of the Code states that:

“Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful...must not be featured in programmes primarily for children unless there is strong editorial justification.”

It is widely accepted that young children playing without appropriate supervision in or near bodies of water is behaviour that can be dangerous.

Ofcom considered that this behaviour, taking into account the way it was presented in the programme, was likely to be easily imitable by children in a manner that is harmful.

Ofcom noted that this programme is made for, and aimed at, pre-school children, some of whom may be watching unaccompanied by an adult.

No warning about the dangers of playing unsupervised in or near water was provided before this item began or during the item itself. The way the activity was portrayed and the commentary implicitly endorsed the behaviour. At one point the narrator said: “*Jake and Luke can’t wait to join in the fun*”.

There was no sign on screen of adult supervision in the vicinity of the water. The body of water the children were playing in was of considerable size. While it only appeared to reach the waist of the children, there was no indication of its maximum depth or reference to the dangers involved. Further, the item showed real children engaged in this potentially dangerous behaviour, rather than cartoon characters.

These factors taken together led Ofcom to take the view that the item as broadcast risked encouraging young children in the audience to play unsupervised in a similar environment (which might consist of significantly deeper water) with harmful

consequences. This concern was highlighted by one of the complainants who had young children and lived near a canal.

As regards editorial justification for showing this potentially dangerous behaviour, Ofcom notes Channel 5's explanation that the aim of this item was to encourage outdoor and social activity by children. Ofcom acknowledges of course that broadcasters have the editorial freedom to show material featuring young children playing in or near water.

However, broadcasters, must take care to ensure that sufficient context is provided to ensure that any potentially dangerous behaviour that is shown is not likely to be imitable in a manner that is harmful. In Ofcom's view the editorial reason for featuring this potentially dangerous behaviour was not strong enough to justify this item as broadcast: the risks of imitation were not sufficiently mitigated by, for example, showing adults supervising the children playing or any warnings about the potential dangers during the item.

The programme was therefore in breach of Rule 1.13 of the Code.

Ofcom noted the broadcaster's intention to introduce a continuity announcement before any future broadcasts of the programme, advising viewers to take care and of the need for adult supervision. However, given the programme content and target audience, such information alone may not, in Ofcom's view, be sufficient to ensure compliance with Rule 1.13 of the Code.

### **Breach of Rule 1.13**

## In Breach

### World of PKR

Channel One, 22 to 31 December 2010, 00:00

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#### Introduction

*World of PKR* was a 30 minute item about the poker website PKR. A viewer objected that the material resembled a programme but was in fact a long advertisement.

Ofcom noted that at the start of *World of PKR* a graphic displayed a message in large text, "THIS IS A COMMERCIAL PRESENTATION". The item was therefore advertising, rather than programming. No further indication of the status of the material was given during the item.

The advertising adopted a studio set-up but also included inserted location pieces. *World of PKR* discussed a variety of aspects of the PKR website: its technical features, the advice available to players, the variety of games available, how to download the necessary software, and so on. *World of PKR* also featured a number of professional poker players associated with PKR.

As advertising, the BCAP Code<sup>1</sup> and COSTA<sup>2</sup> applied to *World of PKR*. Ofcom considered that the material raised several potential issues under both codes<sup>3</sup>:

#### Distinction from editorial content

Rule 2.1 of the BCAP Code requires that:

"Advertisements must be obviously distinguishable from editorial content, especially if they use a situation, performance or style reminiscent of editorial content, to prevent the audience being confused between the two. The audience should quickly recognise the message as an advertisement."

The only indication given to viewers that *World of PKR* was material placed by an advertiser was the text shown briefly at the start. As the advertising adopted a programme-like format for 30 minutes, the extent and frequency of its identification to the audience as advertising therefore raised concern.

#### Teleshopping and advertising minutage

COSTA gives a definition of teleshopping:

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<sup>1</sup> The BCAP Code can be found at: [www.bcap.org.uk/The-Codes/BCAP-Code.aspx](http://www.bcap.org.uk/The-Codes/BCAP-Code.aspx).

<sup>2</sup> COSTA can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>.

<sup>3</sup> Although BCAP is normally responsible for matters of content, Ofcom retains responsibility for enforcing matters of *format* in respect of teleshopping (and other forms of advertising). In other words, it falls to Ofcom to decide whether material meets the definition of teleshopping. As Ofcom was investigating this complaint for that reason, it agreed with BCAP that it would also apply the BCAP content rules for gambling.

“teleshopping’ means television advertising which includes direct offers to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment”<sup>4</sup>.

To qualify as teleshopping advertising must therefore include “direct offers” to the audience to buy products or services. Direct offers are those that can be taken up by the consumer from home, typically by phone or internet, and that do not require the consumer to go to a shop or other place to make the purchase. Teleshopping can be in the form of whole channels, of “windows” at least 15 minutes long, or of spot advertisements.

*World of PKR* did not appear to Ofcom to constitute teleshopping: no direct offers for the sale of any product or service were made.

As such, Ofcom considered that the material appeared to amount to a 30 minute spot advertisement. An advertisement of this length would be in breach of Rule 4 of COSTA which restricts the amount of advertising permissible within each clock hour on this type of channel to 12 minutes.

#### Gambling as a financial solution

Rule 17.3.3 of the BCAP Code requires that:

“[Advertisements must not:] suggest that gambling can be a solution to financial concerns, an alternative to employment or a way to achieve financial security”.

*World of PKR* contained references to significant winnings (e.g. “...and are now winning tens of thousands of dollars”), discussion of poker as a “profession”, suggestions of support for would-be professional players (e.g. “we can make you into a big star” and “great chance for everyone in the player-base to get that dream”), and used the poker professionals featured as encouraging examples (e.g. [of a professional] “he is someone we can all relate to really, if we’re just starting out”).

Generally, *World of PKR* contained considerable emphasis on big winnings, and professional players and their lifestyles: most of the second half of the programme’s 30 minutes was given over to discussing PKR professionals.

#### Age issues

Rule 17.4.6 of the BCAP Code requires that:

“[Advertisements for gambling must not:] feature anyone who is, or seems to be, under 25 years old gambling or playing a significant role. No-one may behave in an adolescent, juvenile or loutish way”.

The ages of the six professional players featured were 20, 22, 24 and 25. All the ages of the professionals were given by the presenters and comments emphasised their youth. For example: “...your stable of kids”, “...they’re young guys...their ages are like 24, 25...”, “...young guys and young girls, as it happens...”, “...only 22!”, “[of a 24-year-old]...the granddad”. In addition, one of the professional players said “I taught myself how to play poker when I was 20”.

#### Potentially harmful behaviour

Rules 17.3.1 and 17.3.10 of the BCAP Code require respectively that:

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<sup>4</sup> This definition is derived from Article 1(l) of the AVMS Directive.

“[Advertisements must not:] portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm”; and

“[Advertisements must not:] suggest that solitary gambling is preferable to social gambling”.

In an interview with one of the PKR professional players the player stated that he gambles on PKR “*six or seven hours a day every day*”.

In view of these issues, Ofcom sought comments from the licensee for the Channel One service, BSkyB Ltd (“Sky”)<sup>5</sup> under the relevant BCAP Code rules, as set out above.

## Response

Sky said that *World of PKR* was provided by NetPlay TV Group Ltd (“NetPlay”) for Channel One’s previous owner and licensee and was contracted to be a 30 minute teleshopping window.

The description of the content in the contract of 28 August 2010 between NetPlay and Living TV Group was: “PKR Poker, a mix of live tournament and poker community arranged for teleshopping airtime show that highlights the best action at the PKR site, with insider features & offers exclusive to Virgin 1 viewers.”

Sky told us that it completed the buy-out of the Living TV Group channels from Virgin Media in July 2010 and notified Ofcom of the change in ownership of the channels. The two companies continued to be operationally separate until 31 December 2010 [i.e. for some five months after Sky became the licensee of what became Channel One]. The compliance of all the Living TV Group channels was conducted by the Virgin Media Compliance Team up until the end of 2010. In practice, Sky said, this meant that the majority of the employees of Living TV Group ended their employment before or during the Christmas holiday period 2010.

On 1 January 2011 all compliance responsibility was moved to the Editorial Policy and Compliance team at Sky.

Sky said that it had had to investigate this case without the Living TV Group compliance staff involved in this show’s compliance, and had made best efforts at finding out what had happened.

From its investigation into this issue, Sky said that it understood that NetPlay provided the teleshopping content *World of PKR* to Channel One to be transmitted seven times between 22 December and 31 December 2011.

*World of PKR* was contracted to be a 30 minute teleshopping window with exclusive offers for sale for Channel One viewers. However, Sky accepted that this contract was not fulfilled as *World of PKR* did not contain direct offers for sale.

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<sup>5</sup> Channel One was formerly called Virgin 1 and was renamed after Sky bought the channel from Virgin Media TV. Sky became the licensee of Channel One on 12 July 2010. The service name change from Virgin 1 to Channel One was agreed by Ofcom on 23 August 2010 and took place on 3 September 2010. Channel One ceased broadcasting on 1 February 2011.

Sky suggested that *World of PKR* may not have been subject to the usual Living TV Group compliance process. The majority of the compliance team had left the business since takeover, Sky told us, so Sky could not confirm whether the material had or had not been assessed before transmission. Nevertheless, Sky said that it could only assume that this show went to air without a compliance review and the appropriate checks.

In this respect Sky said:

“The fact that a number of the staff at Living TV Group had left the business before the first transmission of the show, along with the Christmas holiday period and then the change in responsibility for compliance from Living TV Group to Sky are factors that added to this serious mistake.

It would seem that a number of related factors, linked together, to cause this failure of compliance during this period of change within the business. It is a unique set of events that should never occur in the same manner again, with the same consequences. As we cannot fully confirm exactly what did happen in this case, with those involved, we have little defence to be able to offer. We would therefore appreciate Ofcom’s understanding of the specifics of this case and that it is very unlikely that such a set of events would happen again. Channel One is no longer broadcasting and NetPlay do not provide Sky channels with any broadcast content.

We sincerely apologise for this serious lapse of process in this case, Sky takes its compliance responsibilities very seriously and it is regrettable that this error occurred. As a point of reassurance to Ofcom, we can state that this error would not be repeated at Sky due to the completely different and more robust compliance processes in place.”

Sky also said that it hoped that Ofcom would also take into account that, in Sky’s view, the extent of potential material harm was limited in this case.

The broadcaster pointed out that *World of PKR* was not broadcast after 31 December 2010 and that Channel One ceased broadcasting altogether on 1 February 2011.

Sky conceded that *World of PKR* was in breach of all of the BCAP Code rules cited.

## **Decision**

Ofcom viewed the lapses in compliance as very serious, and noted Sky’s acceptance that the material was in breach of all the BCAP Code rules cited, and its explanation for the circumstances in which these issues arose.

### Distinction from editorial content

Rule 2.1 of the BCAP Code is a fundamental requirement: advertising must always be readily recognisable as such so that viewers are left in no doubt that the material serves an advertiser’s purpose. This requirement helps to protect audiences against the risk of surreptitious advertising.

In this case, we considered that the on-screen text shown briefly at the start of *World of PKR* was insufficient to ensure that viewers of this 30 minute slot were made aware that the material was advertising.

The material was therefore in breach of Rule 2.1 of the BCAP Code.

### Teleshopping and advertising minutage

We note that Sky accepted that the material did not contain direct offers and therefore did not meet the definition of teleshopping. Therefore we found that the material amounted to a 30 minute spot advertisement. This clearly exceeded the 12 minutes of advertising permissible within each clock hour on this type of channel under COSTA.

By failing to adopt a proper teleshopping format including direct offers, the item breached Rule 4 of COSTA.

### Content issues

To advertise gambling as a means of making a living or to escape from debt is prohibited by BCAP Rule 17.3.3. These potentially harmful messages were in our view undoubtedly present in *World of PKR*.

The rule on minimum ages, Rule 17.4.6, similarly seeks to protect people who may be more vulnerable from harm associated with gambling; the advertising was in breach of this rule.

Rules 17.3.1 and 17.3.10 serve to prevent such advertising encouraging or condoning potentially harmful behaviour relating to problem gambling. In this case obsessive and solitary gambling were remarked on in the advertising without disapproval.

The material was therefore in breach of Rules 17.3.3, 17.4.6, 17.3.1 and 17.3.10 of the BCAP Code.

### Conclusion

A half-hour feature breaching numerous advertising rules had been broadcast seven times. This material may not even have been inspected for compliance with the codes prior to broadcast.

The material contained multiple breaches of the BCAP Code in the area of the promotion of gambling, a subject of social concern and sensitivity that attracts correspondingly tight rules. Further, these breaches had occurred in material that, in Ofcom's view, had the clear potential to mislead about its status as advertising.

In addition, the rule that govern allowances of advertising time had been comprehensively breached.

Ofcom did, however, acknowledge Sky's acceptance of the breaches and noted the profuse apologies offered. Ofcom noted that *World of PKR* was broadcast no earlier than 00:00 and would therefore have been unlikely to be seen by many, if any, children.

Ofcom accepted that the circumstances of this case were unusual. Ofcom would therefore not expect any recurrence.

**Breaches of BCAP Code Rules 2.1, 17.3.3, 17.4.6, 17.3.1 and 17.3.10  
Breach of COSTA Rule 4**

## In Breach

### Psychic Interactive

*Psychic TV, 25 January 2011, 10:30 to 11:15*

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#### Introduction

Psychic TV is a channel offering psychic readings to callers. The channel transmits frequent promotions of premium rate telephone services (PRS), both voice and text, by which readings can be obtained, and a facility for viewers to pay for these by credit card.

A viewer objected that the material contained claims of efficacy and accuracy for the readings, something that is prohibited by the UK Code of Broadcast Advertising (“the BCAP Code”)<sup>1</sup>.

In September 2010 new Ofcom rules came into force with the effect that channels and content predicated on the promotion of PRS services (‘Participation television’) became subject to the BCAP Code.

At the same time, the revised BCAP Code allowed PRS-based live and personalised psychic services on channels licensed for that purpose (previously the BCAP Code had prohibited such services)<sup>2</sup>.

In permitting this category of advertising the BCAP Code places certain restrictions on it.

Rule 15.5.2 requires that:

“Advertisements for personalised and live services that rely on belief in astrology, horoscopes, tarot and derivative practices are acceptable only on channels that are licensed for the purpose of the promotion of such services and are appropriately labelled: both the advertisement and the product or service itself must state that the product or service is for entertainment purposes only”.

Rule 15.5.3 requires that:

“Advertising permitted under rule 15.5 may not:

- Make claims for efficacy or accuracy;
- Predict negative experiences or specific events;
- Offer life-changing advice directed at individuals – including advice related to health (including pregnancy) or financial situation;
- Appeal particularly to children;

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<sup>1</sup> The BCAP Code is available at: <http://bcap.org.uk/The-Codes/BCAP-Code.aspx>

<sup>2</sup> Ofcom, not the ASA, is responsible for the regulation of psychic and other ‘participation TV’ services: see paragraph c) of the Introduction to the Bulletin.

- Encourage excessive use”.

Ofcom viewed the material that had been complained about. A female presenter, Debbie, spoke to camera and to a male psychic, Grant, who was also seen on camera, but separately. Ofcom noted that the female presenter quoted and referred to comments made by members of the public about one of the channel's psychics:

*“...you have been spot on about absolutely everything”; and*

*“...she would verify that you came out with all these incredible details about this man she is with now...”*

The psychic, Grant, subsequently talked about ‘rewards from spirits’, “because your [i.e. his own] validations are so good”.

He then thanked customers who had made comments of this sort:

*“...I want to thank everybody out there for sending that feedback... just to let them other people know that might be sceptic out there...if you are sceptical, you've heard that feedback, come through to the phones, I'm going to the phones now, I'm going to the phones now, I'm going to option 3 for five-minute calls...”*

The female presenter then commented to camera, included the following:

*“...I know he's a very powerful psychic, I know it with my head, I know it with my heart, but not the same as when the public phones in, texts, leaves a message and says this was right, this was right, this was right, and when you talk to us about the details he's given you...”*

*“...it's the magic of hearing your voice saying he got the name right, it was Steve, six feet one and Aquarian, you say he would come into my life about a year ago, he came in five weeks ago, oh and by the way there are more details, stuff about Kent and all the rest of it, and all the details are right...”*

*“...it is an incredible thing, this is not ordinary and you can't just make it up because people are not going to phone in and text in...”*

*“...Sammie [a customer] didn't just leave a caller comment...she sent in a text saying 'I will verify, I am happy to verify all of this'...”*

A recording of a call from a different viewer was then played:

*“Grant, unbelievable reading I've had with you, absolutely fantastic and spot on. Listen, I can't [indistinct] enough how you were absolutely spot on with three things, so thank you so much”.*

Shortly after this, Sammie's call was played which repeated the comments about the name, height and star-sign of a man predicted by the psychic.

The presenter than continued:

*“Get it? Five weeks ago he walked into my life – now I tell you what, if you are a sceptic and you always doubted this work, always thought whatever, this is the*

*morning you've just heard two pieces of feedback given to us by genuine members of the public...so if you are ever going to have doubts, if you ever had doubts, I want you to take a dare and see, because you know, you might be right, maybe he's just going to talk an awful lot of rubbish, guess what, he doesn't and you can find out, you can try it for yourself – if it feels wrong, put the phone down – you won't – why am I so sure? – because these are not the only two pieces of feedback I've heard whilst I've been here about Grant Colyer, it's always the same kind of thing, fantastic, got the facts right, accurate – the difference for me this morning is that someone actually said what the facts were that were got right – the guy's name for goodness sake, his star sign, his height, the county he lives in...if what you want is a real genuine reading now that proves the psychic world exists and that it can give you true information about your future Grant Colyer is on option 3...you can prove it for yourself now and for good that this really works."*

A constantly scrolling text banner contained various information including call costs and a statement that the content was for 'entertainment purposes only'.

Ofcom considered that this material raised issues under Rules 15.5.2 and 15.5.3, as set out above. Therefore we sought comments from the broadcaster in respect of these rules.

## **Response**

In respect of Rule 15.5.2 Psychic TV confirmed that the material is broadcast on a channel that is licensed for the promotion of the service and is appropriately labelled. Further, the broadcaster said, the material states that it is for entertainment purposes only.

As to Rule 15.5.3, Psychic TV told us that the preceding half-hour or so of the feature placed the later comments into context. This prior material consisted of a psychic reading, an inserted promotion for a pre-payment facility, further brief readings, references to psychics available to take readings and chat between the on-screen psychic and the presenter. The broadcaster told us that: "The period between 10.30am and 10.55am illustrates the dynamic nature of the programme content and of how a "theme" may evolve over a period of the programme."

The broadcaster also quoted from research<sup>3</sup> that Ofcom had commissioned during its consultation that led to the decision to allow this form of advertising: "...regular viewers of Psychic TV, particularly female viewers, felt the content could be very engaging and could play an important role in helping them consider problems and challenges in their lives. The programming was felt to be trustworthy, particularly by female respondents."

That viewers regard Psychic TV as entertainment was not, the broadcaster believed, in issue, and "clearly there is considerable interaction with viewers, many of whom claim to benefit from the same."

In addition, the broadcaster argued that: "It is also clear that viewers may hold differing views regarding the value to them of the generalized comments of the psychics. This point was clearly made by Debbie [the presenter]. One viewer, for example, felt that Grant was "spot on" whilst Debbie observes that others may feel

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<sup>3</sup> The research is available at:  
<http://stakeholders.ofcom.org.uk/binaries/consultations/participationtv/annexes/report1.pdf>

they “talk an awful lot of rubbish”...Debbie is herself a psychic. Like other psychics, she believes passionately in the genuineness of what she and psychics have to say. She wanted to share with viewers her thoughts on viewer reactions, not least the positive feedback being received.”

Further, Psychic TV said that: “Debbie does not suggest that contacting a psychic will produce or be sure to produce a desired effect. Nor does she make claims for accuracy. What she does is refer to actual viewer feedback. She uses that feedback to highlight the possible benefits to viewers of interacting with psychics should they, of their own volition, choose to do so.”

Generally, the broadcaster defended the material by arguing that the comments broadcast did not suggest that every prediction will be accurate, that Debbie invited people to take a “dare” and that callers may conclude that the psychic featured may “talk a lot of rubbish”.

Psychic TV argued that the consumer is left to form their own view, referring to this as “...a freedom of choice that was welcomed by the majority of respondents who contributed to the October 2009 report by Essential Research Ltd.”

## Decision

The BCAP Code’s prohibition on claims of efficacy or accuracy in advertising for psychic services serves an important purpose. In tandem with the requirement that such services must make clear that they are intended for entertainment only, the rule seeks to ensure that these practices are not presented as in any way dependable or based on any reliable evidence.

In this case, Ofcom first considered whether the advertising had contained claims of efficacy or accuracy, and then sought to establish whether the service had made clear that it was intended for entertainment purposes only.

Ofcom did not accept Psychic TV’s argument about the nature of the material included in the service. Irrespective of any value or benefit that consumers might derive from this service, Ofcom considered that the broadcaster had featured a number of customer testimonials which clearly amounted to claims of both accuracy and efficacy. For example: “...*you have been spot on about absolutely everything*”, and “... *he got the name right, it was Steve, six feet one and Aquarian, you say he would come into my life about a year ago, he came in five weeks ago, oh and by the way there are more details, stuff about Kent and all the rest of it, and all the details are right...*”

As to the broadcaster’s argument that the female presenter had qualified the claims by inviting viewers to take a dare, stating that “*maybe he’s just going to talk an awful lot of rubbish...*”, we were not persuaded that this minimised the effect of the claims in any way, since they were immediately followed by:

*“...guess what, he doesn’t and you can find out, you can try it for yourself – if it feels wrong, put the phone down – you won’t – why am I so sure? – because these are not the only two pieces of feedback I’ve heard whilst I’ve been here about Grant Colyer, it’s always the same kind of thing, fantastic, got the facts right, accurate – the difference for me this morning is that someone actually said what the facts were that were got right – the guy’s name for goodness sake, his star sign, his height, the county he lives in...if what you want is a real genuine reading now that proves the psychic world exists and that it can give you true*

*information about your future Grant Colyer is on option 3...you can prove it for yourself now and for good that this really works."*

Ofcom was therefore of the view that the claims in the customer testimonials were simply further emphasised by these repeated claims made by the female presenter. Broadcasters in this field must ensure that they avoid the inclusion of claims, explicit or implied, for the efficacy or accuracy of psychic practices. This will require that presenters, guests and anyone else working on the channel take care to stay away from this area, and that there is no replaying of testimonials or similar customer comments given by callers off-air. Avoiding such claims also extends to not allowing on air any comment, whoever makes it, that could be understood to be an indication of efficacy or accuracy, including spontaneous comments from customers who might be speaking on air.

The material included in this advertising featured a number of claims of efficacy and accuracy for the psychic services that were being promoted, and was therefore in breach of Rule 15.5.3 of the BCAP Code.

Ofcom then turned to consider the advertising against the requirements of Rule 15.5.3. Ofcom accepts that the Psychic TV service is licensed for the promotion of such services and the broadcast content is labelled on air as being for entertainment purposes. However, in view of the fact that the material featured repeated claims of efficacy and accuracy in breach of Rule 15.5.3, as set out above, Ofcom judged that these claims contradicted the purpose of the mandatory labelling of this material as being merely entertainment. Therefore Ofcom also found the advertising in breach of Rule 15.5.2.

Breaches of these rules are potentially serious because they may result in consumer harm. Ofcom puts Psychic TV on notice that should similar compliance issues arise, it will be likely to consider the imposition of statutory sanctions.

### **Breaches of Rules 15.5.2 and 15.5.3 of the BCAP Code**

## In Breach

### The Business Show

Hope FM, 10 March 2011, 12:00

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#### Introduction

Hope FM is a community radio broadcaster in Bournemouth. It aims to reflect both a Christian ethos and the diversity of the local community.

*The Business Show* is a two hour programme sponsored by SceneOne magazine, a local theatre guide. The programme is broadcast twice weekly and comprises numerous interviews with representatives of different businesses based in the Bournemouth area.

On 10 March 2011, the programme featured a representative of Poole Together – a web-based recruitment agency, which the presenter introduced as “*bringing local employers and job-seekers together.*” The interview included promotional material. For example:

- the agency’s service was described as free to job-seekers, with competitive rates (which were provided on air) for employers who wished to advertise on its website;
- the interviewee stated that her company had 12,000 visitors to its website each week and that it held the details of 3,000 jobseekers, to whom relevant vacancies were emailed; and
- the interviewee announced the agency’s contact details, for interested parties.

The presenter discussed not only the interviewee’s company, but also general topics (albeit related to employment and/or the company). Their conversation was interspersed with music.

A listener contacted Ofcom saying that, while he did not know “if there was any financial gain to the station from this interview”, “any commercial arrangement with the interviewee and her company certainly wasn’t transparent ... by way of [appropriate] signalling...”

We asked Hope FM for its comments concerning the material it had broadcast, with regard to Rule 10.1 of the Code, which states:

“Programming that is subject to, or associated with, a commercial arrangement must be appropriately signalled, so as to ensure that the commercial arrangement is transparent to listeners.”

#### Response

Hope FM confirmed that businesses were featured in *The Business Show* in return for payment. However, it did not consider the broadcast to have breached Rule 10.1 of the Code.

The broadcaster added that “the programme is clearly & appropriately signalled as being commercial in nature, and therefore not part of ... 'normal' programming”, as:

- it is “unmistakenly called *The Business Show*”; and
- “the presenter always introduces the show as such, and then clearly mentions the names of the businesses who will be coming on ... including the name & designation of the business representative”.

Hope FM therefore considered it was “completely transparent with listeners as to the exact nature of the content of the show.”

## Decision

Since 20 December 2010, radio broadcasters have been permitted to promote brands, products and services in programming. Ofcom requires that broadcasters must make clear to the audience that such programming has been subject to a commercial arrangement.

Rule 10.1 of the Code requires that programming that is subject to a commercial arrangement is appropriately signalled to the audience. This ensures that listeners are protected from surreptitious advertising.

*The Business Show* may have a different style to other material broadcast on Hope FM. Nevertheless, it is presented as programming.

In this instance, the presenter said the following as part of his introduction to the programme:

*“...we start in the time-honoured tradition always on The Business Show of asking two questions: The first question is, who are you? ...and ... what do you do?”*

Ofcom noted Hope FM's view that *The Business Show* was “clearly & appropriately signalled as being commercial in nature, and therefore not part of ... 'normal' programming”, together with its reasoning for this.

Ofcom noted that no reference was made in this programming to any commercial arrangement between Hope FM and Poole Together.

Ofcom did not consider that the nature of the programming's content or its title were, in themselves, sufficient to meet the requirements of Rule 10.1.

Furthermore, references to the name and designation of an interviewee are a standard feature of broadcast interviews. We did not consider that these references were sufficient to signal the commercial arrangement that was in place.

We noted that a separate commercial arrangement between Hope FM and SceneOne magazine, the programme sponsor, was signalled (i.e. “*The Hope FM Business Show is brought to you by SceneOne magazine – your free guide to what's happening in the local theatre scene.*”), as required under Rule 10.1 of the Code.

Therefore Ofcom concluded that listeners were unlikely to consider that the programme content was subject to any other commercial arrangement(s), as Hope FM had failed to provide appropriate signalling of this fact.

The programming was therefore in breach of Rule 10.1 of the Code.

**Breach of Rule 10.1**

## Not In Breach

### The X Factor Final

ITV1, 11 December 2010, 19:00 (repeated 12 December 2010, 09:30)

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#### Introduction

*The X Factor Final* was the climax of the seventh series of this popular talent show, which had been transmitted on ITV1 since August 2010.

This first part of the two-part final, broadcast on the evening of Saturday, 11 December 2010, featured five acts. One of these was voted off at the end of that programme, with the remaining four proceeding to the live final on the Sunday. Around 1.05 million of the audience were young children. This represents 7% of the total audience. A repeat transmission on ITV1 at 09:30 on 12 December 2010 was watched by over 50,000 young children. This represents 5.7% of the total audience.

While viewers waited for the voting to be concluded and the announcement of the name of the act which had made it through to the Sunday final show, the programme featured two well known singers. One, Rihanna, performed her latest song, "What's My Name," at 20:32 in a dress which was removed by a dancer during the performance to reveal a strapless top and high waisted pants. Later at 20:47 Christina Aguilera sang the song "Express" from the film "Burlesque" in which she stars. This featured the singer with a number of dancers performing in a burlesque-style of dance and dress.

Ofcom received 2,868 complaints that the performances by Rihanna and Christina Aguilera were "too sexually explicit" for broadcast before the 21:00 watershed. Some considered that *The X Factor* was "a family show" and that the content of both performances was not suitable for children to view before the watershed. With reference to both performances complainants commented that "they [Rihanna and Christina Aguilera] performed in a very sexual manner" and the content "was too sexually explicit and inappropriate for the young audience of this show". With specific reference to Christina Aguilera's performance, complainants expressed concern that: "the dancing, costumes and tone were sexually explicit and at odds with the watershed which should seek to protect children from sexualisation" and there were "extremely revealing background dancers performing indecent dance moves".

Approximately 2,000 of the 2,868 complaints about this programme were received following coverage about the performances in a daily national newspaper. The newspaper coverage reported on concerns that the performances were too explicit for a family programme, and included a number of still images of the performances. However, from a comparison of the images it is clear that the photographs that were published in the newspaper were significantly more graphic and close-up than the material that had been broadcast in the programme, and had been taken from a different angle to the television cameras. Readers of the newspaper would have therefore been left with the impression that the programme contained significantly more graphic material than had actually been broadcast.

Ofcom considered whether the programme as broadcast raised issues against Rules 1.3 and 2.3 of the Code.

Rule 1.3: “Children must be protected by appropriate scheduling from material that is unsuitable for them.”

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...”

We asked Channel TV (“Channel TV” or “the Licensee”), who complied the programme on behalf of the ITV Network for ITV1, how the programme complied with these Rules.

## Response

In response Channel TV stated that it was aware that *The X Factor* was popular with older children and that some younger ones were allowed by their parents and carers to watch it on first broadcast, with others watching a repeat transmission. Consequently, the Licensee stated that it did not believe that anything in the performances of Christina Aguilera or Rihanna was inappropriate for the time of broadcast, nor were the performances somehow ‘stronger’ than any previously seen in the preceding episodes of *The X Factor*.

Channel TV suggested that those viewers who, over the years, have become familiar with *The X Factor* as a show would be aware that it is designed to entertain a mixed audience. Although care is taken to protect the family audience the show attracts (for example, offensive language is excluded and song lyrics are changed as appropriate), some elements of the series may be deemed inappropriate for a younger audience by some sections of the audience.

With respect to the content of the individual performances by Christina Aguilera and Rihanna, the Licensee commented that Rihanna’s performance did not contain offensive language, nudity or inappropriate detail and her stage costume was not revealing. Christina Aguilera’s stage costume was considered “perfectly modest” and those of her dancers “only slightly less so”. Again, there was no nudity, inappropriate detail or close ups and the lyrics of the song were inoffensive.

Channel TV explained that the guest singers’ routines were not created by Brian Friedman, the show’s own creative director, but were choreographed by their own respective teams. As *The X Factor* attracts guest singers of a very high calibre, whose time is limited, the show’s producers could not rely on their availability for extended rehearsals.

However, with respect to the way in which ITV1 presented the Christina Aguilera routine in particular, Channel TV explained that during the morning before the live broadcast some of the shots that the director had intended to use were changed. A decision was taken that some of the camera angles were a little “too close for comfort” given the general tone of the performance and the stage costumes worn by the dancers. Certain close up shots were therefore excluded and replaced by looser, wide shots instead.

Channel TV further argued that Christina Aguilera is not, nor has she ever been, an artiste with a strong fan base amongst pre-teens, unlike her contemporary, Britney Spears. Therefore her performance on *The X Factor* was exactly as one might expect from this internationally renowned singer, assuming a basic knowledge of popular culture.

Channel TV therefore said it was confident at the time of the broadcast that Christina Aguilera's routine was "entirely acceptable even for younger viewers, providing of course that their attention was held by a performer they might not find of interest". *The X Factor* attracts guest singers of some stature and the majority of acts who appear are not ones with specific appeal to younger viewers.

With reference to the burlesque-style dance routine, Channel TV argued this has become "almost mainstream" in recent years, with burlesque performers appearing in current commercials, performing on shows such as *The Paul O'Grady Show* and *Britain's Got Talent*. The Licensee considered the routine on the show was a "mild routine" suitable for inclusion in *The X Factor*, especially as the dancers performed 'solo' rather than in mixed couples.

In conclusion, Channel TV stated that it would be hard to conceive of any actual harm that could have come to even the youngest viewers who watched this performance by Christina Aguilera, consisting as it did of highly-trained solo dancers performing in support of an internationally celebrated artiste with no or little appeal to pre-teens. Channel TV said on behalf of ITV1 that it regretted that some viewers were taken aback by the performance, but it believed that it took appropriate steps to minimise potential offence and make the dance routines as broadcast suitable for all by reviewing and amending the camera angles and shots used after seeing the performances 'blocked' at rehearsals.

The Licensee added that those viewers who chose to watch only the latter stages of the competition, or even just *The X Factor Final* alone, may well have been surprised by this performance by Christina Aguilera but the broadcaster did not believe that the expectations of the loyal audience for this programme were exceeded by the inclusion of this "mildly" sexual routine.

## **Decision**

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, including that "persons under the age of eighteen are protected" and that "generally accepted standards" are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material.

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected. Ofcom considers that the standards it has set for the protection of children to be amongst the most important. Broadcasters are also required under Rule 2.3 of the Code to ensure that material which may cause offence is justified by the context.

### The programme as a whole

In considering this case, Ofcom took into account that *The X Factor* is a Saturday night programme which many families sit down together to watch.

Whilst the *The X Factor* is not aimed at young children, it is scheduled pre-watershed and has consistently attracted a significant child audience and a strong following from

young people. This programme was also repeated at 09:30 on a Sunday morning, when a number of young children watch television, some unaccompanied by an adult.

As a pre-watershed programme its content must therefore be suitable for those children who may be viewing. In the case of *The X Factor Final*, on 11 December 2011 around 1.05 million of the child audience were young children.

Ofcom assessed both performances against the requirements of Rules 1.3 and 2.3 of the Code.

### Rihanna's performance

#### Rule 1.3

Rule 1.3 requires broadcasters to ensure that children are protected by appropriate scheduling from material which is unsuitable for them. The watershed of 21:00 is widely identified by viewers as the time after which they may progressively expect to find material which is aimed at an adult audience. Before 21:00 material unsuitable for children should not, in general, be shown.

With reference to Rihanna's performance (which commenced at 20:32), Ofcom noted that she began in a long wrap-around dress and approximately half way through the routine the dress was removed by a dancer to reveal a strapless top and high-waisted pants.

Rihanna's dance routine had some mildly sexual overtones and included images of her gyrating and rocking her buttocks. However, it was largely shot at a wide angle to show all of the dancers on the stage and from a distance. Where there were close ups of Rihanna, these focussed on her front or her head and shoulders, not her exposed back. Additionally, the camera panned quickly and continuously throughout the performance, resulting in the shots of the individual dance movements of both Rihanna and her dancers being very brief.

Ofcom was therefore of the view that, taken as a whole, the performance by Rihanna was presented in a style which would not have exceeded the likely expectations of the audience either on 11 December between 20:30 and 21:00 or the following morning from 09:30. With reference to the content, the performer and the dancers were in Ofcom's opinion adequately dressed with clothing covering their buttocks. The part of the dance routine which featured some gentle thrusting of the buttocks by Rihanna was in keeping with her performing style, suitably limited and brief in duration, and in Ofcom's view was suitable for a pre-watershed audience. Ofcom concluded therefore that this material was appropriately scheduled and the broadcaster complied with Rule 1.3.

#### Rule 2.3

Having concluded that Rihanna's performance was not in breach of Rule 1.3, Ofcom decided that it did not raise issues under Rule 2.3.

## Christina Aguilera's performance

### Rule 1.3

In reviewing Christina Aguilera's performance of the song "Express" from the film "Burlesque", Ofcom noted the routine was based on a burlesque-style of dance and dress. Burlesque means a variety show characterised by flirtatious comedy, dancing and striptease. Accordingly, while Christina Aguilera wore a short black dress, Ofcom noted that the dancers appearing with the singer wore stage costumes such as suspenders, bra tops, fishnet stockings, basques, mini-skirts and close fittings pants, which might be considered typical of those performing in a burlesque show.

Ofcom also noted that the choreography of the routine appeared to be based on the burlesque-style of dance. This was particularly noticeable in the first half of the routine with the female dancers seated on chairs opening their legs, kicking their legs up, gently thrusting their buttocks whilst bending over their chairs and leaning onto the chairs to position their buttocks towards the audience.

With reference to Rule 1.3, Ofcom considered that this performance taken as a whole was sexualised in nature to some extent. The outfits of some of the dancers were revealing, with limited coverage of the buttocks, and were of a sexualised nature because they were based on lingerie such as basques, stockings and suspenders. The outfits, taken together with dance positions featuring thrusting buttocks and women bent over chairs, resulted in a routine which aimed to reflect the essence of burlesque but contained sexualised elements. Taken individually, some of these images may not be uncommon in programmes broadcast pre-watershed. The routine however had a number of simultaneous, sexualised elements concentrated into a relatively short period of time and there was therefore a cumulative effect.

It is important however to see these sexualised elements of the Christina Aguilera routine in context. Focusing on the stage costumes and dance routines in isolation, particularly when these were presented within the context of a musical performance, may risk exaggerating their significance to viewers.

We note the explanation given by Channel TV that its control over the detailed nature of the performance itself was limited in this case. In such circumstances, broadcasters must take particular care to employ other measures to retain independence of editorial control. In this case, we acknowledge that Channel TV had sought to minimise the potential for offence by taking other measures, such as particular camera angles. Therefore, while the dancers did adopt some sexualised positions intermittently as described above, Ofcom noted that shots of these poses were fleeting, as is expected in a fast paced routine. Additionally, the performance was largely shot at a wide angle to show all of the dancers on the stage and from a distance – minimising the potential impact.

Importantly, throughout the routine there were no close-up shots of individual dancers so the viewer was not drawn to any one dancer's clothing or actions in detail. The dancers were in effect a backdrop to Christina Aguilera, who was not wearing similar clothing or following the same dance routine. For all these reasons, the impact of the dancers on-screen was significantly lessened.

Ofcom considered that there was editorial justification for the type of costumes that the dancers were wearing, and the style of the dance routine overall. They reflected the burlesque-theme and storyline of the feature film "Burlesque" in which Christina Aguilera starred, and which was shortly due to go on general cinematic release at the

time of this broadcast. However, the overtly sexual nature of the burlesque-style routine of the dancers was, in Ofcom's view, nevertheless clearly capable of causing offence to some viewers and we considered that this content was at the very margin of acceptability for broadcast before the 21:00 watershed, and especially when broadcast on 12 December 2011 at 09:30. However, on balance, and taking all matters into consideration, including the steps taken by Channel TV to minimise the potential for offence, Ofcom was of the view that this performance was not in breach of Rule 1.3 of the Code.

### Rule 2.3

Ofcom considered that Christina Aguilera's performance had greater potential to offend some viewers than Rihanna's. This is because of the various sexualised elements of the performance outlined immediately above.

Ofcom concluded however that the performance was sufficiently justified by the context in which it was presented. In particular the performance was within the likely expectations of the audience for pre-watershed programmes. The broadcaster therefore applied generally accepted standards and Rule 2.3 was not breached.

However, broadcasters of programmes that attract family audiences and significant child audiences, and which contain clear sexual overtones or significant sexualised elements transmitted in the period running up to the 21:00 watershed (or on the mornings at weekends), should recognise the significant potential for causing offence. In these circumstances, broadcasters must take great care to provide appropriate protection for those audiences.

Ofcom will shortly be issuing new guidance about the acceptability of material in pre-watershed programmes that attract large family viewing audiences. We will also be requesting that broadcasters who transmit such programming attend a meeting at Ofcom to discuss the compliance of such material.

In view of our concerns about the material under consideration in this case, and the fact that we considered it was at the limit of acceptability for transmission before the 21:00 watershed, Ofcom is requiring the compliance licensee to attend a meeting to discuss the approach taken to ensuring that the programme complied with the requirements of the Code.

### **Not in Breach of Rules 1.3 and 2.3**

## Not in Breach

### The Live Desk

*Sky News, 1 February 2011, 09:50*

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#### Introduction

Sky News is a 24 hour rolling news channel. The broadcasting licence for the channel is held by British Sky Broadcasting Limited. British Sky Broadcasting Limited also holds the licence for the channel Sky Atlantic.

A viewer complained about a report on Sky News in which the news presenter and the Sky News' entertainment correspondent discussed the launch of the Sky Atlantic channel which was to take place that evening.

During the report, the entertainment correspondent said:

*"...well its the end, it could be the end of box sets forever. We never need to buy anything ever again, we could just watch Sky Atlantic, because its the home of HBO here in the UK..."*

The viewer, noting the relationship between Sky News and Sky Atlantic, questioned whether the report was justified editorially.

Ofcom sought the broadcaster's comments on the complaint in relation to the following Code<sup>1</sup> rules:

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|-----------|--|
| Rule 10.1 | "Broadcasters must maintain the independence of editorial control over programme content."             |
| Rule 10.2 | "Broadcasters must ensure that the advertising and editorial elements of a service are kept separate." |
| Rule 10.3 | "Products and services must not be promoted in programmes."  |
| Rule 10.4 | "No undue prominence may be given in any programme to a product or service."                           |

#### Response

Sky News stated that, notwithstanding the fact that both channels have common ownership and control, the Sky News channel has editorial independence from the rest of the group. It advised that the news items featured on Sky News are determined at weekly and daily editorial meetings, without input from the wider group, or from management.

The broadcaster said that editorial independence is very important to the Sky News brand and its credibility as a news provider. Accordingly, it was very aware of the risks to perceptions of that independence in deciding whether and how to cover the launch of the Sky Atlantic Channel.

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<sup>1</sup> The December 2010 version of the Code, which was in force at the time of the broadcast.

The broadcaster said its decision to cover the launch was made based on its judgement of the channel's launch significance as an entertainment story, taking into account the following:

- it was the first launch of a new general entertainment channel aimed at a broad audience in competition with the main public service channels, and featuring expensive, high quality content;
- the channel would be widely available to many millions of viewers;
- the channel's content was of particular interest to viewers of Sky News as it includes a substantial amount of content from the well-known American production company, HBO, which has provided "some of the most popular television programmes of the modern era, including *The Sopranos* and *The Wire*"; and
- the launch night included opening episodes of a new series *Boardwalk Empire*, executive produced by famed director Martin Scorsese. The series had won awards at the Golden Globes and at the Screenwriters and Actors' Guild in the US. The first episode of the series is the most expensive in TV ever, and was also directed by Martin Scorsese.

The broadcaster confirmed that there was no third party involvement in its decision to cover the launch: the Sky News editorial team decided to give coverage to the launch of Sky Atlantic in precisely the same way that it decided to cover any other news story.

Sky News noted that the item was presented as entertainment news. It advised that Sky News carries regular "showbiz slots" in the last 15 minutes of the hour, mainly in the mornings and again in the early evening if there are 'red carpet' events. It stated that the channel had carried many items about other channels' output, including ITV's *The X Factor* and the BBC's *Strictly Come Dancing*. The broadcaster added that other news outlets similarly feature entertainment news regarding new programmes or series on their own and third party channels.

The broadcaster submitted that the test of newsworthiness applied by all news organisations to entertainment news tends to be lower than other news genres. It considered that for entertainment news, being of public interest – as opposed to in the Public Interest – is enough. On this basis the broadcaster's view was that the launch of Sky Atlantic more than attained the necessary threshold of newsworthiness.

The broadcaster said that the reporter's words were spoken live in what was a light, frothy, entertainment "chat" at the end of a broadcast hour. The enthusiasm displayed by the correspondent was, in Sky News' view, no more than that used by Entertainment Correspondents during most such coverage. The broadcaster added that the phrase about 'ending box sets forever' was "nothing more than an effusive flourish, a hyperbole to make a point about the nature of the series featured on the new channel".

The broadcaster believed that it is entirely consistent with the role of a 'showbiz' report, for the reporter to have presented the channel launch in a positive light. The broadcaster considered that the reporting of entertainment news is not the same as presenting a 'review-type' programme. The aim of such reports is two-fold: to inform

viewers of something new and newsworthy in the field of entertainment, including information on why it might be of interest to viewers; and secondly to provide an opportunity to change the tone and pace of the news programme from that of 'standard' news presentation, which might be more sombre, depending on the news content at the time.

Sky News believed that viewers of entertainment news inherently understand that such reports are invariably upbeat and positive and do not confuse them with a straightforward review programme. Accordingly, Sky News considered that the vast majority of the audience would not have considered the report to have been unduly promotional or 'commercial'.

Furthermore, Sky News submitted that the prominence that the item was given was in line with the editorial justification. Sky News noted the coverage this story was given in over fifty newspaper articles and the limited airtime given to it within the totality of Sky News' coverage across the day.

### **Decision**

One of the fundamental principles of European broadcasting regulation is that there is a distinction between advertising and editorial content. This requirement is reflected in the rules set out in Section Ten of the Code (December 2010).

The Code requires that broadcasters must retain editorial control over the programmes they transmit: programmes should not be distorted for commercial purposes. The rules do not prohibit references to products and services in programmes. However, they require that where a product or service is referred to in a programme, the reference must be made in an editorial context and not be unduly prominent. Further, the reference should not promote the product or service.

The acceptability of the level of prominence in a programme given to a product or service will very much depend on the context in which it appears. The same is true of the extent to which references to a product or service may be positive. For example, viewers are generally more accepting of references within programmes to products and services that may be of interest to them as television viewers, e.g. information about other programmes, films, plays etc. In this context, it is commonplace for writers and performers to appear on chat shows to talk about their latest creative venture. In these situations, the material is broadcast for entertainment purposes but inevitably presents the subject matter in a positive light.

In this particular case, we note Sky News' assurances relating to its editorial independence and the reasoning given for covering the story. We are satisfied that the contents of this programme were not distorted for a commercial purpose and we accept that a discussion about a channel launch was editorially justified in the context of an entertainment report.

Further the style and tone of the report was consistent with other such reports and the references to Sky Atlantic were not unduly prominent in this context.

Ofcom therefore found that the item did not breach the Code.

### **Not in breach**

## Not in Breach

### Embarrassing Bodies

Channel 4, 28 March 2010, 19:00

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**This Review Decision replaces a previous decision published in the back pages of Ofcom's Broadcast Bulletin on 24 May 2010.**

#### Introduction

*Embarrassing Bodies* is a series which describes itself as “*demystifying medical mysteries*” and features participants and their unusual medical conditions. In the series, participants are shown having medical consultations with one of the *Embarrassing Bodies* resident doctors concerning various ‘embarrassing’ health problems and conditions. The participants are often also shown receiving further advice and treatment from medical specialists, and reviewing their treatment with the series’ resident doctors.

This particular edition of *Embarrassing Bodies* (“the programme”) featured a man with ‘buried penis syndrome’ and at various points in the programme there was footage of this participant’s penis. In addition, in a parallel programme item, members of a rugby team were invited to measure their penis size, when aroused and non-aroused, to show the extent to which men’s penises vary in size. At two points in the programme, footage was shown of the penis of one of the rugby players being measured.

#### Complaints

Ofcom received 10 complaints about the programme. In summary, complainants objected to the footage of, and discussions about, penises being shown before the watershed, at a time when children might have been watching.

#### Summary of original decision

In line with Ofcom’s procedures, the complaints were initially considered by the Executive without representations being requested from Channel 4. On 26 April 2010, Ofcom wrote to the complainants informing them that the complaints had been not upheld (“the 26 April Decision”).

#### Request for a review

One complainant requested a review of the decision. In accordance with Ofcom’s Procedures for the handling of broadcasting standards or other licence-related cases (“the Procedures”)<sup>1</sup>, it was decided not to grant a review, and this decision was communicated to the complainant on 23 July 2010 (“the 23 July Decision”).

The complainant subsequently submitted a letter before claim pursuant to the Judicial Review Pre-action Protocol, asking that Ofcom withdraw the 23 July Decision and grant a review of the 26 April Decision.

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<sup>1</sup> See <http://www.ofcom.org.uk/tv/ifi/guidance/standards/>

In summary, the complainant made the following main points:

In relation to the *nature of the content* and *scheduling of the programme*, the complainant considered that there was no editorial justification for broadcasting the content of the programme when many younger children were available to view television. In the complainant's view, most viewers would not expect a broadcast dealing with anxieties men may have about the size of their sexual organs to be scheduled at a time when many younger children are available to watch (even if inadvertently). The complainant considered that there was no evidence that viewers who had previously watched the programme over several series, on a weekday night and later time, might expect similar content at this new, earlier time. Ofcom's Guidance on Section One of the Code, 'Protecting the Under Eighteens', advises broadcasters that trustworthy scheduling up to 19:30 is particularly essential to parents and carers of children aged 5 to 8. The complainant referred to a previous Ofcom Finding<sup>2</sup> ("the *Sex Education Show* Finding"), in which according to the complainant, Ofcom established that an educational programme with the potential to harm and/or offend just as effectively attracted its target audience and achieved its stated purpose when broadcast after the watershed.

In relation to the *nature of the channel and audience*, the complainant considered that viewers of non-encrypted channels have a right to expect that early Sunday evening programmes are suitable for viewing by all ages because this has always been UK custom and practice, and viewers have a right to expect programmes to cater for the audience available to view at that time. The complainant argued that the 26 April Decision and 23 July Decision were flawed as they took into account the likely size and composition of the 'target' audience (and presented the actual audience statistics) whereas what Ofcom should take into account is the likely size and composition of the potential audience and whether the broadcaster considered this factor. The complainant considered that the target audience is a particular group of individuals identified as the intended recipient of a particular programme whereas the potential audience is an aggregate of all individuals that it is possible for a programme to reach – even inadvertently.

In relation to the *degree of harm and offence* caused, the complainant said that Channel 4 failed to take all reasonable steps to sufficiently protect vulnerable children, who are in the process of forming a way of behaving and would have little understanding of any medical or educational context, from intentionally or unintentionally watching potentially harmful and/or offensive, i.e. unsuitable, material. Ofcom should have considered whether the programme may have caused offence: there is no need to prove that children could be materially harmed or offended. The complainant said that Channel 4's 'catch up' service, 4oD, deters children from viewing the same series online and allows parents to set a restrictive 'PIN' code. According to the complainant, this may have suggested that the broadcaster believed there was potential for *Embarrassing Bodies* to cause harm.

In relation to the *signalling of the content*, the complainant considered that a high proportion of the audience was likely to consist of younger children, and they may well have been watching without an adult present to make decisions about what material was suitable, or they may have come across it unawares. Channel 4 should have therefore considered the degree of harm or offence likely to be caused by the material and the effect on young children who may have come across it unawares.

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<sup>2</sup>Ofcom's not upheld decision concerning *The Sex Education Show*, Bulletin 133, 11 May 2009 (See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb133/issue133.pdf>).

The complainant added that broadcasters must comply with the legislation that informs the Code, including section 319(4)(d) of Act<sup>3</sup>. According to the complainant, the earlier in the evening a programme is broadcast the more likelihood there is of children, who are unaware of the nature of the programme's content, unintentionally finding it, and Channel 4 needed to take this principle on board. In the complainant's view, the title of the programme and warning about its content before the start, or the fact that it had run over several series, would not assist a person (in particular a child) in avoiding or minimising offence when coming across it unawares.

Ofcom considered that the 23 July Decision not to grant a review of the 26 April Decision was materially flawed, because its reasoning was flawed and/or lacked clarity in certain areas, and that there were compelling reasons why a review of the 26 April Decision should be granted: the arguments made by the complainant in his letter before claim should be addressed and the complaint should be reconsidered in the light of all the relevant correspondence and Channel 4's representations. Exceptionally therefore, it was decided to refer the case to the Broadcasting Review Committee ("the Committee")<sup>4</sup>.

Ofcom asked Channel 4 to submit written representations in relation to the request for review and on how the relevant sections of the programme complied with the following Rules of the Code:

- Rule 1.2: "In the provision of services, broadcasters must take all reasonable steps to protect people under eighteen.";
- Rule 1.3: "Children must also be protected by appropriate scheduling from material that is unsuitable for them.";
- Rule 1.21: "Nudity before the watershed must be justified by the context."; and
- Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context..."

## Response

While reserving its rights in relation to Ofcom's power to conduct the review, Channel 4 set out its formal comments with regard to how the programme complied with the Code.

In summary, Channel 4 made the following main points:

The broadcaster said that it had carefully considered both the Code and Ofcom's Guidance on the Code before scheduling the 19:00 repeat season of *Embarrassing Bodies* (which had originally been shown at 21:00). It said that, while Ofcom's

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<sup>3</sup> According to the complainant, section 319(4)(d) of the Act requires consideration of "*the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content*".

<sup>4</sup> The Broadcasting Review Committee is a sub-committee of the Ofcom Board consisting of members of the Ofcom Content Board. It reviews the decisions of the Ofcom Executive in fairness and privacy investigations, broadcasting standards investigations and other licence-related cases where either the complainant or the licensee is able to demonstrate that the decision is materially flawed.

Guidance contains no Rules and confers no rights, it considered that the programme was in accordance with both the Code and the Guidance.

In relation to the *nature of the content*, Channel 4 said that the nudity in this case was justified by the medical and educative context in which it appeared.

In relation to the *scheduling of the programme*, Channel 4 said that the 19:00 slot on Sunday evenings is not traditionally a slot which attracts the attention of under 16 year olds, and that programmes are routinely broadcast in the slot without reference to whether or not they should be appealing for children. The programme was not preceded or followed by programming aimed at children. Over a minute of footage was removed from the version of the programme repeated at 19:00 on 28 March 2010. It was fallacious to assume that because a programme is originally scheduled and broadcast at 21:00 it is a programme *only* suitable for that timeslot. In relation to the *Sex Education Show* Finding, the broadcaster said that Ofcom's decision in relation to *The Sex Education Show* contained no 'Finding' such as that which the complainant suggested.

In relation to the *nature of the channel and audience*, the broadcaster said Channel 4 has a well-established reputation for broadcasting challenging programmes which are innovative and which deal with content in unique and interesting ways. Channel 4 had taken into account the likely composition of the audience for the repeat of the programme. Based on: the historical data; the fact that children's programmes were not expected in the timeslot; and given that there was appropriate signposting associated with the programme, Channel 4 said that there was no reason to think it would be inappropriate for that timeslot. The broadcaster said that the 'potential' audience must be the audience likely to see the programme. A target audience is the audience the broadcaster expects a programme will appeal to or hopes will watch a programme. In every case where a scheduling decision is made, Channel 4 said that it considered the possible effect of the proposed broadcast on the potential and target audiences as well as considering whether viewers who come across the content unawares could or would be affected.

In relation to the *degree of harm and offence* caused, Channel 4 said that given the strict educational and medical context of the programme and the limited and non-sexual nature of the images of male genitalia and the associated discussion, the degree of harm and offence likely to have been caused was low. In relation to Channel 4's 'catch up' service, 4oD, Channel 4 said that 'PIN' code protection is a function generally available on 4oD, and it is not tailored or designed for *Embarrassing Bodies*. The broadcaster added that the version of the programme which was broadcast at 21:00 was the version made available on 4oD. The 4oD version carried a warning which was essentially equivalent to the warning given when the programme was originally broadcast in a post-watershed timeslot.

In relation to the *signalling of the content*, the broadcaster said that great care was taken to ensure that viewers were appropriately prepared for the content of the programmes which were repeated at 19:00. There was a clear unambiguous statement prior to the commencement of the programme correctly flagging its tone and content and, where appropriate, there was specific flagging into each part of the programme about matters such as nudity and graphic surgery. Given the educational and medical tone of the programme and the fact that there were no lingering or inappropriate nude images, there was no reason to think that a viewer coming to the programme unawares would not quickly understand the purpose of the programme and contextualise the content. Channel 4 added that section 319(4) of the Act

imposes no obligations on Channel 4. Rather, Channel 4 said it had to comply with the Code.

## Decision

Ofcom has a duty to ensure that people under eighteen are protected, for example, from material that is unsuitable for them and to ensure that generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and offensive material. Ofcom is required to apply those standards in the manner that best guarantees an appropriate level of freedom of expression.

In relation to protection of under-eighteens and generally accepted standards, Ofcom firstly has to assess the nature of the content and secondly the context in which the content is broadcast, and in the case of content that is unsuitable for children, whether it has been appropriately scheduled.

Importantly, under the Code, there is no absolute prohibition on nudity in programming before the watershed. However, broadcasters must ensure that if nudity does appear before the watershed it is justified by the context.

### Rule 1.3

In this case, the Committee first assessed whether the instances of nudity, and associated discussion including discussion of sexual problems, in the programme constituted material unsuitable for children for the purposes of Rule 1.3. Children are defined in Rule 1.3 as people under the age of fifteen years.

The Committee considered that *Embarrassing Bodies* is an educational programme. Viewers are informed about 'embarrassing' medical conditions that they might face in order to demystify those conditions and alleviate any anxieties viewers might have about them. The Committee considered that, in principle, educational programming on medical matters, and in particular a programme which stresses the importance of viewers not needing to feel anxious or embarrassed by any medical conditions, is not unsuitable for children.

In this case, the Committee considered that the segments of the programme featuring and discussing male genitalia and sexual problems clearly fell within the educational remit of the series. There were two related items which featured male genitalia. The first item dealt with a person with the medical condition 'buried penis syndrome', and sufficient footage of the participant's penis and surgery was shown to illustrate the condition and treatment. The second item featured members of a rugby team being invited to measure their penis size, when aroused and non-aroused, to show the extent to which men's penises vary in size. At two points in the programme, footage was shown of the penis of one of the rugby players being measured. The Committee considered that, although arguably the tone of this item played to the stereotype of 'male locker-room' humour, the reason for the footage of the rugby player's penis was also clear: namely, it was part of the educational message of the programme that there is variation in the size of penises in the population at large. In relation to both the participant with 'buried penis syndrome' and the rugby players, the Committee considered that the images of male genitalia featured in the programme were not lingering or gratuitous, and the purpose of including the images and related discussion in the programme was not sexual arousal.

Consideration was given by the Committee to the complainant's argument that Channel 4's 'catch up' service 4oD deters children from viewing *Embarrassing Bodies* and allows parents to set PIN code protection, suggesting Channel 4 considered that the programme had the potential to cause harm. The Committee noted that the edition of the programme on 4oD was the post-watershed version, which was not identical to the version under consideration. In addition, the Committee noted that PIN code protection is a generic feature of the 4oD service, not put in place specifically for *Embarrassing Bodies*. Therefore the Committee did not consider the presentation of material on 4oD to be a relevant consideration in assessing whether the programme was compliant with the Code.

On balance, the Committee considered that the content was not unsuitable for children. However, the Committee went on to consider whether, if the content were considered unsuitable for children, it had been appropriately scheduled, as required by Rule 1.3 of the Code.

The nature of the content was a set of brief images of male genitalia, featured in a non-sexual context in a medical educational programme. The Committee noted that the programme was an edited-down version of the original which had been broadcast post-watershed. The Committee put particular weight on the fact that whilst other free-to-air public service channels would be likely to schedule programming aimed at a family audience at 19:00 on a Sunday evening, Channel 4 does not schedule programming aimed at children at this time. The Committee noted both the historic trends for child audiences in this time-slot and the low number of child viewers in the audience in this case<sup>5</sup>. The Committee also noted that the scheduling of the programme should be seen in the context of Channel 4's special statutory remit to make and broadcast high quality and diverse programming<sup>6</sup>. The Committee considered that the scheduling of a serious educational programme dealing with medical issues and aimed at an adult audience, as this was, would be within the likely expectations of the audience for Channel 4 at 19:00 on a Sunday evening.

The Committee considered the argument put forward by the complainant about the *Sex Education Show* Finding. In that case, Ofcom considered that an edition of *The Sex Education Show* broadcast at 20:00 was not in breach of the Code but stated that "Ofcom considers *The Sex Education Show* may have just as effectively achieved its educational aims...if it had been broadcast after the watershed". The Committee noted, however, that Ofcom had not stated in the *Sex Education Show* Finding that such medical educational content could not be shown before the watershed. Furthermore, the content considered in the *Sex Education Show* Finding, as well as being for a "serious educational purpose", also suggested "methods of improving sexual technique and arousal" whereas the content in the present case did not cover such issues and was not, therefore, directly comparable. The Committee therefore considered that the programme had been appropriately scheduled.

Given the above, the Committee considered the content to be compliant with Rule 1.3 of the Code.

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<sup>5</sup> Channel 4's figures showed that under sixteens: historically comprised 10% of the audience in this timeslot; and 9% of the audience for the programme.

<sup>6</sup> See sections 198A(1)(a) and 265(3) of the Act.

### Rule 2.3

The Committee then considered whether the images of penises and associated discussion complied with Rule 2.3 of the Code, which requires broadcasters to ensure that material which may cause offence is justified by the context.

The Committee first considered whether the content was potentially offensive. The Committee recognised that the images of male genitalia and associated discussion of intimate medical issues had the potential to cause offence. The Committee then considered whether the inclusion of that material was justified by the context.

As set out above, the Committee considered that nature of the content was a set of brief images of male genitalia and associated discussion, featured in a non-sexual context in a medical educational programme. The programme was broadcast on Channel 4, which has a special statutory remit to make and broadcast high quality and diverse programming. It was broadcast at 19:00 on a Sunday evening, a time at which Channel 4 does not schedule programming aimed at children. Historic trends for child audiences in this time-slot are low, as was the number of child viewers in the audience for the programme. The Committee noted that the programme was scheduled between other programmes targeted at an adult audience (*Channel 4 News* and *Come Dine with Me*).

The Committee considered that the degree of harm or offence likely to be caused by the inclusion of the images of male genitalia and associated discussion of intimate medical issues was low. The programme was educational and, notwithstanding the element of 'male locker-room' humour in the item featuring members of a rugby team, the segments of the programme featuring and discussing male genitalia clearly fell within its educational remit. The images of male genitalia were not lingering or gratuitous, and the purpose of including the images and related discussion was not sexual arousal. The Committee considered the complainant's argument that the presentation of the programme on 4oD suggested that Channel 4 considered that the programme had the potential to cause harm but, noting that the version of the programme on 4oD was the post-watershed version and that PIN code protection is a generic feature of the 4oD service, did not consider it to be a relevant consideration in assessing the degree of harm or offence likely to be caused by the material.

The Committee considered the likely size and composition of the potential audience and the likely expectation of the audience. The Committee noted the complainant's view that the potential audience is an aggregate of all individuals that it is possible for a programme to reach, even inadvertently. The Committee considered that if this approach were adopted, every free-to-air television household would be within Channel 4's potential audience, and that a more appropriate approach would be to consider the audience likely to view this particular programme, on this particular channel, at this particular time. Bearing in mind Channel 4's remit, the fact that it typically schedules thought-provoking programming targeted at an adult audience during the early evening, and the historically low child audience for this timeslot on Channel 4, the Committee considered that it was likely that the potential audience would have been largely composed of adults, and that it was likely that a serious medical education programme would have been within their expectations.

The Committee also considered the extent to which the nature of the content was brought to the attention of the potential audience. The Committee noted that there was the following pre-broadcast announcement:

*“Get ready to learn one of life’s great lessons as our Embarrassing Bodies doctors teach us whatever your medical condition: have no shame, we’re all the same. With full frontal nudity, surgical operations and intimate examinations”.*

There then followed the following voiceover commentary within the programme:

*“In tonight’s show, a man with a penis hard to find...and Dr.Christian is in the locker room getting the measure of men’s willies”*

In addition, prior to each advertisement break, the programme signalled that the next programme segment would be returning to aspects of the discussion of male genitalia.

The Committee considered that these announcements would have brought the nature of the content to the attention of the potential audience before the programme and that the information was reinforced at appropriate points during the programme. This information would have assisted in avoiding or minimising offence.

The Committee considered the effect of the content on viewers who came across it unawares. It considered that the clear medical educational context, and the limited and non-titillatory nature of the images and associated discussion, would have minimised the offence caused by the material and prevented any possibility that it might cause harm to children.

The Committee noted the complainant’s argument that the broadcaster had to comply with section 319(4)(d) of the Act<sup>7</sup>. The Committee considered that this statutory requirement informed the Rules of the Code, including in particular Rule 2.3, and that the Committee therefore did not need to apply section 319(4)(d) directly to the programme.

In conclusion, the Committee considered that the material in the programme which may have caused offence was justified by the context. Therefore, the broadcaster had maintained generally accepted standards and there was no breach of Rule 2.3.

#### Rule 1.21

The Committee considered whether the nudity in the programme, broadcast before the watershed, was justified by the context as required by Rule 1.21 of the Code.

The Committee viewed the contextual factors considered in relation to Rule 2.3 as relevant, in particular the following: Channel 4’s statutory remit to provide high quality and diverse programming; the fact that the programme was scheduled before and after other programmes targeted at an adult audience; and that the images of penises were limited and clearly not for the purposes of sexual arousal.

Given the above, the Committee considered that the inclusion of nudity in the programme was justified by the context and therefore there was no breach of Rule 1.21.

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<sup>7</sup> Section 319(4) of the Act states: *“In setting or revising any standards under this section, OFCOM must have regard, in particular and to such extent as appears to them to be relevant to the securing of the standards objectives, to each of the following matters-...(d) the likelihood of persons who are unaware of a programme’s content being unintentionally exposed, by their own actions, to that content”.*

### Rule 1.2

Finally, the Committee considered whether the programme complied with Rule 1.2, which requires that broadcasters must take all reasonable steps to protect people under eighteen.

The Committee considered that as the programme had been appropriately scheduled under Rule 1.3, and as the nudity and material which may have caused offence was justified by the context under Rules 1.21 and 2.3, the broadcaster had taken all reasonable steps to protect under eighteens. The programme was therefore not in breach of Rule 1.2 of the Code.

**Not in breach**

## Advertising Scheduling Cases

### In Breach

#### Breach findings table

*Code on the Scheduling of Television Advertising compliance reports*

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

- a) on public service channels time devoted to television advertising and teleshopping spots must not exceed:
  - i) on average of 7minutes per hour for every hour of transmission time across the broadcasting day; and
  - ii) subject to (i) above, an average of 8minutes an hour between 6pm and 11pm;

Rule 4(b) of COSTA states:

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

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
UTV	20 November 2010 18:00	COSTA Rule 4a) ii)	UTV transmitted 30 seconds more advertising than permitted during peak.  <b>Finding: Breach</b>
UTV	06 February 2011 16:00	COSTA Rule 4a i)	UTV transmitted 10 seconds more advertising than permitted in a single hour.  <b>Finding: Breach</b>
Comedy Central Extra	09 February 2011 22:00	COSTA Rule 4b	Comedy Central Extra transmitted 21 seconds more advertising than permitted in a single hour.  <b>Finding: Breach</b>

## Fairness and Privacy Cases

### Upheld

#### Complaint by Mr Santokh Singh

*Sikh Channel News, Sikh Channel, 1 August 2010*

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**Summary:** Ofcom has upheld this complaint of unfair treatment made by Mr Santokh Singh.

On 1 August 2010, The Sikh Channel reported allegations that some employees of the Indian Consulate in Milan in Italy (“the Consulate”) were corrupt. It indicated that these employees would not provide services to members of the Sikh community unless they received a bribe. The report said that the bribe money was paid to agents of the Consulate who had been planted in photocopy shops outside the Consulate. Two of the alleged agents were named in the report, one as a Mr Lalli.

In his complaint Mr Santokh Singh said that in addition to his given name he was also known as Mr Lalli.

Mr Santokh Singh complained to Ofcom that he was treated unfairly in the programme as broadcast.

In summary, Ofcom found the following:

- Mr Santokh Singh was treated unfairly in the programme as broadcast in that the broadcaster did not take reasonable care to satisfy itself that: material facts regarding the claim that Mr Lalli was an agent of corrupt officials at the Consulate were not presented, disregarded or omitted in a way that was unfair to Mr Santokh Singh; or that anyone whose omission from the programme could be unfair to him had been offered an opportunity to contribute.
- The claim that Mr Lalli was an agent of corrupt officials at the Consulate constituted an allegation of wrongdoing, and given that the report included no evidence to support this allegation it was particularly important that the broadcaster offer Mr Santokh Singh an appropriate and timely opportunity to respond to this allegation. Mr Santokh Singh was not given such an opportunity by the broadcaster and therefore he was treated unfairly in programme as broadcast in this respect.

#### Introduction

The Sikh Channel is a television service providing educational and religious programming for the Sikh Community. It can be accessed throughout the UK and Europe via Sky television with selected programming available around the world via the internet.

On 1 August 2010, the Sikh Channel broadcast a news programme, which included a report about alleged corruption among the employees of the Indian Consulate in Milan in Italy (“the Consulate”). The report, which included footage of a press conference that took place in the Punjab, indicated that people seeking services from the Consulate were “*treated roughly and in a corrupt manner*” and that they would only receive services, such as getting new or renewed passports and death certificates, if they gave money to agents of the Consulate who had been planted in

photocopy shops outside the Consulate for that purpose. The report also said that the Amritdhari Sikhs (devout Sikhs) were not allowed to enter the Consulate unless they removed their kirpans<sup>1</sup>. Two of the alleged agents were named in the report, one as a Mr Lalli.

Mr Santokh Singh, also known as Mr Lalli, complained to Ofcom that he was treated unfairly in the programme as broadcast.

In order to consider this complaint Ofcom asked an independent translator to provide it with a transcript of the report translated into English<sup>2</sup>. It noted that the broadcaster raised no issues regarding the content of this English language transcript. Ofcom also noted that the words "*Indian Embassy in Italy*", "*the Embassy*" and "*the Indian Embassy*" as well as "*the Consulate in Milan*" were all used in the report and that the translator had advised it that the words "Embassy" and "Consulate" were loan words in Punjabi (i.e. words borrowed from another language, in this case English) and might be used interchangeably. Ofcom considers that all were used to indicate the Indian Consulate in Milan.

## **The Complaint**

### **Mr Singh's case**

In summary, Mr Singh complained that he was treated unfairly in the programme as broadcast in that:

- a) He was unfairly portrayed in that the report falsely accused him of being a corrupt agent of the Indian Consulate in Milan.
- b) He was not given an opportunity to respond to the allegations made about him in the programme.

By way of background Mr Singh said that following the broadcast he had had contact with a representative of the Sikh Channel, Mr Harbhajan Singh Sindhu, who offered to give him an opportunity to respond to the allegations in a future broadcast on the Channel but that this did not happen.

### **The Sikh Channel's case**

In summary the Sikh Channel ("the Channel") responded to Mr Singh's complaint as follows.

The broadcaster explained that it sought to give a candid view of events in the Punjab, including on matters of controversy in politics and business, which often arose from the divisions that were in turn based on differing opinions about how to build a new country and separate from India. The Channel indicated that the report about Mr Singh fitted into this category. It said that the report did not aim to pinpoint any individual but was intended to act as a warning to Sikhs that this practise went on and to warn them about getting involved. It added that it did not act in bad faith and merely showed items of news and current affairs leaving viewers to form their own opinion.

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<sup>1</sup> A kirpan is a dagger which devout Sikhs are required by their religion to wear.

<sup>2</sup> A copy of which was forwarded to the broadcaster.

With respect to Mr Santokh Singh's post broadcast contact with Mr Singh Sandhu, the Channel said that Mr Singh Sandhu seemed to have accepted that the accusations were false and made a gentleman's agreement for Mr Santokh Singh to appear on the Channel to explain his point of view. The Channel had not received a request regarding this matter to date, but there was no reason why Mr Santokh Singh should not appear in a programme in the future.

## Decision

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

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

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

In considering this complaint, Ofcom took account of Rule 7.1 of the Ofcom Broadcasting Code ("the Code"), which provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes.

- a) Ofcom first considered the complaint that Mr Santokh Singh was unfairly portrayed in that the report falsely accused him of being a corrupt agent of the Indian Consulate in Milan.

In considering this part of the complaint, Ofcom paid particular regard to Practice 7.9 of its Broadcasting Code ("the Code") which states that when broadcasting a factual programme broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation; and anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.

Ofcom observed that the report clearly indicated that Sikh people seeking services from the Embassy were "*treated roughly and in a corrupt manner*" and that they would only receive services, such as getting new or renewed passports and death certificates, if they gave money to agents of the Embassy who had been planted in photocopy shops outside the Embassy for that purpose. The report also included footage of a press conference in India at which two individuals, Mr Harbinder Singh and Mr Nishan Singh, made allegations regarding this matter.

In particular, Ofcom noted that Mr Harbinder Singh said "*We have come to India to plead for justice because the Consulate in Milan is not listening to us*". It also noted that, having outlined the nature of the problem he said Sikhs faced when seeking services from the Embassy (notably that "*the agents treat us roughly and the [Consulate's] Counsel colludes with them*"). Mr Harbinder Singh went on to

name the alleged Counsel and one of two agents he said were *“treating our people badly”*.

Mr Nishan Singh said at the press conference that *“the Embassy is creating difficulties for us and we have come to India with a memorandum. Our problems are we do not get passports [and] death certificates and the agents such as Mr Kang or Mr Lalli. They said there is no problem but Das<sup>3</sup> has got all the proofs and one can come to us anytime and see these and consult with us. Das will provide the proof or apologise if he is wrong. We want the agents removed”*.

Ofcom noted that the words *“Indian Embassy in Italy”*, *“the Embassy”* and *“the Indian Embassy”* as well as *“the Consulate in Milan”* were all used in the report. Ofcom considers that all were used to indicate the Indian Consulate in Milan and that viewers of the report would have understood the report to have claimed that Mr Lalli was one of two agents working for corrupt officials at the Indian Consulate in Milan.

Ofcom noted that the Sikh Channel did not challenge Mr Santokh Singh’s assertion that he was also known as Mr Lalli.

Ofcom then went on to consider the basis on which the programme made the claim that Mr Lalli was one of two agents working for corrupt officials at the Indian Consulate in Milan.

In this context, Ofcom noted that the Sikh Channel’s response to the complaint did not refer to the programme makers having gathered any evidence that Mr Lalli was an agent for corrupt officials in the Indian Consulate in Milan or indicate the basis of the testimony of Mr Harbinder Singh and Mr Nishan Singh which was included in the report. Ofcom also noted that the broadcaster did not indicate the identity of the person referred to as *“Das”* by Mr Nishan Singh in the report or explain what *“proof”* he held regarding this matter.

In addition, Ofcom observed that the broadcaster acknowledged that in post-broadcast correspondence with the complainant its representative, Mr Singh Sindu, had accepted that the allegations made against Mr Santokh Singh in the report were false.

In light of these factors, Ofcom considers that the broadcaster took no steps to verify the validity of the claim that Mr Lalli was an agent of corrupt officials at the Indian Consulate in Milan. Consequently, it concluded that the broadcaster did not take reasonable care to satisfy itself that material facts regarding the claim were not presented, disregarded or omitted in a way that was unfair to Mr Santokh Singh. Therefore, Ofcom found that the complainant was portrayed unfairly in the programme as broadcast in this respect.

Before the broadcast the Sikh Channel made no attempt to contact Mr Santokh Singh or anyone else whose potential contribution to the programme might have avoided any potential unfairness to the complainant. The broadcaster therefore did not take reasonable care to satisfy itself that anyone whose omission from the programme could be unfair to the complainant had been offered an opportunity to contribute. Ofcom therefore found that the complainant was portrayed unfairly in the programme as broadcast in this respect also.

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<sup>3</sup> No further information was provided regarding the identity of *“Das”* in either the report or the broadcaster’s response to the complaint.

- b) Ofcom then considered the complaint that Mr Santokh Singh was treated unfairly in that he was not given an opportunity to respond to the allegations made about him in the programme.

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

Ofcom noted that Mr Santokh Singh was also known as Mr Lalli and that, as set out at decision head a) above, Ofcom has concluded that viewers would have understood the report to have indicated that Mr Lalli was an agent of corrupt officials at the Indian Consulate in Milan.

This claim constituted an allegation of wrongdoing on the part of Mr Santokh Singh. Given that the report did not include any evidence to support this allegation and that, on the information available, it appeared to Ofcom that the programme makers did not seek such evidence, Ofcom considers that it was particularly important for the broadcaster to have offered Mr Santokh Singh an appropriate and timely opportunity to respond to this allegation. Further there was no reason on the facts of this case why the broadcaster should have been excused from the requirement to offer the complainant an opportunity to respond before the broadcast.

Mr Santokh Singh was offered a chance to present his view on the matter on the Channel after he complained about the broadcast to the Channel. Ofcom noted that this offer, which had not been fulfilled by the time this complaint was submitted, was repeated in the response to this complaint. However, in light of the fact that Mr Santokh Singh was not made aware of the allegation against him and offered an opportunity to respond to it prior to the broadcast, Ofcom considers that he was not given an appropriate and timely opportunity to respond to the allegation.

Therefore, Ofcom found that he was treated unfairly in this respect.

**Accordingly, Ofcom has upheld Mr Santokh Singh's complaint of unfair treatment.**

**Ofcom has also directed The Sikh Channel to broadcast a summary of this finding.**

## Partly Upheld

### **Complaint by Mrs P made on her own behalf and that of other family members, and on behalf of Mr F (her son)**

*Cutting Edge: My Daughter Grew Another Head and Other True Life Stories, Channel 4, 4 March and 6 June 2010 and More4, 16 May 2010*

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**Summary:** Ofcom has upheld part of this complaint of unwarranted infringement of privacy made by Mrs P on her own behalf and that of other family members, and on behalf of Mr F (her son) in relation to the above programme.

In summary, Ofcom has found that:

- The complainants retained a legitimate expectation of privacy (under Section 8 of the Broadcasting Code) in respect of the particular material broadcast by the programme about the murder of their son/brother by Mr C in 2008.
- Channel 4 did not obtain consent before broadcasting information about the murder of the complainants' son/brother (including his first name and a partial photograph in a tabloid newspaper) under Practice 8.6. However, the infringement of the complainants' privacy in this respect was warranted under the terms of Practice 8.6.
- Nevertheless, having regard to the particular nature and content of the relevant part of the programme (and its potentially distressing effect on the complainants), Channel 4 should at least have informed the complainants (and specifically Mrs P) of its plans for the intended broadcast under Practice 8.19 to reduce their potential suffering and distress. Channel 4 gave no specific reason why taking this step was not "reasonably practicable" under Practice 8.19, and Ofcom considers that its failure to do so was not otherwise warranted under that Practice in the circumstances.
- Channel 4 therefore breached Rule 8.1 of the Broadcasting Code in that respect.

### **Introduction**

On 4 March 2010, Channel 4 broadcast an episode of its *Cutting Edge* documentary strand called *My Daughter Grew Another Head And Other True life Stories* ("the programme"). The programme, which was repeated on More4 on 16 May 2010 and on Channel 4 on 6 June 2010, looked at "true life" stories that people seek to sell to magazines which trade in those stories.

The programme followed a number of journalists speaking about how they sourced 'true life' stories from members of the public and got them published. It was narrated by actor and writer Robert Webb. The programme included people who had had true life stories written about them and other people commenting upon some of the stories. A wide range of true life stories was mentioned in the programme including: a woman who said she could "*speak cow*"; a man who had been impaled on a broomstick; a woman whose husband wore a wedding dress to their wedding; the first man in the UK to have had bottom implants; a woman whose daughter "*grew another head*"; and a man whose girlfriend had "*dumped*" him by faking her own death.

One section of the programme (at just over 13 and a half minutes into the broadcast) followed freelance journalist Angela Epstein as she sought to get a story (to sell to a true life magazine) about the murder of Mr T R (the complainants' son/brother)<sup>1</sup> from a man ("Michael") who was a friend of the murderer, Mr C. The segment first introduced Ms Epstein by showing her standing in a street, talking on a mobile telephone and referring to someone who may have known "*Myra Hindley personally*". (It appeared that Ms Epstein was potentially sourcing another story from a third party on behalf of someone who had a connection with the convicted murderer, Myra Hindley). Ms Epstein was then shown talking to an off-camera programme-maker and explaining her approach to a story.

The programme proceeded to track Ms Epstein on her way to interview Michael, who was introduced by a shot showing him standing in a commercial kitchen and saying straight to the camera: "*My name's Michael, I'm from Leeds and my best friend's a cannibal*". At that point, the programme then cut to someone handling a copy of *The Sun* newspaper, who turned to a page featuring the headline: "*'Cannibal' Murder Trial. Mr Gay fried victim in herbs and had a nibble. He knifed old love*", together with a picture of Mr R. It then showed the person turning to another page of the newspaper which featured the headline: "*Mr Slay UK. Guilty of cannibal murder*". Whilst these images were being shown, the programme included the following commentary:

*"Unsurprisingly when a former Mr Gay UK killed his lover and then ate him it caused a sensation in the tabloids. That was over a year ago but in the true life world stories don't go stale...If Angela can get a fresh first-person angle on the tragedy from the cannibal's best friend, she can breathe new life into the story and earn them both a windfall"*.

The programme showed Ms Epstein interviewing Michael as he stood chopping vegetables next to a kitchen counter. Ms Epstein then proceeded to ask Michael what he understood had happened to the complainants' son/brother on the night that he was killed by Mr C. Michael replied by stating that "*As I believe it now, after T<sup>2</sup> was killed, he [Mr C] carved a big piece of his [Mr R's] chest muscle out, and carved a large piece of his calf muscle out the back of his leg*". Michael stated his belief that Mr C had used his "chef's knives" to perform those acts, and subsequently "*taken the pieces of flesh downstairs to the kitchen where they've been found diced up, and fried and seasoned*." In response to another question from Ms Epstein about what (in Michael's view) Mr C might have been intending to cook, Michael suggested that Mr C might have been "*trying to whip up a boeuf bourguignon, for example*".

Ms Epstein further asked Michael if Mr C had previously done anything which suggested that he had a "*cannibalistic tendency*", by saying (for example) "*Oh, she looks good enough to eat,*" or "*...I wonder what human flesh tastes like...*". Michael said "no", Mr C had never shown any sign of cannibalism, "*never*". He went on to state that Mr C had written to him on occasions, and sent him "*a lot of menu ideas*". Ms Epstein asked Michael whether the "*thought of getting menu ideas from a cannibal*" did not "*turn [his] stomach slightly?*" Michael replied: "*It does in a way, but he was a very good chef. He was a lot better chef than me.*"

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<sup>1</sup> Ofcom has ascribed a T for the murder victim's first name and an R for his surname. This is to enable it to reflect references which were made to Mr T R's first name in the programme.

<sup>2</sup> At this point in the programme Michael used Mr R's first name.

At the conclusion of the interview, the programme showed Ms Epstein leaving the location of the interview with the commentary stating: *“Angela was pleased with her story: ‘Recipes from jail by cannibal chef’. She thought she might get over £1000 for it.”* The programme then showed an off-camera programme-maker asking Michael what he would say his motivation was for selling the story. Michael replied: *“Money. Money, [I] need the extra money. Simple”*. The programme then briefly showed close-up cut-away footage of a chef removing raw meat from plastic wrapping, while a voice from an off-camera programme-maker asked Ms Epstein: *“Is there something sort of a bit uncomfortable about the idea of someone making money out of their friend who’s a murderer?”* The programme then showed further cutaway footage of a chef removing more raw meat from its wrapping, as Ms Epstein replied: *“There is. There is. But then cannibals sell. This is my job. This is what I do. He’s telling his story, and he if didn’t tell it to me, he’d tell it to somebody else. I can’t wrestle with his conscience in terms of having chosen to do that in the first place.”*

This section of the programme concluded by showing Ms Epstein attempting to pitch a story (on the basis of her interview with Michael) to someone called “John” by telephone. The voice-over commentary stated that Ms Epstein *“didn’t get her scoop in the end. Michael had already sold his story elsewhere, with a clear conscience. For Angela this was one trip that didn’t pay off.”*

## **The Complaint**

### **Mrs P’s case**

Following the broadcast of the programme, Mrs P made various complaints in relation to the programme, both on her own behalf and that of various family members. These included that her privacy was unwarrantably infringed in the making and the broadcast of the programme.

By its Entertainment Decision (dated 8 July 2010), Ofcom set out the heads of complaint which it had entertained from Mrs P on her own behalf and that of her son, Mr F (collectively, “the complainants”).

In summary, the heads of complaint which Ofcom entertained from the complainants in relation to unwarranted infringement of privacy were as follows:

- a) Channel 4 did not approach Mrs P for permission to broadcast a story about the murder and cannibalisation of her son Mr R.

By way of background Mrs P noted that other broadcasters had contacted her in order to ask for permission to make a programme about the murder of her son and she had declined to give such permission. She also said that she should have been informed about the plan to show this programme prior to its broadcast, notwithstanding the fact that the story of her son’s murder was in the public domain. And,

- b) Mrs P said that her late son’s name and photograph should not have been shown in the programme without the relevant permission and that disclosing this information in the context of “other trivial matters” was not warranted by the public interest. She also noted that, in contrast to the story about her son, the names of some of the other people featured in the programme who had been the subject of a ‘true life’ story were ‘bleeped’ out.

## Channel 4's case

In response to the entertained heads of complaint set out above, Channel 4 provided detailed written submissions to Ofcom. Before responding to Mrs P's specific complaints, Channel 4 emphasised that it had never been its intention "*to cause distress or upset to Mrs P or any member of her family*", and offered its sincere apologies to the extent that the broadcast of the programme had had that effect. Channel 4 explained that, in view of the distress caused, it had taken immediate steps to amend the master copy of the programme by deleting the reference to the first name of Mrs P's son, and the photograph of him which briefly appeared in the programme. Channel 4 confirmed that the programme would not be re-broadcast (or otherwise made available) by it in the same form, and that the amended version of the programme would not in any way identify Mrs P's son by name or photograph. It also accepted that the steps it had taken to address Mrs P's concerns since receiving her complaint to Ofcom could and should have been taken when she contacted Channel 4 after the first transmission of the programme (on 4 March 2010) and before it was re-broadcast on More 4. Channel 4 re-iterated its apologies for any further upset to the family caused by the unamended repeat and by its failure not to have taken action more quickly to address her concerns.

Nevertheless, Channel 4 maintained that it had acted in good faith, and that the broadcast of the programme had complied with the relevant provisions of Ofcom's Broadcasting Code. In summary, Channel 4 responded to Mrs P's complaint as follows.

By way of context, it explained that the programme formed part of its flagship *Cutting Edge* documentary strand which, it said, embodied its commitment to broadcasting robust documentaries in the public interest. It maintained that the strand regularly deals with difficult and contentious themes, allowing independent and frank analysis of community, nationwide and international issues.

In relation to the programme, Channel 4 said that it addressed the industry trading in 'true life' reporting in Britain, and it approached that subject in a unique and innovative way. The programme considered the ethics of those involved in this industry and sought to understand what made these stories appealing to the public, why, and by whom stories were disclosed for publication. It showed journalists on the track of real life stories which they thought could be attractive to publishers; examined individual cases where stories had been sold; looked at the role of agents in assessing and promoting stories; and showed the consumption of stories by members of the public. Channel 4 considered that, through a series of "vignettes", the programme highlighted the range of bizarre, tragic, and unusual personal stories which were made available to the British public under the rubric of "true stories".

In that context, Channel 4 maintained that the programme was not about the murder of Mrs P's deceased son: it simply examined the attempts by one person to exploit his association with a convicted murderer for financial gain. Channel 4 emphasised that the name of Mrs P's son was mentioned only once in the programme (and it was only his first name) – his surname was not mentioned in order to reduce the scope of his identification and to reduce any potential distress to his family; and no full photograph of Mrs P's deceased son appeared in the programme. Channel 4 asserted that the programme simply illustrated the coverage that was given to the murder of Mrs P's son, and the trial of Mr C, by showing (very briefly) an example of one of the tabloid articles printed about the matter (specifically from *The Sun* on 18 October 2008). That article featured a large photograph of Mr C himself, and a smaller photograph of Mrs P's son which appeared momentarily. Channel 4

considered that it would have been *“very difficult for the overwhelming majority of the audience to have identified Mrs P’s deceased son from such a fleeting partial image”*. However, Channel 4 stressed that it was never the intention to feature a still image of Mrs P’s son in any way and the inclusion of the image *“was entirely accidental”*.

Channel 4 explained the chronological background of the story concerning Mr C’s murder of the complainants’ son/brother. It said that Mr C had committed the murder in April 2008; he had been charged on or around 24 April 2008; the story then broke in the press on 2 May 2008 (whereupon there was significant and sensational reporting of the case, including photographs of Mrs P’s son which are still readily available on the internet); and Mr C was then convicted in October 2008 (sentenced to 30 years’ imprisonment). Against that background, Channel 4 maintained, all of the matters pertaining to the circumstances of the murder of Mrs P’s son which were referred to in the programme were in the public domain and had been since October 2008. Channel 4 added that the programme did not seek to provide any information or insight into the circumstances of the murder; but that bare facts relating to the murder were included in the programme to establish the editorial context for the story that the programme was reporting: i.e. that an associate of a convicted murderer was selling stories about the murderer and that various publications were interested in paying for and publishing those stories.

Channel 4 proceeded to deal with the specific elements of the complaints set out above. Under the heading “No permission”, it stated that the programme *“briefly touched upon”* the factual circumstances concerning the murder of Mrs P’s son and the actions of a man convicted of the murder. It repeated that Mrs P’s deceased son was not, however, in any way *“the focus of the segment”* containing Ms Epstein’s interview with “Michael”. It argued that, by examining the type of story the journalist was interested in pursuing, the sorts of issues and matters which people such as Michael tell journalists, and the way in which journalists seek to profit from what is disclosed, the programme was clearly examining the ethical and moral questions underlying the true stories market. In this respect, Channel 4 referred to the fact that Michael was specifically questioned about his motivation for speaking, and forced to admit that he was motivated by personal monetary gain. It further highlighted that Ms Epstein was also asked about her role, and did not seek to defend it: she simply indicated that she was doing her job and left the ethical question entirely to Michael.

Channel 4 submitted that the programme therefore made it completely clear that no-one in the true stories industry was concerned with the ethical or moral questions, or, if they were, those considerations were discarded in favour of personal monetary gain or notoriety. Channel 4 maintained that these were *“legitimate matters of public interest and concern”* that were appropriate for examination in the programme.

Channel 4 specifically referred to Practice 8.19 of the Ofcom Broadcasting Code (set out below) and said that *“Every effort was taken to reduce the possibility of distress to anyone who knew Mrs P’s deceased son”*. His full name was not given in the programme and, although a fleeting partial image of him from *The Sun* was shown, the intention was to provide the viewer with the context about how the tabloid press dealt with the murder and trial at the time.

Channel 4 argued that the experience of Mrs P’s deceased son *“was not a feature of the programme”*, nor was it an issue that was *“central to”* the programme or that was repeated or dwelt on unnecessarily. In the segment in question, Channel 4 contended, the “feature” was the steps that an associate of the murderer was prepared to take to obtain cash, and the way in which the ‘true life’ industry responds

to those steps. The repetition of matters concerning Mrs P's son, all of which were in the public domain, were ancillary and appropriately limited.

Channel 4 contended that, in all of these circumstances, the broadcast complied with Practice 8.19 of the Broadcasting Code and that, in any event, nothing in the Code required Channel 4 to seek the complainants' permission before the programme could refer to material concerning Mr R.

It argued that there was no legitimate expectation of privacy in relation to the circumstances of the murder of the complainants' son/brother, and that "*Nothing in the programme traversed areas which were not fully published at the time of the arrest and trial of*" Mr C. Those matters were, and remained, matters of public interest and in the public domain.

Alternatively, Channel 4 argued, even if the complainants did have a legitimate expectation of privacy in relation to the circumstances of the murder of their son/brother, any infringement of that expectation was warranted by the circumstances in which the programme was produced. In Channel 4's submission, the programme was in the public interest, and the importance of the subject matter (namely the true stories market in Britain and the ethical, moral and financial considerations bound up in the culture which supports and maintains that market) meant that, given the limited use of material which identified or concerned Mr R, it was appropriate for that material to be included in the broadcast.

However, Channel 4 also accepted that, given the distress that Mrs P and her family had experienced, and with the benefit of hindsight, "*it would have been better to have written to Mrs P to notify her of the broadcast even though, as Channel 4 read the provisions of the Ofcom Broadcasting Code, such notification may not have been strictly necessary.*"

Under the heading of "Inconsistent treatment", Channel 4 referred to Mrs P's reliance on the fact that the identities of some others featured in the programme were obscured, but that of her deceased son was not. In this connection, Channel 4 explained that where identities were obscured in the programme, the circumstances were not identical or similar to that of Mrs P's son. Blurring was used to obscure identity in the programme on only two occasions:

- Michael's fellow chefs at his present place of employment had their identities obscured because the owner of the restaurant was concerned that patrons might mistakenly think that the person convicted of the murder worked at the restaurant where Michael worked. And
- In a segment featuring the attempts made by Dennis to sell his story (that a millionaire had "bought" his wife), the identities of both the millionaire and Dennis's wife were obscured because the court case had not concluded.

Channel 4 said that the programme-makers and Channel 4 editorial staff felt that it was important to make limited passing reference to Mr R by his first name so that viewers understood that he was not just a nameless victim. Channel 4 considered that this helped better contextualise the story of Michael, who clearly knew both the victim and murderer, and revealed the "*extent to which he had no moral qualms about selling his story to the press for financial gain.*" Again, however, Channel 4 accepted that, with the benefit of hindsight, the removal of the reference to the first name of the complainants' son/brother may have helped reduce potential distress to Mrs P.

In reference to what it said was the “*single fleeting visual reference to a partial photograph of Mrs P’s son*”, Channel 4 highlighted that this was part of the “*contemporaneous newspaper reporting at the time of the trial*”. It was included because, without knowing about the earlier publicity given to the murder by Mr C and his trial, viewers could not have understood why there was an opportunity for the murderer’s associate to sell his story. However, Channel 4 further accepted that showing this photograph was “accidental”, and it would have been better not to have shown the image in the programme.

## Decision

Ofcom’s statutory duties include a requirement to secure the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both (i) unfair treatment in programmes included in such services, and (ii) unwarranted infringements of privacy resulting from activities carried on for the purposes of such services: section 3(2)(f) of the Communications Act 2003 (as amended).

In carrying out its duties, Ofcom must have 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 must also 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: see sections 3(4)(g) and 3(3)(a) of the Communications Act 2003 (as amended).

In reaching its decision on the entertained heads of complaint set out above, Ofcom considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and the written submissions provided by both parties.

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

This is reflected in how Ofcom applies Rule 8.1 of Ofcom’s Broadcasting Code (“the Code”) which states that “*Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.*” In relation to that Rule, Section 8 explains that the term “warranted” has a particular meaning: “*It means that where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.*”

Section 8 of the Code then provides a series of “Practices to be followed” by broadcasters. But, as the “Foreword” to Section 8 makes clear, a “*failure to follow these practices will only constitute a breach [of Rule 8.1] where [it] results in an unwarranted infringement of privacy.*” In that context, Ofcom has set out below what it considers are the potentially relevant “Practices” of Section 8 to address in relation

to the particular heads of complaint (set out above) which Ofcom has entertained in this case.

### Relevant Practices of the Code

In relation to the first part of Head (a) of the entertained complaints (namely that Channel 4 failed to approach Mrs P for permission to broadcast a story about the murder and cannibalisation of her son), Ofcom considers that the relevant Practice under the Code is Practice 8.6. That Practice states that *“If the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. [...]”*

In Ofcom’s view, Practice 8.6 is also the applicable provision to consider in relation to Head (b) of the entertained complaints, since the particular complaint under that head was that (in summary) the name and photograph of the complainants’ son/brother should not have been shown in the programme without their (and specifically Mrs P’s) permission, and that disclosing this particular information was not warranted by the public interest.

However, Ofcom considers that the latter part of Head (a) above also contained a discrete element of complaint in relation to an alleged failure by Channel 4 to inform Mrs P of its plan for the programme and its intended broadcast even though her late son’s murder was in the public domain. In Ofcom’s view, that particular complaint relates specifically to Practice 8.19 of the Code which states as follows:

*“Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual programmes.*

- *In particular, so far as is reasonably practicable, surviving victims and/or the immediate families of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past.”*

These, therefore, are the Practices of Section 8 which Ofcom considers are specifically relevant to address in relation to the entertained heads of the complaint set out above. However, in order to establish whether Channel 4 was required to comply with these Practices in the first place, Ofcom considers that the initial starting point under Section 8 is to consider whether the complainants had a “legitimate expectation of privacy” under the Code in respect of the particular material broadcast about the murder of their son/brother.

If so, then it is necessary to consider the particular application of the above Practices in this case, whether Channel 4 failed to comply with them, and whether the infringement of the complainants’ privacy was warranted under those Practices (and under Rule 8.1), either on public interest grounds or otherwise.

### Legitimate expectation of privacy

In this respect, Channel 4’s primary submission was that the complainants did not retain a “legitimate expectation of privacy” at all in respect of the material which was

broadcast about the murder of their son/brother. Specifically, it maintained that *“There is no legitimate expectation of privacy in relation to the circumstances of the tragic murder of Mrs P’s deceased son. Nothing in the programme traversed areas which were not fully published at the time of the arrest and trial of Mr C and those matters were, and remain, matters of public interest and in the public domain.”*

Ofcom does not agree that the complainants had no legitimate expectation of privacy at all in relation to the material which was broadcast about the murder of their son/brother.

The guidance on the meaning of “legitimate expectation of privacy” (which introduces the Practices under Section 8) makes clear that such expectations are circumstance-specific and *“will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place... People under investigation or in the public eye, and their immediate family and friends, retain a right to a private life, although private behaviour can raise issues of legitimate public interest.”*

Practice 8.3 of the Code also makes clear that *“When people are caught up in events which are covered by the news they still have a right to privacy in both the making and the broadcast of a programme, unless it is warranted to infringe it. This applies both to the time when these events are taking place and to any later programmes that revisit those events.”*

In Ofcom’s view, these provisions make clear that persons are not necessarily deprived of expectations of privacy under Section 8 of the Code if information in respect of which they claim a right to privacy has been put into the public domain in the past.

In that context, Ofcom accepts that information about the circumstances surrounding the murder of Mrs P’s son was in the “public domain” to the extent that – as Channel 4 explained – those circumstances were widely reported in the newspapers at the particular time of Mr C’s arrest and his conviction. It further accepts that Channel 4 took some (limited) measures to restrict the information which could specifically identify the complainants’ son/brother.

Nevertheless, considering the particular circumstances of this case by reference to the specific material which was broadcast in the relevant section of the programme, Ofcom considers that the complainants did retain a legitimate expectation of privacy for the following cumulative reasons:

- (a) Information about the murder of the complainants’ son/brother was personal to them and their family, and related to traumatic events which self-evidently would have caused them substantial grief. Were it not for the media attention surrounding the murder of their son/brother, it appears that the complainants were otherwise private individuals who could not be said to be in the public eye.
- (b) As the script in the programme made clear, the reporting of the case in newspapers occurred over a year before the first broadcast of the programme, and was coverage over which it appears the complainants had little (if any) personal control, and which they did not themselves seek to exploit.

- (c) Whilst information on the trial may have remained retrievable on the internet for the public to seek out, the effect of the programme – and its broadcast three times on television by Channel 4 – was to resurrect (or as the programme’s commentary put it, “*breathe new life into*”) the case for the audience in a new way which could (and appears did) have a significant effect on Mrs P. (See below in relation to Practice 8.19).
- (d) In Ofcom’s view, simply revisiting the particular “Mr Gay UK” case in any detail would have had the effect of publicly re-associating the complainants with what followed in the subsequent interview with Michael. But in introducing the section of the programme in which “Michael” was interviewed, the camera also showed (even if briefly and partially) a photograph of the face of the complainants’ son/brother in a newspaper, which made him much more readily identifiable (particularly to those who knew him, including the complainants) and added to the complainants’ association with what followed.
- (e) The victim was further identified by his first name “T” (within about a minute of the pictures of the tabloid headlines) at the start of the subsequent interview with Michael, the self-proclaimed “best friend” of the “cannibal”.
- (f) Finally, and significantly, the interview with Michael then provided graphic details specific to “T’s” case about exactly what Michael understood Mr C did to the complainants’ son/brother (and his dead body) on the night that he was killed. (Those graphic details – and the surrounding presentation of the interview – are set out in the Introduction and are considered more fully below in relation to Practice 8.19).

Taken together, Ofcom is satisfied that the above circumstances meant that the complainants’ retained a “legitimate expectation of privacy” under the Code in respect of the particular material broadcast in the programme. However, Ofcom recognises that this expectation may have been of a lower order in respect of bare information about the murder of the complainants’ son/brother in consequence of it having been in reported in the public domain.

In that context, Ofcom considers below the application of the specific Practices of Section 8 identified above, and whether any failure by Channel 4 to comply with them was “warranted” under those Practices.

#### Practice 8.6

As set out above, Ofcom considers that the first part of Head (a) and the complaint under Head (b) have to be considered together in relation to Practice 8.6 since they both relate to an alleged failure by Channel 4 to obtain permission (i.e. consent) from the complainants to broadcast the story about the murder of their son/brother and even to include his name/image in the programme. Practice 8.6 states that “*If the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. [...]*”

Channel 4 did not dispute that it did not seek permission or consent from the complainants to broadcast information about the murder of the complainants’ son / brother. Rather, it submitted that nothing in the Code required it to obtain permission from the complainants before the programme could feature material concerning their deceased son/brother. It contended that the complainants did not have any relevant legitimate expectation of privacy. (Ofcom has not accepted that argument for the

reasons set out above). Alternatively, Channel 4 contended, if the complainants did have a legitimate expectation of privacy in this case, then *“the circumstances in which this programme was produced were sufficient to warrant an infringement of any such expectation”*.

In that connection, Channel 4 maintained that the programme was *“entirely in the public interest and concerned a topic of importance and substance: the ‘true stories’ market in Britain and the ethical, moral and financial considerations bound up in the culture which supports and maintains that market. The importance of the subject matter...meant that, given the ancillary and appropriately limited use that was made of material which identified or concerned Mrs P’s deceased son, it was appropriate for that material to be included in the broadcast.”*

In further arguing that the programme was justified on public interest grounds, Channel 4 went on to contend in its submissions that the *“inclusion of limited information about the circumstances of the murder of Mrs P’s deceased son was in the public interest because that information established the context for the segment in which it occurred”*. Channel 4 submitted that the programme was clearly examining the ethical and moral questions which underlie the “true stories” market, in particular: *“by examining the type of story the particular journalist [i.e. Ms Epstein] was interested in pursuing (in this case, ordinary people connected to sensational murder cases), the sorts of issues and matters which disclosers (in this case, the murderer’s associate Michael) tell journalists and the way in which journalists seek to profit from what is disclosed”*.

Having fully considered those submissions, Ofcom accepts that the general story about the murder of Mr R (including the brief mention of his first name and showing of a photograph in a tabloid newspaper) was addressed in the context of a programme which sought to examine the market for “true life” journalism in Britain, and the motivations of journalists and contributors who trade in these stories. That purpose was clear in the particular section of the programme which contained Michael’s interview because it concluded by showing him being asked what had motivated him to tell his story (which he frankly admitted was “money”), and then featured Ms Epstein clearly being asked to justify her attempted facilitation of selling Michael’s story to the press for their mutual financial gain. The programme further made clear that she had failed in her attempt to profit from Michael’s story as he *“had already sold his story elsewhere, with a clear conscience...”*.

In Ofcom’s view, these were legitimate matters of public interest for examination in the wider context of the programme. Furthermore, Ofcom is mindful that the information in respect of which the complainants (and Mrs P in particular) maintained Channel 4 should have obtained their prior permission / consent to broadcast was the general story about the murder of their son/brother<sup>3</sup>, and specifically his first name and photograph. It also accepts Channel 4’s explanation as to why others in the programme had their identities fully obscured, whereas only limited steps were taken to restrict any material identifying the complainants’ son/brother.

Accordingly, having due regard to broadcasters’ freedom of expression, recognising that the past reporting of bare information about the murder of the complainants’ son/brother lowered their expectation of privacy in respect of it, and bearing in mind the limited use that was made of the photograph and first name of Mr R (which has now been further limited through amendment to the master copy of the programme),

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<sup>3</sup> Specifically Mrs P complained in her complaint form that Channel 4 never approached her or her family for permission to “speak about” her son’s murder.

Ofcom considers that the infringement of the complainants' privacy in the broadcasting of these particular matters was warranted under Practice 8.6.

However, as set out below, Ofcom considers that the nature and content of the particular interview with Michael (as it was presented in the programme), and the distress which it may have caused to the complainants as a result, requires more specific consideration under the terms of Rule 8.19.

### Practice 8.19

Practice 8.19 is different from Practices in other parts of Section 8, and from Practice 8.6 in particular, as it addresses the potential suffering and distress which might be caused to "*victims and/or relatives when [broadcasters make or broadcast] programmes intended to examine past events that involve trauma to individuals (including crime)...*".

For that reason, Practice 8.19 requires that "*Broadcasters should try to reduce the potential distress to*" such victims and/or relatives "*...unless it is warranted to do otherwise*". The Practice then goes on to provide (in a bullet point) what steps are contemplated in this respect, and states that (emphasis added):

*"In particular, so far as is reasonably practicable, surviving victims and/or the immediate families of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past."*

It is clear from the terms of the bullet point to Practice 8.19 that it does not (by contrast with Practice 8.6) guide or require broadcasters to obtain (prior) consent or permission from relevant surviving victims and/or immediate relatives to broadcast material: it simply contemplates broadcasters seeking to reduce potential distress to victims and/or relatives by, "*so far as is reasonably practicable*", informing them of the "*plans for the programme and its intended broadcast*". The bullet point is also expressed to apply "*even if the events or material to be broadcast have been in the public domain in the past*", which was the case in the circumstances of this complaint.

In addressing this particular provision, Channel 4 accepted that it had not sought to inform the complainants of its plans for the programme and its intended broadcast. But it argued that (by reference to the particular terms of the bullet point in Practice 8.19) "*the experience of Mrs P's deceased son was not a feature of the programme*" (Channel 4's emphasis) and that, while there "*was a brief reference to it in one segment of the programme; it was not an issue that was central to the programme or which was repeated or dwelt on unnecessarily. In the segment in question, the feature is the steps an associate of the convicted killer ...is prepared to take to obtain cash...*" (Channel 4's emphasis). Channel 4 further argued that the relevant segment in the programme only "*briefly touched upon*" the factual circumstances concerning the murder of the complainants' son/brother by Mr C, and that "*Mrs P's deceased son was not, in any way, the focus of the segment*".

Having carefully considered those submissions, and thoroughly reviewed the relevant segment of the programme, Ofcom is satisfied that the terms of the bullet point in Practice 8.19 did properly apply to the circumstances of this particular case. Ms Epstein's interview with Michael was the central item presented in this particular section of the programme, and its opening was entirely focused on what Michael

understood had happened to the complainants' son/brother on the night that "T" was killed by Mr C. That was the very first question put by Ms Epstein to Michael in this segment, and it prompted Michael then to describe in explicit detail: (a) how Mr C "*carved a big piece of his chest muscle out and carved a large piece of his calf muscle out...*" using (so Michael believed) his chef knives, and (b) what Mr C did when he went down to the kitchen having carried out those acts. He even speculated that Mr C might have been "*trying to whip up a boeuf bourguignon, for example*". No other murder or victim was discussed in relation to Mr C: it was specifically the murder of Mr R which provided the basis for Michael to go on and talk about Mr C never having shown a "cannibalistic tendency", and the fact that he still received "menu ideas" from a convicted killer, with a view to selling his story to a 'true life' magazine.

Accordingly, Ofcom is satisfied that, for the purposes of the bullet point in Practice 8.19, this segment of the programme did "feature" (through Michael's explicit discussion of Mr R's murder) the "experience" of the complainants' son/brother as a specific victim of cannibalism at the hands of a particular murderer. Furthermore, insofar as the bullet point is expressed to apply within the wider provision of Practice 8.19, Ofcom is also satisfied that this section of the programme did "examine" (even if comparatively briefly, as part of a wider illustration of a person seeking to exploit the market in true life stories) the "past event" of Mr R's murder by Mr C in the sense contemplated by the first paragraph of Practice 8.19.

As to the potential of this section of the programme to cause distress to the complainants, Ofcom considers that the nature and detail of the descriptions provided by Michael clearly had the very real potential to cause severe distress to the complainants, and to Mrs P in particular. (In this respect, Ofcom notes that Mrs P originally claimed in her complaint form that the programme did cause her severe distress – when it showed her son's photograph and mentioned his murder – in that it induced her to have a panic attack and set back nervous conditions for which she was receiving counselling. While she did not specifically focus on the details of Michael's descriptions, Ofcom considers that they would clearly have contributed to the potential distress initially caused to her by references to her son at the start of the interview with Michael.)

Furthermore, Ofcom considers that the surrounding presentation of the interview in the programme also had the potential to intensify the distressing impact of this segment on the complainants given that it showed Michael chopping food in a kitchen (using the very implement which he described Mr C as having used on the body of the complainants' son/brother) and subsequently included close-up cut-away shots of a chef handling raw meat. In Ofcom's view, that was an obvious sensitivity to which the programme-makers and Channel 4 could reasonably have been expected to be aware in considering whether it was appropriate to inform Mrs P about their plans for the intended broadcast.

Ofcom accepts Channel 4's point that the inclusion of the graphic descriptions about Mr C's treatment of the body of the complainants' son/brother may have been necessary and justified to contextualise the particular story in this segment, and in particular to illustrate the point that Michael clearly both knew Mr C and had no compunction about revealing explicit details in respect of his friend's cannibalistic practices for personal financial gain. But Ofcom does not consider that a specific justification or warrant for not having at least warned the complainants (and Mrs P in particular) about Channel 4's plans for the programme (and specifically for its intended broadcast of the interview with Michael), in the manner contemplated by

Practice 8.19, in order to reduce the potential distress that obviously might have been caused to the complainants in consequence of watching the programme.

Equally, Ofcom is not persuaded that the wider public interest considerations which it has decided (in relation to Practice 8.6) warranted the inclusion in the programme of information about Mr R's murder (together with his first name and a brief image of him in a tabloid newspaper) without the complainants' consent also provided a specific justification for not having taken the protective steps set out by Practice 8.19. Ofcom cannot see any reason of public interest for not having taken steps to inform the complainants in the manner envisaged by that Practice. In Ofcom's view, those were appropriate and proportionate steps to have taken in the particular circumstances of this case when balanced against the potential effect of the relevant section of the programme on the complainants (as the immediate relatives of Mr R).

In light of the above, Ofcom does not accept Channel 4's submission that *"Every effort was taken to reduce the possibility of distress to anyone who knew Mrs P's deceased son"* (i.e. by not giving his full name in the programme and making sure that the (partial) image of the complainants' son/brother in *The Sun* newspaper was only shown briefly by the camera). As explained above, Practice 8.19 does not apply to just *"anyone who knew Mrs P deceased son"*: it provides that broadcasters should, *"so far as is reasonably practicable"*, inform surviving victims and/or the immediate families of those whose experience is to feature in the programme of the plans for that programme and its intended broadcast.

Channel 4 did not advance in its submissions any particular reason why, in the circumstances of this programme's production, it was not *"reasonably practicable"* for it (or the relevant programme-makers) to at least inform Mrs P of its plans for the intended broadcast. Indeed, Channel 4 accepted that *"with the benefit of hindsight, it would have been better to have written to Mrs P to notify her of the broadcast even though, as Channel 4 read the provisions of the Ofcom Broadcasting Code, such notification may not have been strictly necessary."*

Accordingly, since Ofcom is satisfied that Channel 4 did not give any reasons why it was not *"reasonably practicable"* at least to notify Mrs P in the way that it now accepts would have been preferable, and since Ofcom can see no specific justification (on public interest grounds or otherwise) for Channel 4's failure to do so, Ofcom has found that the programme has therefore breached Practice 8.19 of the Code.

Ofcom acknowledges the sincere apologies advanced by Channel 4 for any distress or upset caused by the programme to the complainants and their family, and its acceptance that the steps which it has now taken to amend the master copy of the programme could and should have been taken when Mrs P first contacted Channel 4 after transmission of the programme (and prior to its repeat on More 4). Nevertheless, in Ofcom's view, that suffering and distress may have been reduced in the first place if Channel 4 had sought to comply with the terms of Practice 8.19.

**Accordingly, Ofcom has upheld part of Mrs P's and Mr F's complaint of unwarranted infringement of privacy.**

## Partly Upheld

### Complaint by Mr Richard Skeggs

*Balitang Europe, ABS-CBN News Channel, 13 and 20 September 2009*

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**Summary:** Ofcom has partly upheld Mr Skeggs' complaint of unfair treatment. Ofcom has not upheld Mr Skeggs' complaint of unwarranted infringement of privacy either in the making of the programmes or in the programmes as broadcast.

These programmes consisted of a two-part investigation into allegations that Mrs Helena Skeggs had borrowed over £600,000 from 50 Filipinos in London by making fraudulent claims and that the victims had been unable to recover the monies from her or her husband Mr Richard Skeggs.

Mr Skeggs complained that he was treated unfairly in the programmes as broadcast and that his privacy had been unwarrantably infringed in the making and the broadcast of the programmes.

In summary Ofcom found the following:

#### Fairness

- The broadcaster had taken reasonable steps in not presenting, disregarding or omitting material facts relating to the allegation against Mr Skeggs contained in the programmes, namely that cheques issued by him had bounced, in a way that was unfair to Mr Skeggs.
- However, the broadcaster did not offer Mr Skeggs an appropriate and timely opportunity to respond to the allegations contained in the programme. This was unfair.

#### Privacy

- The broadcaster was given photographs of Mr Skeggs and his family by people who claimed to be owed money. The broadcaster therefore did not infringe Mr Skeggs' privacy in order to obtain the photographs and in the making of the programme.
- Mr Skeggs' privacy was not unwarrantably infringed by the broadcast of photographs of him and/or his family. The photographs disclosed no personal or sensitive information about Mr Skeggs and he did not have a legitimate expectation of privacy in relation to them.
- The broadcast of extracts from a letter before action written by Mr Skeggs' solicitors to the broadcaster did not unwarrantably infringe his privacy, as it was in the public interest that comments made by Mr Skeggs' solicitors that were relevant to the allegations made about him in the programme, were included in the programme.

## Introduction

On 13 and 20 September 2009, ABS-CBN News Channel (“ABS-CBN” or “the Broadcaster”), a 24 hour news channel for the Philippines, broadcast two editions of *Balitang Europe*, a community news programme providing information for Filipinos in Europe. The programmes consisted of a two-part investigation into allegations that Mrs Helena Skeggs had borrowed substantial sums of money from 50 Filipinos in London which they had been unable to recover from her or her husband, Mr Richard Skeggs.

The programmes featured a number of people who said they had lent money to Mrs Skeggs, but had not been paid back. The programmes stated that the creditors had received cheques that bounced, including cheques issued by Mr Skeggs and/or Mr and Mrs Skeggs’ company, Quadro Limited; that County Court judgments against Mrs Skeggs had not been satisfied and that she had not responded to complaints made to the Philippine Embassy in London.

In both programmes it was stated that the broadcaster had tried to contact Mr and Mrs Skeggs to get their side of the story and in the programme broadcast on 20 September 2009 an extract from a letter from their solicitors was broadcast which stated “*Although it is true that our clients have, like many people, recently experienced financial difficulty ...*”. The programme also stated that their representatives had informed the broadcaster that Mrs Skeggs would be able to repay her debts soon, that the accusations against Mr and Mrs Skeggs were untrue and that in some cases they were owed money by the people making claims.

Mr Skeggs was not a participant in the programmes, but both programmes broadcast a number of photographs of him, Mrs Skeggs, and his 13-year old daughter.

Mr Skeggs complained to Ofcom that he was treated unfairly in the programmes and that his privacy had been unwarrantably infringed in the making and broadcast of the programmes.

## The Complaint

### Mr Skeggs’ case

In summary, Mr Skeggs complained that he was treated unfairly in the programmes as broadcast in that:

- a) He was unfairly portrayed as a fraudster who had conned 50 people out of money, although he had not been charged by the authorities.
- b) He was not given an opportunity to respond to the allegations.

By way of background, Mr Skeggs said that no effort was made to contact either him or Mrs Skeggs to get their views and that, prior to the programme broadcast on 13 September 2009, his legal adviser tried to obtain details of the allegations from the broadcaster, but received no response.

In summary, Mr Skeggs complained that his privacy was unwarrantably infringed in the making of the programmes broadcast on 13 and 20 September 2009 in that:

- c) Photographs of him and his family were illegally taken from his home and were included in the programme.

In summary, Mr Skeggs complained that his privacy had been unwarrantably infringed in the programmes as broadcast in that:

- d) Photographs of him and his family, illegally taken from his home, were included in the programme broadcast on 13 September 2009.
- e) Extracts from a letter sent to the broadcaster by his solicitors were included in the programme broadcast on 20 September 2009.

#### **ABS-CBN's case**

- a) ABS-CBN first responded to the complaint that Mr Skeggs was unfairly portrayed as a fraudster who had conned 50 people out of money.

ABS-CBN said that it was approached by several members of the Filipino community in the United Kingdom ("the interviewees") with a story about a Filipina based in London who had not fully repaid substantial amounts of money borrowed from them. Each of the interviewees told the broadcaster that a woman known variously as Helena Garcia Pedroche, Helena Marcos Skeggs and Mrs Helena Skeggs befriended them, took them out for dinner or gave them presents. In this way, ABS-CBN said that she gained the interviewees' trust and then was able to ask them for money or the use of their credit cards. ABS-CBN said that the reasons Mrs Skeggs gave for wanting the money were many and various and that she would introduce herself as a millionairess and an illegitimate daughter of the late Philippine President Marcos.

ABS-CBN said that some interviewees said Mrs Skeggs had paid back some of the money she had borrowed, but never all of it and eventually it became very difficult to collect anything from her. ABS-CBN said the broadcaster was shown several cheques which had bounced, signed by Mr Skeggs, who it thought was either the partner or husband of Mrs Skeggs.

ABS-CBN said that it had approached the making of the programmes on the basis of substantial research undertaken over the course of three months and documentary evidence provided by individuals who had been affected. It had interviewed numerous witnesses and had collected supporting documentation including copy County Court judgments and bounced cheques signed by Mr Skeggs.

- b) ABS-CBN responded to the complaint that Mr Skeggs was not given an opportunity to respond to the allegations.

ABS-CBN said that the programmes did not state that Mr Skeggs was a "fraudster" who had "conned" 50 Filipino people out of money, but it recognised that the programmes could be interpreted as making that allegation and ABS-CBN therefore accepted that the programmes alleged wrongdoing on the part of Mr Skeggs.

However, ABS-CBN said that it had given Mr Skeggs several opportunities to respond, both before and after the broadcasts of the programmes, which he declined. ABS-CBN said it made a number of attempts between June and September 2009 to contact Mr and Mrs Skeggs so that it could obtain their side of the story. ABS-CBN said that prior to the broadcast of the programmes, the reporter visited Mr Skeggs' home in an attempt to make contact with him and obtain his comments. It sent an email to Mrs Skeggs' representative, Mr

Englefield, but received no reply. It tried to call the mobile phone numbers of Mrs Skeggs, but again there was no answer. Sometime in July 2009 ABS-CBN said that Mrs Skeggs phoned its reporter but all she did was to scream and rage. Mrs Skeggs also telephoned from her representative's office screaming and saying "*I am not a bad person. I did not point a gun at them and you cannot show me on TFC*". ABS-CBN said that during this telephone conversation its reporter asked Mrs Skeggs about the fraud allegations and also asked her for an interview.

ABS-CBN said that it made clear in the commentary to the programmes that Mr Skeggs had been approached, but that he had chosen not to contribute or appear. ABS-CBN said that Mr Skeggs had also declined to give his side of the story when offered the opportunity to do so subsequently. Furthermore ABS-CBN said that it had broadcast comments made by Mrs Skeggs and her representatives, including her denial of the debts and the counter-allegations that in fact it was Mr and Mrs Skeggs who were owed money.

ABS-CBN responded to the complaint of unwarranted infringement of privacy in the making of the programme as follows:

- c) ABS-CBN responded to the complaint that Mr Skeggs' privacy was unwarrantably infringed in the making of the programme broadcast on 13 September 2009 because photographs of him and his family were illegally taken from his home.

ABS-CBN said no member of its news team or anyone affiliated with ABS-CBN entered Mr Skeggs' residence or removed any photograph from his home. It said that the photographs used in the programmes were provided by interviewees who complained about the treatment they had received from Mrs Skeggs. ABS-CBN said it had no reason to believe that the photographs it received from interviewees were anything other than the property of the individuals in whose possession they were. One interviewee informed ABS-CBN that the photographs she provided were taken by her at an airshow in July 2008 and that she had paid for the prints. Another interviewee provided a statement confirming she had witnessed photographs being handed to the reporter at one of the group meetings.

ABS-CBN responded to the complaint of unwarranted infringement of privacy in the programme as broadcast as follows:

- d) ABS-CBN responded to the complaint that Mr Skeggs' privacy was unwarrantably infringed in the programme broadcast on 13 September 2009 because photographs of him and his family were broadcast.

ABS-CBN accepted that photographs of Mr Skeggs were used in the programmes without his consent. However, it said that the use of the photographs was warranted because it was in the public interest to show Mr Skeggs' image and that the public interest outweighed his right to privacy. It said that Mr and Mrs Skeggs' activities did not take place in the privacy of their own home, but were in the public arena. ABS-CBN also said that some of the allegations and evidence had already appeared on the internet and were therefore already in the public domain.

- e) ABS-CBN responded to the complaint that Mr Skeggs' privacy was unwarrantably infringed in the programme broadcast on 20 September 2009 because extracts from a letter sent to the broadcaster by his solicitors were included in the programme.

ABS-CBN said that by Mr Skeggs' own admission the letter was sent to ABS-CBN by his solicitors. It was not sent "without prejudice" and therefore its contents were open and not restricted in any way. ABS-CBN said that the letter was written to and addressed to it and that it was therefore entitled to use it in any way it wished. ABS-CBN said that there was no infringement of Mr Skeggs' privacy in it doing so. Furthermore, it said that it was under an obligation to use the letter and extracts from it, as to omit the letter would have brought it into breach of Practice 7.9 of Ofcom's Broadcasting Code ("the Code").

### **Mr Skeggs' response**

- a) As regards the complaint that he was portrayed as a "fraudster", Mr Skeggs said that the two programmes alleged that he assisted Mrs Skeggs in defrauding various third parties but that ABS-CBN had provided no evidence that he had "conned", "defrauded" or "victimised" anyone.

Mr Skeggs said that Mrs Skeggs had borrowed money from certain third parties and that on a number of occasions he had sought to repay her debts. Some cheques had bounced as a result of a simple mistake in respect of finances. Mr Skeggs said that this could not be said to be fraudulent. He said that as soon as a bounced cheque was brought to his attention he apologised and paid the monies in cash wherever possible. Mr Skeggs said he did not think such matters were newsworthy and, as the cheques were not in respect of monies owed by him, it could not be said that he had "conned", "defrauded" or "victimised" anyone.

Mr Skeggs said that ABS-CBN had not sought, or been able, to substantiate any of the very serious and distressing allegations against him.

- b) As regards opportunity to respond, Mr Skeggs noted that ABS-CBN stated that it "*exerted all efforts to get the spouses' side of the story but they could not be contacted by phone*" and that the reporter said that he gave Mr Skeggs "opportunities to be interviewed to give [his] side of the story" and that he made "a number of attempts between June and September 2009 to contact Helena and Richard Skeggs".

Mr Skeggs said that, from the evidence provided by ABS-CBN, the only effort made appeared to be a single visit to his house when he was not there. Mr Skeggs said that no note or letter was left informing him of ABS-CBN's visit or setting out the subject matter of the programmes and no further effort to contact him appeared to have been made.

Mr Skeggs said that the first he knew of the programmes was on 13 September 2009. As soon as he became aware of the broadcast, Mr Skeggs said that he emailed ABS-CBN on the email address listed on Ofcom's website to seek details of the allegations being made against him, but that he never received a response to the email.

Mr Skeggs said that ABS-CBN had also referred to two emails sent by the reporter. However, the emails were sent to Mrs Skeggs' representative, who did not represent Mr Skeggs, and they were sent after the date of the first broadcast.

Mr Skeggs said that he was not contacted by the reporter at any time and that the reporter made one aborted effort to contact him prior to 13 September 2009. Mr Skeggs said that considering the gravity of the allegations being made against

him, he considered that was manifestly not an “appropriate and timely opportunity to respond”.

- d) With reference to the use of photographs of him in the broadcast, Mr Skeggs said that the inclusion of images was not justified in the public interest, as all he had done was make some failed (and some successful) attempts to pay someone else’s debts. That alone did not represent a matter of public interest that would outweigh his right to privacy.

### **ABS-CBN’s final response**

- a) As regards the complaint that Mr Skeggs was portrayed as a “fraudster”, ABS-CBN said that there was substantial evidence that a number of cheques issued by Mr Skeggs had bounced. This was of particular significance to the Filipino community because in the Philippines, the making and issuing of a cheque without sufficient funds was a criminal offence. ABS-CBN said that this was analogous to the position in the UK, where it was a criminal offence for a person knowingly to cause a cheque to be written that he or she knows will not be honoured. ABS-CBN said that there was a fine line between “knowing” and “being mistaken” and that it was shown 10 bounced cheques signed by Mr Skeggs dating from November 2005 to June 2009. It considered that the evidence presented to it showed that there was a serious case to be answered by Mr Skeggs.
- b) In relation to the complaint that Mr Skeggs was not given an appropriate and timely opportunity to respond, ABS-CBN said that the reporter attempted to make contact with Mr and Mrs Skeggs on numerous occasions between June and September 2009 to obtain their side of the story. He tried to make contact by telephone on the numbers provided to him by his sources and had a telephone conversation with Mrs Skeggs on 3 July 2009 when Mrs Skeggs called his mobile phone directly. ABS-CBN said that the reporter told Mrs Skeggs that he wanted to obtain Mr and Mrs Skeggs’ side of the story and that it was evident that Mrs Skeggs knew about the nature of the allegations that were being made. The reporter believed that Mrs Skeggs would discuss the matter with Mr Skeggs. ABS-CBN said that the reporter asked Mrs Skeggs for an interview with her and her husband and that she declined.

ABS-CBN said that it did not accept that the first Mr Skeggs knew of the programmes was 13 September 2009. ABS-CBN said that Mrs Skeggs knew that the programme was being made from the conversation she had with the reporter on 3 July 2009 and that it was legitimate for ABS-CBN to expect that she would mention it to her husband. ABS-CBN said that it received an email from Mr Skeggs on 13 September 2009, but was unable to respond as on 15 September 2009 it received a letter about the matter from Mr and Mrs Skeggs’ solicitors. It considered that it would not have been appropriate for it to respond directly to Mr Skeggs once solicitors had been instructed. ABS-CBN said that if Mr Skeggs had merely made mistakes in relation to his financial affairs and the bounced cheques, it was reasonable for ABS-CBN to expect that he would get in touch to tell them as much.

- d) As regards the use of photographs of Mr Skeggs in the broadcast, ABS-CBN said that the programmes had revealed more than the fact that Mr Skeggs had made some failed attempts to repay someone else’s debts. ABS-CBN said that any infringement of Mr Skeggs’ privacy was warranted, as it was in the public interest to broadcast the programmes and expose Mr Skeggs’ actions.

ABS-CBN also said that there were internet sites featuring Mrs Skeggs' story, referring to Mr Skeggs and using the same documents and photographs as were shown in the programmes. These pre-dated the programmes and the documents and photographs were therefore already in the public domain before they were shown in the programmes.

## **Decision**

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

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

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

## **Provisional Decision on Fairness**

Ofcom's Executive came to a Provisional Decision to uphold Mr Skeggs' fairness complaints. In summary, the Executive found that:

- The information included about Mr Skeggs in the programmes would have left viewers with the clear impression that he had fraudulently obtained substantial sums of money from 50 people. In the absence of any evidence to support the allegation and as Mr Skeggs was not given an appropriate and timely opportunity to respond to the allegation, the programmes resulted in unfairness to him.
- The broadcaster was given photographs of Mr Skeggs and his family by people who claimed to be owed money. The broadcaster therefore did not infringe Mr Skeggs' privacy in order to obtain the photographs and in the making of the programme.

## **Review of Provisional Decision on Fairness**

ABS-CBN requested and was granted a review of the fairness elements of the Provisional Decision. The Broadcasting Review Committee ("the Committee"), a sub-committee of the Ofcom Board consisting of members of the Ofcom Content Board, independently re-considered the fairness part of the Provisional Decision in accordance with paragraphs 38 and 39 of Ofcom's Procedures for the handling of Fairness and Privacy complaints ("the procedures").

### **ABS-CBN's Request for Review**

In summary, ABS-CBN said that it was absolutely clear that at no time did the broadcasts either directly or indirectly portray Mr Skeggs as someone who had fraudulently obtained substantial sums of money from 50 people. It said that behaviour was only linked to his wife, Mrs Helena Skeggs. ABS-CBN said that no such words in the programme were associated with Mr Skeggs and apart from

alleging that he had written cheques that had bounced, nothing further was attributed to him. It said that whether this behaviour amounted to fraudulent behaviour was never commented on directly and in any event would have been a question of evidence for determination in any potential criminal proceedings.

ABS-CBN said that it had reviewed its previous submission and on reflection and on thorough review, it now retracted the statement made in its previous submission that it “accepted that the first programme accused Mr Skeggs of wrongdoing and that while the words ‘fraudster’ and ‘conned’ had not been used in the programme about Mr Skeggs, ABS-CBN recognised that it was a possible interpretation of the content of the programmes”. Having again reviewed the broadcasts, ABS-CBN said that it did not accept that viewers would have been left with the impression that Mr Skeggs had committed fraud or conned anyone.

ABS-CBN said that it did accept that the programmes raised issues that Mr Skeggs may have wanted to address and it argued that it attempted to give every opportunity to Mr Skeggs to do so but that Mr Skeggs did not respond to telephone calls. ABS-CBN said that it believed its contact details and those of its reporter were known to Mr Skeggs since these were known to Mrs Skeggs and her legal advisor and were in any event a matter of public record. It said that at no time since the broadcasts had Mr Skeggs made any attempt to put his side of the story or explain the bounced cheques. ABS-CBN said that other broadcasters had also tried to get in contact with Mr Skeggs, but that he had not responded to them either.

#### *Broadcast of 13 September 2009*

ABS-CBN said that this programme clearly focused on the activities of Mrs Skeggs. It said that the allegations by the ‘victims’ related only to activities which the broadcaster stated were ‘allegedly’ linked with her. It said that the programme did not make any judgement about the truth of what it had been told. ABS-CBN said that the programme referred throughout only to allegations.

ABS-CBN said that Mr Skeggs was only named twice in this report, and that the first was a factual reference to ‘allegedly’ bounced cheques signed by him, made payable to some of the individuals who had complained to it. ABS-CBN said that although it had been provided with copies of bounced cheques in advance of the broadcast, the programme only stated that it had been alleged that they had bounced. It said that the second reference to Mr Skeggs was in the final commentary from the studio when the broadcaster relayed what it had been told, namely that fifteen of the ‘victims’ were planning on bringing a group action for fraud against Mr and Mrs Skeggs. ABS-CBN said that the programme did not intimate that either party was guilty of fraud merely that it had been told that this action was contemplated.

ABS-CBN said that the other references to Mr Skeggs in this broadcast were only indirectly as follows:

- a) By reference to the fact that Mrs Skeggs was married to a Briton (it said that no other connotation was implied, inferred or referred to directly).
- b) By reference to the fact that Mrs Skeggs has a British Spouse (it said that no other connotation was implied, inferred or referred to directly).
- c) By reference to ‘Spouses’ i.e. husband and wife. The programme stated that the Broadcaster had been attempting to get ‘their’ side of the story but had not been able to contact them by phone.

- d) By reference to court proceedings by the victims but that the 'Spouses' had not showed up at court. The broadcaster said that this contention was supported by evidence including court documents giving a default judgment against Quadro Limited, a company of which Mr Skeggs was a director. The broadcaster said that this proved that Mr Skeggs had some involvement in the matter, although no conclusion was drawn as to that involvement and no other mention made of it. It said that the default judgment obtained against Quadro Limited was evidence of the fact that Mr Skeggs had ignored or otherwise avoided participating in the court proceedings i.e. 'not showed up' in the words of the broadcast.

ABS-CBN said that all references involving the 'couple' or the 'spouses' were caveated with the word 'allegedly'. It said that, therefore, the first broadcast was not in any way unfair to Mr Skeggs, and that it was wrong for any such conclusion to be drawn because the evidence and documents do not support any such conclusion. ABS-CBN further submitted that at no time during this broadcast was Mr Skeggs portrayed as a fraudster. It said there were no allegations about anything that Mr Skeggs had done save for his signature on cheques which had 'allegedly' bounced. ABS-CBN said that it did not venture to draw any inference from that but merely stated what it had been told by named individuals that they had grievances which were supported by evidence.

#### *Broadcast of 20 September 2009*

ABS-CBN said that the second programme focused immediately on the activity of a 'Filipina' married to a Briton.

ABS-CBN said that the statement that the '*couple are paying for their indebtedness*' could have led the viewing audience to conclude that they were either making payments or otherwise were regretting their indebtedness. It said that no adverse inference can be drawn from this against Mr Skeggs. Rather, ABS-CBN said, it implies that they were either making amends or otherwise taking responsibility. ABS-CBN said that none of the activities described by the broadcaster were attached to Mr Skeggs or even to him as part of the 'couple' or as a 'spouse'. It said that all of the questionable activities described were ascribed to Mrs Skeggs alone.

ABS-CBN said that the programme then went on to state that '*the Europe news bureau took three months to investigate the complaints by Filipinos in London against Helena and her husband Richard Skeggs*'. ABS-CBN said that this is factual and the people who complained to the news bureau did complain about both husband and wife. ABS-CBN said that no inference can be drawn about any fraudulent involvement by Mr Skeggs being portrayed from this. ABS-CBN said that the programme did not directly assert that any behaviour by Mr Skeggs was fraudulent nor did it refer to him having conned anyone.

ABS-CBN said that the programme then went on to explain the mode of operation used by Mrs Skeggs. It said that the debts were all referred to as 'her' debts not as 'their' debts or 'his' debts – so again it would be wrong to draw any conclusion that Mr Skeggs had been portrayed in any unflattering light from this or that he had suffered any unfair treatment. ABS-CBN said that there can have been no doubt but that all the actions complained of were actions of Mrs Skeggs, save for the signatures on bounced cheques.

ABS-CBN said the programme referred to '*the bounced cheque from the company owned by the couple and signed by Richard Skeggs*'. It said that this was factually correct and the bounced cheque drawn on Quadro Limited, signed by Mr Skeggs

was displayed. It said that the programme did not say anything which would have invited the audience to draw any particular conclusion.

ABS-CBN said that there is no other reference at all throughout the programme to Mr Skeggs save for a reference to a letter received from 'her' (i.e. Mrs Skeggs') new solicitor which said that the "*the accusations against the couple are not true*". It said that this was referring to allegations made by the Filipino victims who had complained to the broadcaster. ABS-CBN said that it would therefore appear that it was the solicitor who had included Mr Skeggs in the affair by this inference. It said that the rest of the facts are reported accurately by reference to the Skeggs' solicitor's letter and no mention was made by the programme of any other involvement of Mr Skeggs.

#### *Cultural/Legal Differences*

ABS-CBN said that in English law it is not necessarily a criminal offence to write a cheque that bounces. It said that this is not the position in the Philippines where an individual may be found criminally liable once they have issued a cheque with insufficient funds. ABS-CBN said that, therefore, for someone to issue even a single cheque which bounces is naturally considered by Filipino's as a far more serious wrong than it would be considered under English law. ABS-CBN said that the interpretation by the individuals who complained to it was that criminal offences had been committed by both Mr and Mrs Skeggs. ABS-CBN said that the programme was, however, more circumspect as it merely reported about what it had been told by the persons who complained to it and that much was stated explicitly.

#### *Evidence in Support*

ABS-CBN said there was no basis for the Ofcom finding that the broadcaster did not have evidence. It said that the allegations in relation to Mr Skeggs were that he had issued bounced cheques. ABS-CBN said it did have evidence to support this as it had been given copies of the cheques which Mr Skeggs signed and which bounced as evidenced by the letters from the banks stating that the cheques had been returned 'refer to drawer' which had also been handed to them. It said it had provided Ofcom with:

- Transcripts of both programmes
- Witness statements from Gloria Tabor, Marie Fairbanks and Gene Alcantara
- Copies of bounced cheques signed by Mr Skeggs to various individuals
- A copy of a County Court Judgment against Quadro Limited.

#### *New Material Evidence*

ABS-CBN also presented further evidence which it said had come to light since the programmes were broadcast, ABS-CBN provided the accounts of three further witnesses who claimed to have been the victims of Mr and Mrs Skeggs, Editha Francisco, Margie Luistro and Digna Eusebio. ABS-CBN said that the further evidence demonstrated that Mr Skeggs was inextricably linked with the activities of Mrs Skeggs.

ABS-CBN also said that it was in receipt of a letter signed by four individuals in support of its position. ABS-CBN said that the letter reflects the oral evidence, backed with documents that were provided to it prior to the broadcasts. ABS-CBN said that the letter confirmed that from what the authors had seen and experienced, Mr Skeggs was aware of and party to his wife's activities. ABS-CBN said that even though it was told of this on numerous occasions it did not repeat any allegations

against Mr Skeggs that it could not substantiate with documentary evidence. ABS-CBN said that the only allegation that was made in the broadcasts related to the bounced cheques and that was supported by documentary evidence.

#### *Opportunity to Respond*

In relation to the 13 September programme, ABS-CBN said that it did attempt to make contact with Mr Skeggs using various telephone numbers that it had been given by the people who had complained to it about Mr and Mrs Skeggs. ABS-CBN said that it also documented that it had visited their home and tried to make direct contact there with both parties to get their side of the story. It said that attempts had also been made to get in touch via the legal adviser Philip Englefield. ABS-CBN said that as a result of these attempts Mrs Skeggs did make contact with the broadcaster prior to the first broadcast, whereupon the broadcaster asked for her comments, and that these were then reported accurately in the first broadcast.

ABS-CBN said that it had the legitimate belief that Mr Skeggs was/is the husband of Mrs Skeggs and having made contact with her, it was reasonable to assume that she would have discussed the matter with him, given their relationship and the fact that they had both acknowledged certain debts via their legal representative and directly to the individuals to whom they allegedly owed money.

ABS-CBN said that, given that the legal representative Philip Englefield was dealing with debts incurred by Quadro Limited, a company of which Mr Skeggs was a director, it was legitimate for the broadcaster to assume that Philip Englefield would have been obliged to inform Mr Skeggs about the broadcaster's investigation. ABS-CBN said that Mr Skeggs could have come forward with his comments as he must have been aware of the proposed broadcast at or around the same time as Mrs Skeggs and Philip Englefield were aware, and certainly well before the first broadcast.

ABS-CBN said that in any event, the focus was entirely on Mrs Skeggs and not her husband and that since it tried to get in touch with Mr Skeggs to obtain his response before the first broadcast but had not succeeded, the first broadcast was designed to include no content that could be deemed to be unfair to Mr Skeggs.

In relation to the 20 September programme, ABS-CBN noted that the programme stated that the couple denied owing money and that they said that the position was quite the reverse and they were owed money by the people who had complained, and that none of the accusations made against them had any basis.

ABS-CBN said that at the end of the programme, it stated that it was still open to hearing the Skeggs side of the story to give them a chance to explain their position on the alleged debt.

ABS-CBN said that it continued to try to make contact with Mr Skeggs and extended an open offer to Mr and Mrs Skeggs to comment.

#### Mr Skeggs' comments in response

In relation to his complaint that he had been portrayed unfairly as someone who had fraudulently obtained sums of money from 50 people, Mr Skeggs said that viewers would have been left with the impression that he had committed fraud. He said that the printed headline that ran alongside the first broadcast translates to "50 Pinoy victimised by fellow Filipino and British husband". Mr Skeggs said that this directly

implicates him in the news report and is displayed on screen for most of the broadcast.

Mr Skeggs said that he was named in the second broadcast. He said that the printed headline that ran alongside the second broadcast named him specifically. Mr Skeggs said that the English translation of it was "Another victim of husband and wife Helena and Richard Skeggs shows up." Mr Skeggs said that he failed to see how the viewer of the report could be left with any other impression than that he was involved with the systematic defrauding of numerous members of the Filipino community.

Mr Skeggs said that no other news agency has approached him directly or indirectly to comment on the allegations. He also said that he was not aware of any other news agency approaching Mrs Skeggs' legal advisor Philip Englefield. Mr Skeggs said that with over 200 million registered domain names and 500 billion GB of data published on the internet it is impossible for a single user to keep track of all reports published to the internet.

In relation to his complaint that no evidence was provided in support of the allegation of his fraudulent behaviour, Mr Skeggs said that the latest data submitted by the broadcaster failed to show any fraudulent behaviour on his behalf. He said that it failed to prove that he owes any of the alleged victims money and cannot show a County Court Judgment that has been obtained against him. Mr Skeggs said that the documents presented have all been seen by the civil courts in this country which have then subsequently agreed that he does not owe the three women monies. Mr Skeggs said that as the three women have failed to obtain a civil ruling against him for monies owed he cannot see how there is any proof of his fraudulent behaviour in this matter.

Mr Skeggs said that the report and the subsequent submissions made by the broadcaster failed to highlight that monies had been received by the complainants in lieu of the bounced cheques. He said that the three women the broadcaster highlighted in its subsequent submissions, he believed have all been repaid. Mr Skeggs said that in the case of Margie Luistro payment was made in April 2010. Mr Skeggs enclosed a copy of the receipt with his submissions.

In relation to the complaint that he was not given an appropriate and timely opportunity to respond to allegations Mr Skeggs said that he maintains that the broadcaster made no effort to contact him either by phone or email. He said the broadcaster should have contacted him directly, not through his wife or her legal advisor. Mr Skeggs said that one visit to the house does not constitute a concerted effort to make contact. Mr Skeggs said that, contrary to what the broadcaster submitted, he had tried to make contact with the broadcaster to get some clarity on the allegations being made. Mr Skeggs said that to this extent, he has never received a response to an email he sent shortly after the first report was aired. Mr Skeggs said that the broadcaster had failed in allowing him a suitable time to respond.

#### **Review Committee Decision on Fairness**

When considering the complaints of unfair treatment, the Committee had regard to whether the broadcaster's actions ensured that the programmes as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code.

Rule 7.1 of the Code states that "*Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes*".

Practice 7.9 of the Code states that *“Before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that: material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation; and anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.”*

Practice 7.11 of the Code states that *“If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.”*

The Committee had regard to Rule 7.1 and Practices 7.9 and 7.11 when reaching its decisions on the individual heads of the complaint detailed below.

The Committee decided, in accordance with Paragraph 39 of the Procedures, that it should substitute its own decision for the decision of the Ofcom Executive.

- a) The Committee first considered Mr Skeggs’ complaint that he was treated unfairly in the programmes as broadcast because he was portrayed as a fraudster who had conned 50 people out of money.

In considering this head of complaint, the Committee had regard to whether the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to an individual or organisation (as outlined in Practice 7.9 of the Code).

The Committee was mindful of the fact that it was working from a transcript which translated the programme into English and that, while the parties had agreed the translation, some words and expressions may not be easily translated and some of the original meaning could be lost.

The Committee first sought to decide what allegations were made about Mr Skeggs in both programmes.

#### 13 September 2009 programme

The Committee noted that this programme indicated that Mrs Skeggs had taken at least £600,000 from around 50 Filipinos in London by befriending them and gaining their trust by treating them to meals, providing them with gifts and telling them, amongst other things, that she was wealthy, she was related to the late former President Marcos or that she needed money to pay for expensive medical treatment for her aunt. The programme said that she would then borrow money or offer to invest money for the Filipinos, but that although initially she had repaid some money, it had become increasingly difficult to obtain repayment from her, that she had been taken to court and that a complaint had been made about her to the Philippine Embassy in London, but that she had not responded to the court or to the Embassy.

In this context, the Committee sought to examine what references were made to Mr Skeggs. It noted that this programme also referred to, showed photographs of and made allegations about Mr Skeggs as follows:

A headline stating *“50 Pinoy victimised by fellow Filipino and British husband”* was superimposed over a photograph of Mr and Mrs Skeggs and the headline remained throughout the broadcast

A photograph of Mr and Mrs Skeggs was shown at several points during the broadcast

*"It is estimated that at least £600,000 or almost 50m Pesos were taken by a Filipina who is married to a Briton from 50 Filipinos that they victimised here in London".*

*"Cheques issued by her husband Richard Skeggs allegedly bounced".*

*"Balitang Europe exerted all efforts to get the spouses' side of the story but they couldn't be contacted by phone".*

*"The news team also went to the flashy residence said to be rented out by the spouses ..., but there was no response".*

*"Five victims have already tried to bring the matter to court but until now, the spouses haven't showed up".*

*"The fifteen victims are now planning to file a group complaint for fraud in the court against Helena and Richard Stuart-Skeggs. They stressed that even if they could not recover their money, as long as they see in jail the couple who allegedly duped them".*

*"Next week, more exposé from the alleged victims of the Skeggs couple".*

#### 20 September 2009 programme

The Committee noted that this repeated the claims made about Mrs Skeggs and made further similar claims against her. It also again referred to, showed photographs of and made allegations about Mr Skeggs. The Committee noted the following statements about Mr Skeggs in particular:

*A caption stating "another victim of husband and wife Helena and Richard Skeggs shows up" was displayed throughout the broadcast.*

*"The couple are paying for their indebtedness".*

*"Europe News Bureau took three months to research the complaints by Filipinos in London against Helena and her husband Richard Skeggs".*

*"Europe News Bureau tried to get the side of the Skeggs couple".*

*"... the bounced cheque from the company owned by the couple and signed by Richard Skeggs".*

*"But according to the email BEU received from her [Mrs Skeggs] new solicitor, the accusations against the couple are not true".*

*"The solicitor admitted that their clients are going through a financial crisis, but that it is the complainants who are allegedly the ones who owe the couple money, and their accusations have no basis".*

The Committee took the view that the programmes (a) contained a specific allegation that Mr Skeggs had issued cheques that bounced, and (b) gave the

impression that Mr Skeggs himself was implicated in the fraudulent activity of his wife.

The Committee took the view that the references to the “*couple*” and the “*spouses*” were factual references about the relationship between Mr and Mrs Skeggs and did not necessarily amount to a specific allegation of fraudulent activity made against Mr Skeggs, beyond his role in issuing bounced cheques. However, the Committee considered that it might have been inferred by the viewer, in particular as a result of the references to the “*victims of the couple*”, that Mr Skeggs was party to fraudulent activity.

The Committee then considered whether the broadcaster had taken reasonable care to ensure that they did not present, disregard or omit material facts from the programmes in a way that was unfair to Mr Skeggs, and in this regard examined what evidence the broadcaster had to support the allegation at the time of the broadcasts.

The Committee noted that Ofcom was supplied with copies of nine bounced cheques issued over a period of four years and signed by Mr Skeggs. Seven were apparently drawn on Mr Skeggs’ personal account and two on the account of Quadro Limited.

As a result, the Committee considered that ABS-CBN did have enough evidence at the time of the broadcasts to support the specific allegation made in the programmes that Mr Skeggs had issued cheques that bounced given that it had provided several bounced cheques that had been signed by Mr Skeggs.

In the circumstances therefore, the Committee considered that, in relation to the specific allegation made against Mr Skeggs, the broadcaster did take reasonable care not to present, disregard or omit material facts in a way that was unfair to Mr Skeggs.

In relation to any inference that might have been drawn that Mr Skeggs was engaged in fraudulent activity, the Committee considered that the information presented was put forward in a factual manner, for example, when referring to Mr and Mrs Skeggs as the “*couple*” or the “*spouses*”, or when referring to the intention of the alleged victims to file a group complaint against the couple. In those circumstances, where the broadcaster had not itself drawn any conclusions from those facts, the Committee did not consider that any inference which might be drawn was as a result of a failure on the part of the Broadcaster to exercise reasonable care not to present, disregard or omit material facts in a way that was unfair to Mr Skeggs.

The Committee has therefore not upheld the complaint in this respect.

- b) The Committee considered Mr Skeggs’ complaint that he was not given an opportunity to respond to the allegations.

In considering this head of complaint the Committee took account of Practice 7.11 of the Code which provides that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

The Committee first referred to its finding set out under head a) which found that the programme made a specific allegation that Mr Skeggs had issued cheques

that bounced. The Committee took the view that this constituted an allegation of wrongdoing for the purposes of Practice 7.11, and that Mr Skeggs should have been given the opportunity to respond to the allegation by presenting his side of the story.

The Committee also noted its finding under head a) that it might have been inferred that Mr Skeggs had been involved in fraudulent activity. The Committee took the view that, although this was not a specific allegation by the Broadcaster, the fact that viewers may have inferred wrongdoing on the part of Mr Skeggs meant that Mr Skeggs should have been given the opportunity to present his side of the story.

The Committee noted that the specific allegation made against Mr Skeggs, and the possible wider inferences of wrongdoing that may have been drawn, were of a serious nature and carried negative connotations about the integrity of Mr Skeggs' character. The Committee considered that it was necessary for a Broadcaster, when making such serious allegations, to give each person against whom allegations were made an individual opportunity to respond to those allegations. Given that the allegation that Mr Skeggs had signed bounced cheques, and the implication that Mr Skeggs may have been party to fraudulent activity, related specifically to him (albeit in the context of wider allegations against Mrs Skeggs), the Committee considered that Mr Skeggs himself should have been given an appropriate and timely opportunity to respond, in accordance with Practice 7.11 of the Code.

The Committee noted that ABS-CBN asserted in the programmes, in its response to the complaint, and in its request for review, that it had given Mr Skeggs an opportunity to respond.

The Committee noted that ABS-CBN's response referred to various attempts to contact Mrs Skeggs and/or her representatives prior to 13 September 2009. However, the only references in ABS-CBN's first response to the complaint to specific attempts to contact either Mr or Mrs Skeggs were that the reporter sent an email to Mrs Skeggs' legal representative, attempted to contact Mrs Skeggs' mobile telephone, and went to Mr and Mrs Skeggs' house in order to try to interview her and Mr Skeggs (but that nobody answered). There appear to have been few, if any, attempts to speak to Mr Skeggs specifically. ABS-CBN's attempts to obtain a response to the programmes appeared to have been almost exclusively directed towards Mrs Skeggs and/or her representative.

The Committee noted that when ABS-CBN first referred to a conversation its reporter had with Mrs Skeggs in July 2009, it said that during that conversation he "asked her for an interview". ABS-CBN subsequently said that during that conversation the reporter said to Mrs Skeggs that he "wanted to obtain their side of the story both from her and her husband" and that he "asked Mrs Skeggs for an interview with her and her husband".

The Committee noted that ABS-CBN said that Mrs Skeggs clearly knew that the programme was being made from the conversation she had with the reporter on 3 July 2009 and that ABS-CBN said that it was legitimate for ABS-CBN to expect that she would tell her husband that ABS-CBN was trying to get in touch with him to discuss allegations that had been made about them both. However, while the Committee noted that Mrs Skeggs may have been broadly aware of the nature of the allegations against her as the story had already appeared on the internet, ABS-CBN provided no information that suggested that Mr Skeggs was ever

informed that ABS-CBN intended to allege that Mr Skeggs had issued bounced cheques. The Committee did not consider that it was appropriate for the Broadcaster to rely on the fact that Mrs Skeggs would communicate to Mr Skeggs the nature of the programmes, the nature of the specific allegation against him, or the existence of an opportunity to respond.

The Committee also noted that, despite Mr Skeggs having sent an email after the broadcast of the 13 September programme, asking for details of the proposed allegations, and providing specific contact details, ABS-CBN appeared to have made no attempt to contact Mr Skeggs specifically prior to the broadcast of the 20 September programme. The Committee noted that the reporter did send an email to Mrs Skeggs' representative asking for an interview with her, and again tried to call Mrs Skeggs. ABS-CBN also received an urgent letter before action dated 15 September 2009 from solicitors acting on behalf of Mr and Mrs Skeggs, but again, there appeared to have been no attempt to inform either Mr Skeggs or his solicitors of the nature of the allegations to be broadcast on 20 September 2009 or to provide Mr Skeggs with an appropriate and timely opportunity to respond.

The Committee noted that, while a response can be sought in a number of different ways, e.g. by seeking an on-camera interview, by requesting a written response for inclusion in the programme or even simply telephoning the subject, what is important is that the subject is notified of all material allegations and given a proper opportunity to respond.

In this case, despite the fact that ABS-CBN said that it had been investigating the matter since June 2009 and would have had ample time to set out the allegations in writing, it provided no information to show that prior to the broadcast on 13 September 2009 it provided Mr Skeggs with any information about the broadcast allegation. Nor did ABS-CBN provide any information to show that it made any attempt to provide Mr Skeggs with a summary of the allegation to be included about him in the programme scheduled to be broadcast on 20 September 2009 or provide him with an opportunity to respond by a particular date.

The Committee noted that after the programmes were broadcast ABS-CBN offered Mr Skeggs an opportunity to tell his side of the story, but does not consider that amounts to a timely opportunity to respond, particularly as ABS-CBN said that it had been researching the story for some three months before broadcast. In Ofcom's view, a timely opportunity to respond must generally be an opportunity provided prior to broadcast so that the response can be included in the programme in which serious allegations are made about the individual. In light of the above, the Committee does not consider that Mr Skeggs was provided with a timely or appropriate opportunity to respond to the serious allegation made in the programmes about him or to put forward his side of the story in relation to any implication that Mr Skeggs was involved in fraudulent activity. The Committee considered that failure to provide that opportunity resulted in unfairness to Mr Skeggs.

The Committee has therefore upheld the complaint in this respect.

### **Decision on Privacy**

Neither Mr Skeggs nor the Broadcaster requested a review of the privacy element of Ofcom's Provisional Decision. That part of the Provisional Decision is now adopted as set out below.

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

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

- c) Ofcom considered Mr Skeggs' complaint of unwarranted infringement of privacy in the making of the programme broadcast on 13 September 2009 because photographs of him and his family were illegally taken from his home and were included in the programme.

Ofcom noted that ABS-CBN denied that it or any member of its news team entered Mr Skeggs' home or removed any photograph from his home and stated that the photographs used in the broadcasts were provided by interviewees who complained about the treatment they had received. One of them had confirmed that she had taken photographs with her own camera at an airshow in July 2008 and ABS-CBN also provided a statement from an interviewee who confirmed that she had seen photographs handed to ABS-CBN by the owners of the photographs.

Ofcom noted Mr Skeggs' contention that the photographs were taken illegally from his home. Ofcom was satisfied, however, that ABS-CBN had not removed the photographs from Mr Skeggs' home and had obtained them properly, as far it was concerned, and in good faith. As a result, Ofcom was satisfied that ABS-CBN had not infringed Mr Skeggs' privacy in obtaining the photographs and in the making of the programme.

Ofcom has not therefore upheld the complaint in this respect.

- d) Ofcom considered Mr Skeggs' complaint that his privacy had been unwarrantably infringed in the programme broadcast on 13 September 2009 because photographs of him and his family were included in the programme.

In doing so, Ofcom took the following approach. A significant part of the complaint Mr Skeggs initially made appeared to relate to the broadcast of photographs showing his daughter, but also said he was only making a complaint of unwarranted infringement of privacy on his own behalf. Ofcom therefore gave Mr Skeggs the opportunity to clarify his complaint and, if he wished to do so, provide Ofcom with information so it could consider whether his daughter's privacy had been infringed. He did not take that opportunity. Ofcom therefore only considered whether Mr Skeggs' privacy had been unwarrantably infringed in the broadcast of the photographs of him and his family.

Ofcom first considered whether Mr Skeggs had a legitimate expectation of privacy in relation to the photographs broadcast without his consent.

Ofcom noted that two photographs which included Mr Skeggs were broadcast in the programme and that both photographs also included Mrs Skeggs. Two further photographs of Mrs Skeggs were included in the programme, one of which also included Mr Skeggs' daughter.

It was clear to Ofcom that two of the photographs had been taken at an air-show in July 2008 and had therefore been taken in a public place. It was not clear to Ofcom where the other two photographs had been taken but, as they appeared to have been taken at social gatherings, Ofcom considered that it was likely they had been taken in private places. It was also apparent to Ofcom that all the photographs were taken by acquaintances with the knowledge and consent of those featured.

Ofcom then considered both whether Mr Skeggs had a legitimate expectation of privacy in relation to the broadcast photographs of him and in relation to the photographs of his family.

While Ofcom recognises that privacy could include the right to control the dissemination of information about a person's identity or image, in Ofcom's view, in the absence of other factors or aggravating circumstances, there will not generally be a legitimate expectation of privacy in relation to the mere disclosure of a person's image.

As to the photographs of Mr Skeggs, Ofcom noted that he was not a public figure, that the photographs were of him going about his private business and that they had both apparently been taken with his knowledge and consent. Ofcom recognised that Mr Skeggs would not have expected that photographs of him would be broadcast on a television news programme, however, as the photographs of Mr Skeggs merely disclosed what he looked like and did not appear to disclose any information of a personal or sensitive nature or show him in an embarrassing situation, in Ofcom's view, Mr Skeggs did not have a legitimate expectation of privacy in relation to the broadcast of the photographs of him.

As to the photographs of Mrs Skeggs and Mr Skeggs' daughter, Ofcom noted that they merely disclosed what they looked like and did not appear to disclose any information about Mr Skeggs' private or family life. As a result, Ofcom did not consider that Mr Skeggs had a legitimate expectation of privacy in respect of the broadcast photographs of Mrs Skeggs or his daughter.

Given this, Ofcom considered that there was no infringement of Mr Skeggs' privacy in respect of the broadcast of the photographs of him and his family and it was not necessary for Ofcom to consider whether any intrusion into his private life was warranted.

Ofcom has not therefore upheld the complaint in this respect.

- e) Ofcom considered Mr Skeggs' complaint of unwarranted infringement of privacy in the programme as broadcast on 20 September 2009 because extracts from a letter sent to the broadcaster by his solicitors were included in the programme.

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

Ofcom first considered whether Mr Skeggs had a legitimate expectation of privacy in relation to the extracts from his solicitors' letter that were broadcast without his consent.

Ofcom noted that the following information from the solicitors' letter was included in the programme:

*"The accusations against the couple are not true".*

*"But it is the complainants who are allegedly the ones who owe the couple money and their accusations have no basis".*

And that the following extract was visible in the programme:

*"Although it is true that our clients have, like many people, recently experienced financial difficulty ...".*

Ofcom noted that the solicitors' letter, written on behalf of Mr and Mrs Skeggs and dated 15 September 2009, was not a letter taking up an offer by the broadcaster to respond to allegations that were to be made in the programme on 20 September 2009 for inclusion in the programme. Rather, the letter was a response to the fact allegations about Mr and Mrs Skeggs had already been broadcast. It was headed "Urgent Letter Before Action". It denied the allegations that had been made about Mr and Mrs Skeggs in the programme broadcast on 13 September 2009 and warned that if the second programme was broadcast Mr and Mrs Skeggs would be advised to commence proceedings and seek substantial damages. In order to avoid proceedings, the letter demanded a written apology, an undertaking that the allegations would not be repeated and that the second programme would not be broadcast making the same or similar allegations. While Ofcom noted that the letter was not marked "Private and Confidential" or "Not for Publication", it also noted that the letter disclosed private information about Mr and Mrs Skeggs' financial circumstances.

Given all these points and, even though it had been written to a broadcaster, in Ofcom's view Mr Skeggs would not have expected the contents of the letter to be broadcast in a television programme. In Ofcom's further view, the letter's contents, in particular details of Mr Skeggs' financial circumstances, was information in relation to which he would have had a legitimate expectation of privacy.

Ofcom then proceeded to consider the competing right of the broadcaster to freedom of expression and the audience's right to receive information and ideas without unnecessary interference. In this respect, Ofcom considered whether in the circumstances there was a sufficient public interest to warrant an infringement of Mr Skeggs' privacy.

Ofcom noted that the programmes broadcast serious allegations about Mr and Mrs Skeggs that had a direct relevance to and potential impact on the programmes' target audience. It also noted that, although the letter from Mr Skeggs' solicitor could not reasonably be said to constitute a response to those allegations for inclusion in the programme, it was the first detailed communication that the broadcaster had obtained from Mr and/or Mrs Skeggs and contained information that was relevant to the allegations being made.

In Ofcom's view, the broadcaster had a right to report a story which informed viewers of the negative experiences alleged to have been experienced by Filipinos in London, in circumstances where significant sums of money appeared to be involved. This served the public interest. There was also a public interest in including in the programme broadcast on 20 September 2009, comments made

by Mr Skeggs' solicitors that were relevant to the allegations made about him. Given the serious nature of the allegations and the relevance to them of the solicitors' comments that were broadcast, Ofcom considered the public interest weighed in favour of the broadcaster's right to freedom of expression over Mr Skeggs' expectation of privacy. The public interest in this case was sufficient to warrant the infringement of Mr Skeggs' privacy by the broadcast of those few extracts from the solicitors' letter, without Mr Skeggs' consent.

Taking all of these factors into account, Ofcom therefore found that there was no unwarranted infringement of Mr Skeggs' privacy and has not upheld the complaint in this respect.

**Accordingly Ofcom has upheld Mr Skeggs' complaint of unfair treatment, but has not upheld Mr Skeggs' complaint of unwarranted infringement of privacy in the making and broadcast of the programme.**

## Not Upheld

### Complaint by Mrs Helena Skeggs

*Balitang Europe, ABS-CBN News Channel, 13 and 20 September 2009*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Mrs Helena Skeggs.

These programmes investigated allegations made by a number of London-based Filipinos that Mrs Helena Skeggs had borrowed over £600,000 from 50 Filipinos by making false claims, such as that she was a millionairess awaiting the arrival of funds or the illegitimate daughter of the former President Marcos. They said that they had been unable to recover the monies from her.

Mrs Skeggs complained that she was treated unfairly in the programmes as broadcast and that her privacy had been unwarrantably infringed in the making and the broadcast of the programmes.

In summary Ofcom found the following:

- The programmes did not present allegations about Mrs Skeggs in a way that was unfair to her.
- Mrs Skeggs was provided with an appropriate and timely opportunity to respond to the allegations made in the programmes.
- The programme makers were given photographs of Mrs Skeggs and her family by people who claimed to be owed money. The programme makers therefore did not infringe Mrs Skeggs' privacy in order to obtain the photographs and in the making of the programme.
- Mrs Skeggs' privacy was not unwarrantably infringed by the broadcast of photographs of her and/or her family. The photographs disclosed no personal or sensitive information about Mrs Skeggs and she did not have a legitimate expectation of privacy in relation to them.

#### Introduction

On 13 and 20 September 2009, ABS-CBN News Channel, a 24 hour news channel for the Philippines, broadcast two editions of *Balitang Europe*, a community news programme providing information for Filipinos in Europe. The programmes consisted of a two-part investigation into allegations that Mrs Helena Skeggs had borrowed substantial sums of money from 50 Filipinos in London which they had been unable to recover from her or her husband.

The programmes featured a number of people who said they had lent money to Mrs Skeggs, but had not been paid back. The programmes stated that the creditors had received cheques that bounced, including cheques issued by Mr Skeggs and/or Mr and Mrs Skeggs' company, that County Court judgments against Mrs Skeggs had not been satisfied and that she had not responded to complaints made to the Philippine Embassy in London.

In both programmes it was stated that the programme makers had tried to contact Mrs Skeggs to get her side of the story and in the programme broadcast on 20 September 2009 it was stated that representatives for Mrs Skeggs had informed the programme makers that Mrs Skeggs was going through a financial crisis, that she would be able to repay her debts soon, that the accusations against Mr and Mrs Skeggs were untrue and that in some cases they were owed money by the people making claims.

Mrs Skeggs did not participate in either programme, but both programmes broadcast a number of photographs of her, her partner, Mr Skeggs, and his 13-year old daughter.

Mrs Skeggs complained to Ofcom that she was treated unfairly in the programmes and that her privacy had been unwarrantably infringed in both the making and broadcast of the programmes.

## **The Complaint**

### **Mrs Skeggs' case**

In summary, Mrs Skeggs complained that she was treated unfairly in the programmes as broadcast in that:

- a) She was unfairly portrayed as a swindler and as having conned 50 people out of money lent to her.

By way of background, Mrs Skeggs said that, while it was correct that she had borrowed money, she had always promised to repay it and the people who made the verbal allegations in the programmes were all aware she intended to repay it.

- b) She was not given an opportunity to respond to the allegations.

By way of background, Mrs Skeggs said that no effort was made to contact either her or Mr Skeggs to get their views and that, prior to the programme broadcast on 13 September 2009, Mr Skeggs' legal adviser tried to obtain details of the allegations from the broadcaster, but received no response.

In summary, Mrs Skeggs complained that her privacy had been unwarrantably infringed in the making of the programmes in that:

- c) Photographs of her were taken from her home without her consent.

In summary, Mrs Skeggs complained that her privacy had been unwarrantably infringed in the programmes as broadcast in that:

- d) Photographs of her and her family, which were taken from her home, were included in the programmes as broadcast without her consent.

### **ABS-CBN News Channel's case**

ABS-CBN News Channel ("ABS-CBN") responded to the complaint of unfair treatment as follows:

- b) ABS-CBN first responded to the complaint that Mrs Skeggs was unfairly portrayed as a swindler and as having conned 50 people out of money lent to her.

ABS-CBN said that it was approached by several members of the Filipino community in the United Kingdom (“the interviewees”) with a story about a Filipina based in London who had not fully repaid substantial amounts of money borrowed from them. Each of the interviewees told the programme makers that a woman known variously as Helena Garcia Pedroche, Helena Marcos Skeggs and Mrs Helena Skeggs befriended them, took them out for dinner or gave them presents. In this way, ABS-CBN said that she gained the interviewees’ trust and then was able to ask them for money or the use of their credit cards. ABS-CBN said that the reasons Mrs Skeggs gave for wanting the money were many and various and that she would introduce herself as a millionairess and an illegitimate daughter of the late former Philippine President Marcos.

ABS-CBN said that some interviewees said Mrs Skeggs had paid back some of the money she had borrowed, but never all of it and eventually it became very difficult to collect anything from her. ABS-CBN said the programme makers were shown several cheques which had bounced, signed by Mr Skeggs, who it thought was either the partner or husband of Mrs Skeggs.

ABS-CBN said that it had approached the making of the programmes on the basis of substantial research undertaken over the course of three months and documentary evidence provided by individuals who had been affected. It had interviewed numerous witnesses and had collected supporting documentation including a copy notebook provided by one of the interviewees, Ms Gloria Tabor, containing the names of around 50 creditors, copy County Court judgments and bounced cheques signed by Mr Skeggs.

- c) ABS-CBN responded to the complaint that Mrs Skeggs was not given an opportunity to respond to the allegations.

ABS-CBN said that the programmes did not state that Mrs Skeggs was a “swindler” or that she had “conned” anyone, but it recognised that the programmes could be interpreted as making that allegation and ABS-CBN therefore accepted that the programmes alleged wrongdoing on the part of Mrs Skeggs.

However, ABS-CBN said that it had given Mrs Skeggs several opportunities to respond, both before and after the broadcasts of the programmes, which she declined. ABS-CBN said it made a number of attempts between June and September 2009 to contact Mr and Mrs Skeggs so that it could obtain their side of the story. It tried to call the mobile phone numbers for Mrs Skeggs which had been provided by the interviewees, but there was no answer from her. In July 2009 ABS-CBN said that Mrs Skeggs telephoned its reporter from her representative’s office and said “I am not a bad person. I did not point a gun at them and you cannot show me on TFC”. The reporter said that he asked Mrs Skeggs questions about the allegations, but she simply denied cheating people. The reporter said he also asked her for an interview but she just repeated that they could not broadcast a programme about her. The reporter also spoke on that occasion to Mrs Skeggs’ representative and he promised that Mrs Skeggs would make payments as soon as money was released by the bank and he confirmed this in an email dated 3 July 2009.

ABS-CBN also said that prior to the broadcasts of the programmes, the reporter visited Mrs Skeggs' home in an attempt to make contact with her and obtain her comments, but, although her car was parked outside, nobody answered the door.

ABS-CBN said that it made clear in the commentary to the programmes that Mrs Skeggs had been approached, but that she had chosen not to contribute or appear. ABS-CBN said that Mrs Skeggs had also declined to give her side of the story when offered the opportunity to do so subsequently. Furthermore ABS-CBN said that it had broadcast comments made by Mrs Skeggs and her representatives, including her denial of the debts and the counter-allegations that in fact it was Mr and Mrs Skeggs who were owed money.

ABS-CBN responded to the complaint of unwarranted infringement of privacy in the making of the programme as follows:

- d) ABS-CBN responded to the complaint that photographs of Mrs Skeggs were taken from her home without her consent.

ABS-CBN said no member of its news team or anyone affiliated with ABS-CBN entered Mrs Skeggs' residence or removed any photograph from her home. It said that the photographs used in the programmes were provided by interviewees for the programmes. ABS-CBN said it had no reason to believe that the photographs it received from the interviewees were anything other than the property of the individuals in whose possession they were. One interviewee informed ABS-CBN that the photographs she provided were taken by her at an airshow in July 2008 and that she had paid for the prints. Another interviewee provided a statement confirming she had witnessed photographs being handed to the reporter at one of the group meetings.

ABS-CBN responded to the complaint of unwarranted infringement of privacy in the programme as broadcast as follows:

- e) ABS-CBN responded to the complaint that photographs of Mrs Skeggs and her family were broadcast without her consent.

ABS-CBN accepted that photographs of Mrs Skeggs were used in the programmes without her consent. However, it said that the use of the photographs was warranted because it was in the public interest to show Mrs Skeggs' image and that the public interest outweighed her right to privacy. It said that Mrs Skeggs' activities did not take place in the privacy of her own home, but were in the public arena. ABS-CBN also said that some of the allegations and evidence had appeared on the internet before the broadcasts and were therefore already in the public domain.

### **Mrs Skeggs' response**

- a) As regards the complaint that she was portrayed as a "swindler", Mrs Skeggs said that she did not "victimise", "swindle" or "con" anyone and the statement in the programmes that she "*took*" or "*absconded*" with money implied that she stole it. Mrs Skeggs said that she borrowed or received money from certain third parties in normal, legitimate circumstances, but then experienced financial difficulties and was unable to repay certain debts as soon as she had wished. Mrs Skeggs said that she had now paid, or was in the process of repaying all of the debts.

Mrs Skeggs said that the programmes wrongly stated that she owed £600,000 to 50 individuals. Mrs Skeggs said that she had no idea how the figure of £600,000 was arrived at and that the only evidence for the claim that there were 50 creditors came from Ms Tabor's statement and a notebook that she showed the reporter. Mrs Skeggs said that ABS-CBN has not produced evidence to substantiate these claims and that it did not appear that the reporter had endeavoured to corroborate the claims elsewhere.

Mrs Skeggs said that the reporter's statement suggested that he had seen evidence of monies owing to 13 people, not 50. Mrs Skeggs said that of those 13 people, the debts to six of them had been repaid and she disputed that any monies were owed to one of them. Mrs Skeggs said that the rest were the subject of County Court judgments which she did not challenge and were in the process of being repaid.

- b) As regards opportunity to respond, Mrs Skeggs said that in the programmes the reporter stated that he *"exerted all efforts to get the spouses' side of the story but they could not be contacted by phone"*. In his statement he said that he gave Mrs Skeggs "opportunities to be interviewed to give [her] side of the story" and that he made "a number of attempts between June and September 2009 to contact Helena and Richard Skeggs".

Mrs Skeggs said that in fact she did not recall receiving a single telephone call, voicemail or email from the reporter and that at no point was she provided with information sufficient for her to make an informed decision about whether to contribute to the programmes in reasonable time prior to the broadcasts.

Mrs Skeggs said that she noted that the reporter visited her house when she was not at home, but left no note or letter informing her of his visit. Mrs Skeggs said that the only other effort made by the reporter was to contact her representative. Mrs Skeggs said that soon afterwards she had a brief telephone conversation with the reporter but that he failed to provide sufficient information for her to make an informed decision about whether to contribute to the programmes. Mrs Skeggs said that following the broadcast of the programme on 13 September 2009, the reporter contacted her to ask for an interview to give her side of the story for the programme scheduled for 20 September 2009. However, having seen the content of the first programme, Mrs Skeggs said that she rejected the offer, fearing that her contribution would be distorted.

- d) With reference to the use of photographs of her in the broadcasts, Mrs Skeggs said that there were images of her in programmes that included unsubstantiated allegations that she had "victimised", "swindled" or "conned" third parties. Mrs Skeggs said that ABS-CBN had not proved that she had done anything other than borrow money and been unable to pay it back. Mrs Skeggs said that this was not a matter of public interest that would outweigh her right to privacy.

### **ABS-CBN's final response**

- a) As regards the complaint that Mrs Skeggs was portrayed as a "swindler", ABS-CBN said that it had evidence in the form of copy County Court judgments totalling in excess of £45,000, Ms Tabor's list of debts totalling £261,590 and the reporter's spreadsheet of Ms Tabor's list and details of other creditors he had spoken to. ABS-CBN said that its reporter had spoken directly to 18 individuals to verify their stories and was able to satisfy himself that the documents he was

given were genuine, that the sums taken by Mrs Skeggs were real and that her “*modus operandi*” was the same or substantially the same in each case.

- b) In relation to the complaint that Mrs Skeggs was not given an appropriate and timely opportunity to respond, ABS-CBN said that the reporter attempted to make contact with Mrs Skeggs on numerous occasions between June and September 2009 to obtain her side of the story. He also attempted to make contact with Mrs Skeggs and her representative through their respective telephone numbers. He spoke to Mrs Skeggs on 3 July 2009, when she called his mobile phone directly, which suggested that she had received his messages. ABS-CBN said that from what Mrs Skeggs said to the reporter it was evident that she knew about the nature of the allegations that were being made. The reporter said he also asked Mrs Skeggs whether she and her husband would give an interview and she declined. ABS-CBN said that the reporter informed Mrs Skeggs during the telephone conversation that he was investigating allegations of fraud against her and explained that he needed her side of the story to ensure a balanced programme. ABS-CBN said that the reporter then spoke to Mrs Skeggs’ representative and said that he was working on a report about Mrs Skeggs and the money that she had allegedly taken from people. The reporter also explained that he was seeking input from Mr and Mrs Skeggs to enable a balanced programme to be made and again requested their participation. ABS-CBN said that the conversation with Mrs Skeggs’ representative was evidenced in an email from him the same day.

ABS-CBN agreed that the reporter did not leave a note at Mrs Skeggs’ house, as he believed that Mr and Mrs Skeggs were at home, since their car was in the drive, and that they were fully aware from his knocking on the door and calling out that he was attempting to speak with them.

ABS-CBN said that in both programmes it had stated that it remained open to Mr and Mrs Skeggs to provide their respective sides of the story and that it had repeated this offer more recently and had again extended the opportunity to Mrs Skeggs to provide her version of events, which she had declined.

- d) As regards the use of photographs of Mrs Skeggs in the broadcasts, ABS-CBN said that the programmes revealed more than the fact that Mrs Skeggs borrowed money and failed to pay it back, as each individual who came forward independently verified that she had used the same basic method to gain their trust and confidence before asking for substantial sums of money for apparently legitimate reasons. ABS-CBN said that it was in the public interest to disclose Mrs Skeggs’ behaviour.

Furthermore, ABS-CBN said that a news item about Mrs Skeggs appeared on several internet-based news websites and featured the same story and many of the same documents and photographs as were shown to and independently verified by ABS-CBN. The news stories pre-dated the programmes and the documents and photographs were already in the public domain prior to being shown to ABS-CBN.

## Decision

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

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

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

### Unfair treatment

- a) Ofcom first considered the complaint that Mrs Skeggs was unfairly portrayed as a swindler and as having conned 50 people out of money lent to her.

Ofcom considered whether the broadcaster's actions ensured that the programmes as broadcast avoided unjust or unfair treatment of Mrs Skeggs, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). In particular, Ofcom had regard to whether the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to an individual or organisation (as outlined in Practice 7.9 of the Code).

Ofcom was mindful of the fact that it was working from a transcript which translated the programme into English and that while the parties had agreed the translation, some words and expressions may not be easily translated and some of the original meaning could be lost.

Ofcom noted that the first programme commenced with the following statements:

*"It is estimated that at least £600,000 or almost 50m Pesos were taken by a Filipina who is married to a Briton from 50 Filipinos that they victimised here in London...Filipino Helena Pedroche Garcia Stuart-Skeggs, who has a British spouse allegedly had a "sweet tongue" (persuasive) and knows how to deal with her fellow Filipinos. Her usual modus, she would befriend her prospective victim, she would treat them to a fancy restaurant and hotel and give them various presents. When the prospective victim's trust has been obtained, that's when she would ask for a loan or lure them into investing in stock market".*

The programme featured two people who told of their experiences with Mrs Skeggs and the reporter then stated:

*"In the beginning, Helena was able to repay a little of her loans, however, it eventually became difficult to collect from her and the cheques issued by her husband, Richard Skeggs, allegedly bounced.*

*Five victims already tried to bring the matter to court but until now the spouses haven't showed up yet. The victims also approached the Embassy, but Helena never showed up despite a letter sent by the Embassy to her".*

The second programme largely repeated the allegations made in the first programme and featured a number of other people who told of their experiences with Mrs Skeggs.

Ofcom noted that, although the words “swindler” and “conned” were not used in either programme, ABS-CBN recognised that the programmes could be interpreted as portraying Mrs Skeggs as a “swindler” and as having “conned” 50 Filipinos out of money they had lent to her. Ofcom also noted that Mrs Skeggs considered that the programmes implied that she had stolen the money. However, given that the programmes referred throughout to loans and promises to pay, Ofcom did not consider that was a meaning that the programmes bore.

In Ofcom’s view, the programmes portrayed Mrs Skeggs as a swindler and as having conned 50 people out of money they lent to her and Ofcom proceeded to consider whether, in portraying Mrs Skeggs in that manner, the broadcaster had taken reasonable care not to present, disregard or omit material facts in a way that was unfair to Mrs Skeggs.

It should be noted, that Ofcom’s role was not to establish whether Mrs Skeggs had or had not swindled or conned Filipinos in London, but to determine whether, in broadcasting the allegations, the programme makers took reasonable care not to present, disregard or omit material facts in a way that was unfair to Mrs Skeggs and whether they had subjected her to unfair or unjust treatment in the broadcast of the programme.

Ofcom noted that at the time of the broadcasts ABS-CBN had collected information from interviews with numerous people who claimed they were owed money by Mrs Skeggs and from supporting documentation which indicated that:

- Mrs Skeggs was known by a number of different names: Helena Garcia Pedroche, Helena Marcos Skeggs and Mrs Helena Skeggs.
- Mrs Skeggs claimed to be: the illegitimate daughter of late former President Marcos, a millionairess, the daughter of an actress who became Miss Spain, an immigration adviser and a Virgin Atlantic pilot.
- Mrs Skeggs gained the trust of her creditors by: befriending them, telling them how rich she was, reinforcing the tales of her wealth by entertaining them at expensive restaurants and hotels and by giving them expensive gifts.
- Having gained their trust, Mrs Skeggs would: ask them for loans, borrow their credit cards or seek money to invest on the stock market for them.
- The reasons Mrs Skeggs gave for wanting the money were: that her aunt was suffering from cancer and she needed to pay for expensive treatment, she needed a short-term loan until the large inheritance she was due to receive came through or so she could invest on their behalf on the stock market.
- The reasons Mrs Skeggs gave for not repaying the monies were: her inheritance was so large the bank was holding it or that she was just awaiting funds to repay and would pay as soon as the money was released by the bank.
- Mrs Skeggs rarely denied she owed monies: she had admitted certain debts, signed a list of debts admitting sums due, agreed terms for repayment of other debts, said she would repay as soon as monies were released, promised repayment many times, did not appear to have contested County Court proceedings and Mr Skeggs had signed cheques in part payment.

- There were a number of creditors and large amounts due to them: 51 people from whom a total £542,890 had been borrowed, which with a year's interest at 10% amounted to £644,722.

In Ofcom's view, on the information collected by ABS-CBN, there was a basis for saying that it was not possible to describe the way in which Mrs Skeggs persuaded people to lend or invest money with her as "normal, legitimate circumstances", as she suggested. As a result, Ofcom did not consider that it was unreasonable for ABS-CBN to have portrayed Mrs Skeggs in the way that it did.

Ofcom also noted that Mrs Skeggs said that she owed nowhere near £600,000 to nothing like 50 people. However, at the time of the broadcasts, the reporter had taken statements from 18 people and had compiled a spreadsheet listing 51 individuals and the amounts of money they were owed. Some of the information on the spreadsheet had been provided by Ms Tabor, the rest had been added after the reporter spoke to the individuals. Ofcom recognised that nine people on the spreadsheet had the sum £0 by their names, which suggested that at the time of broadcast they were not owed any money and that therefore ABS-CBN only had evidence of monies owed to 42 people.

Although ABS-CBN did not receive a response to the allegations from Mrs Skeggs prior to the broadcasts, it did receive an email from her representative dated 3 July 2009, in which he said that funds were to be released very soon and that on receipt of a list of those claiming funds he would go through the list with Mrs Skeggs and where it was agreed funds were due he would pay them out of the funds he received. ABS-CBN also received a letter before action from Mrs Skeggs' solicitors dated 15 September 2009 which stated that the allegations made in the programme broadcast on 13 September 2009 were not true and that Mrs Skeggs was in fact owed money by a number of those making claims against her. It also stated that she had recently experienced financial difficulty, but that any sums due would be repaid in the next few weeks. Ofcom noted that the above information was included in the programme on 20 September 2009.

Ofcom recognised the importance of freedom of expression and the freedom to broadcast matters of genuine public interest such as the allegations contained in these programmes. However, it also recognised that in presenting such serious allegations the Code requires that broadcasters take reasonable care not to do so in a way that causes unfairness to individuals or organisations. In this case, taking into account the evidence considered above and the submissions of the parties, and notwithstanding the discrepancy over how many people were owed money, Ofcom did not consider that the programmes presented, disregarded or omitted material facts in a way that was unfair to Mrs Skeggs in respect of the allegations and the responses received to the allegations and has not upheld the complaint in this respect.

- b) Ofcom then considered the complaint that Mrs Skeggs was not given an opportunity to respond to the allegations.

Ofcom considered whether the broadcaster's actions ensured that the programmes as broadcast avoided unjust or unfair treatment of Mrs Skeggs, as set out in Rule 7.1 of the Code. In particular, Ofcom had regard to Practice 7.11 which requires that, if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom acknowledged that various representations had been made by the parties about Practices 7.3 and 7.13 which provide that where a person is invited to make a contribution to a programme they should normally be given sufficient information to ensure their consent to contribute is informed consent and that where it is appropriate to represent the views of a person or organisation that is not participating in the programme this must be done in a fair manner. However, these issues did not form part of the Entertained Complaint and were not therefore considered by Ofcom.

Ofcom noted ABS-CBN's admission that the programmes alleged wrongdoing on the part of Mrs Skeggs. As stated above, it was Ofcom's view that the programmes portrayed Mrs Skeggs as a swindler and as having conned 50 people out of money they lent to her. As a result, and in accordance with the Code, Mrs Skeggs should normally have been given an appropriate and timely opportunity to respond to the allegations.

Ofcom first considered whether Mrs Skeggs had been provided with an appropriate and timely opportunity to respond to the programme broadcast on 13 September 2009. Ofcom noted that ABS-CBN asserted both in the programmes and in its response to the complaint that the reporter had tried to contact Mrs Skeggs to give her opportunities to respond to the allegations and that Mrs Skeggs stated that, other than one brief telephone conversation with the reporter, she did not recall receiving a single telephone call, voicemail message or email from the reporter before the programme broadcast on 13 September 2009 and that no note or letter was left at her house informing her of the reporter's visit or setting out information about the allegations.

While Ofcom noted there was a dispute between the parties about the attempts the reporter said he had made to contact Mrs Skeggs between June and September 2009 on the mobile phone numbers he had been provided with by the interviewees, the parties did agree that the reporter had a telephone conversation with Mrs Skeggs which he said took place in July 2009.

The reporter said that during the conversation he told Mrs Skeggs he was compiling a report on the complaints of the alleged victims and asked for her response to the allegations and for an interview. Ofcom noted that Mrs Skeggs had not taken issue with the detail of the reporter's account of the conversation (although she said the reporter failed to provide sufficient information for her to make an informed decision about whether to contribute to the programmes). The reporter said that from the content of what Mrs Skeggs said to him, he believed that she knew about the nature of the allegations that were being made at that point. The reporter said he then spoke to Mrs Skeggs' representative and told him that he was working on a report about Mrs Skeggs and the money that she had allegedly taken from people and that he was seeking her input to enable a balanced programme to be made.

On 2 August 2009, the reporter and some of the interviewees went to Mrs Skeggs' house to try to speak to her. The reporter said that they tried to obtain a response for about 10 minutes, but that despite the fact that the reporter believed Mrs Skeggs was at home because her car was parked outside, there was no answer. Mrs Skeggs said she was not at home.

Ofcom recognises that a response can be sought in a number of different ways, e.g. by seeking an on-camera interview, by requesting a written response for inclusion in the programme or even simply telephoning the subject. What is

important however is that the subject is notified of all material allegations and given a proper opportunity to respond. In Ofcom's view, approaches for a response do not generally need to set out or explain all the evidence upon which the allegations being made are based, provided a proper description of the allegations is provided.

In order to demonstrate that Mrs Skeggs had been notified of all material allegations, it would have been preferable if they had been set out in writing in advance of the programmes. However, it was clear to Ofcom that the nature of the allegations to be broadcast was made clear to Mrs Skeggs and her representative in the telephone conversation on 3 July 2009 and that she declined an invitation to respond by way of an interview.

As regards the programme broadcast on 20 September 2009, Ofcom considered that Mrs Skeggs had been provided with an appropriate and timely opportunity to respond, as she acknowledged she received an invitation to be interviewed but that she rejected the offer as she feared her contribution would be distorted.

In the circumstances, Ofcom considered that Mrs Skeggs had been offered an appropriate and timely opportunity to respond to the allegations contained in the programmes.

Ofcom has not therefore upheld the complaint in this respect.

### Privacy

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

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

- c) Ofcom considered the complaint that photographs of Mrs Skeggs were taken from her home without her consent and were used in the programmes as broadcast.

Ofcom noted that ABS-CBN denied that it or any member of its news team entered Mrs Skeggs' home or removed any photograph from her home and stated that the photographs used in the broadcasts were provided by interviewees who complained about the treatment they had received. One of them had confirmed that she had taken photographs with her own camera at an airshow in July 2008 and ABS-CBN also provided a statement from an interviewee who confirmed that she had seen photographs handed to ABS-CBN by the owners of the photographs.

Ofcom noted Mrs Skeggs' contention that the photographs were taken illegally from her home. Ofcom was satisfied, however, that ABS-CBN had not removed the photographs from Mrs Skeggs' home and had obtained them properly, as far it was concerned, and in good faith. As a result, Ofcom was satisfied that ABS-

CBN had not infringed Mrs Skeggs' privacy in obtaining the photographs and in the making of the programme.

Ofcom has not therefore upheld the complaint in this respect.

- d) Ofcom considered the complaint that photographs of Mrs Skeggs and her family were included in the programmes as broadcast without her consent.

In doing so, Ofcom took the following approach. Mrs Skeggs' complaint said she was only making a complaint of unwarranted infringement of privacy on her own behalf, not on behalf of her partner or his daughter (notwithstanding the reference to them in her complaint). In light of the fact Mr Skeggs had also made a complaint, and of the way Ofcom dealt with it, Ofcom therefore only considered whether Mrs Skeggs' privacy had been unwarrantably infringed in the broadcast of the photographs of her and her family.

Ofcom first considered whether Mrs Skeggs had a legitimate expectation of privacy in relation to the photographs broadcast without her consent.

Ofcom noted that four photographs which included Mrs Skeggs were broadcast in the programmes. Two of them included Mr Skeggs and one included Mr Skeggs' daughter.

It was clear to Ofcom that two of the photographs had been taken at an airshow in July 2008 and had therefore been taken in a public place. It was not clear to Ofcom where the other two photographs had been taken but, as they appeared to have been taken at social gatherings, Ofcom considered that it was likely they had been taken in private places. It was also apparent to Ofcom that all the photographs were taken by acquaintances with the knowledge and consent of those featured.

Ofcom considered both whether Mrs Skeggs had a legitimate expectation of privacy in relation to the photographs of her and in relation to the photographs of her partner and his daughter.

While Ofcom recognises that privacy could include the right to control the dissemination of information about a person's identity or image, in Ofcom's view, in the absence of other factors or aggravating circumstances, there will not generally be a legitimate expectation of privacy in relation to the mere disclosure of a person's image.

As to the photographs of Mrs Skeggs, Ofcom noted that she was not a public figure, that the photographs were of her going about her private business and that they had all apparently been taken with her knowledge and consent. Ofcom recognised that Mrs Skeggs would not have expected that photographs of her would be broadcast on a television news programme, however, as the photographs of Mrs Skeggs merely disclosed what she looked like and did not appear to disclose any information of a personal or sensitive nature or show her in an embarrassing situation, in Ofcom's view, Mrs Skeggs did not have a legitimate expectation of privacy in relation to the broadcast of the photographs of her.

As to the photographs of Mr Skeggs and his daughter, Ofcom noted that they merely disclosed what they looked like and did not appear to disclose any information about Mrs Skeggs' private or family life. As a result, Ofcom did not

consider that Mrs Skeggs had a legitimate expectation of privacy in respect of the broadcast photographs of Mr Skeggs and his daughter.

Given this, Ofcom considered that there was no infringement of Mrs Skeggs' privacy in respect of the broadcast of the photographs of her and her family and it was not necessary for Ofcom to consider whether any intrusion into her private life was warranted.

Ofcom has not therefore upheld the complaint in this respect.

**Accordingly Ofcom has not upheld Mrs Skeggs' complaint of unfair treatment or unwarranted infringement of privacy in either the making or broadcast of the programme.**

## Not Upheld

### Complaint by the Free Gaza Movement made on its behalf by Ms Alex Harrison

*Panorama: Death in the Med, BBC1, 16 August 2010*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Ms Alex Harrison on behalf of the Free Gaza Movement.

An edition of *Panorama* looked at the boarding in May 2010 by Israeli soldiers of the Mavi Marmara, one of the ships in the Gaza Freedom Flotilla, which was attempting to take aid to Gaza. The flotilla was organised by the Free Gaza Movement ("Free Gaza") and the programme referred to the flotilla as "*sailing under the banner of the Free Gaza Movement*".

In summary Ofcom found the following:

- The programme did not portray Free Gaza unfairly, as a result of the misrepresentation or omission of material.
- The programme did not include any allegations to which Free Gaza should have been given an opportunity to respond.

#### Introduction

On 16 August 2010, the BBC broadcast an edition of its current affairs documentary series *Panorama*, entitled *Death in the Med*. The programme looked at the boarding in May 2010 by Israeli soldiers of a ship in the Gaza Freedom Flotilla ("the flotilla"), which was attempting to take aid to Gaza. The flotilla was organised by the Free Gaza Movement ("Free Gaza"), which describes itself as a human rights group that "wants to break the siege of Gaza" and to raise "international awareness about the prison-like closure of the Gaza Strip and to pressure the international community to review its sanctions policy and end its support for continued Israeli occupation". The programme referred to the flotilla as "*sailing under the banner of the Free Gaza Movement*". Israeli soldiers boarded the Mavi Marmara, the largest of the six ships in the flotilla.

Presenter Jeremy Vine introduced the report as follows:

*"...three months on, the global storm over Israel's blockade of Gaza is still continuing. Israel was accused of breaking international law by seizing a Turkish ship, in an action in which nine people died. Now Israel says they were terrorists, but Turkey insists they were innocent victims. With several inquiries underway, Panorama's Jane Corbin has important new evidence from both sides, to piece together the real story for the first time".*

The programme included footage taken on board and around the Mavi Marmara. There was footage of interviews with Israeli soldiers. The programme also included interviews with activists who were on board the flotilla, including Ms Lubna Masarwa, the Free Gaza co-coordinator on board the Mavi Marmara.

Ms Alex Harrison, a crew member on the flotilla and a co-ordinator with Free Gaza, complained that Free Gaza was treated unfairly in the programme as broadcast.

## The Complaint

### Free Gaza's case

In summary, Free Gaza complained that it was treated unfairly in that:

- a) Free Gaza was portrayed unfairly as a result of the misrepresentation of material facts in that:
  - i) The presenter said that the reporter had *"important new evidence from both sides, to piece together the real story for the first time"*, but that statements from Israeli Naval Commando 13 were presented, unchallenged, as facts, while evidence from Free Gaza was barely acknowledged and was referred to as *"claims"*.
  - ii) The reporter asked *"...what was the real agenda of some of those people who called themselves 'peace activists' aboard the Free Gaza Flotilla?"* and portrayed them as a violent Islamic activist mission seeking confrontation with Israel. Ms Harrison said that Free Gaza was comprised of peace activists of various or no religious backgrounds and that they were unarmed civilians with a humanitarian cargo, in international waters.
  - iii) The programme referred to the Israeli commandoes as having to *"fight for their lives"*, but Ms Harrison said that the members of Free Gaza were not the aggressors and that nine of them were killed and another 50 injured.
  - iv) The programme included footage filmed by Free Gaza and stolen by the Israeli commandos, but only included clips selected by the people who stole the film.
  - v) The programme included an audio tape of an offensive statement, in which a voice was heard to say *"Shut up, go back to Auschwitz"* and *"We're helping Arabs go against the US. Don't forget 9/11, guys"* and alleged that it was made by Free Gaza. In fact, days after the event, the tape was shown to have been doctored and the Israelis stopped relying on it.
  - vi) The reporter said that *"the question of who shot first remains disputed"*, despite the fact that Free Gaza did not shoot or carry any weapons.
  - vii) The reporter made a false claim that two thirds of the medicines carried on the flotilla were out of date.
- b) Free Gaza was portrayed unfairly as a result of the omission of material facts in that:
  - i) The programme did not show the testimonies of over 30 British passengers on the flotilla, several of whom, including Ms Harrison, were interviewed at length by the programme makers.
  - ii) The programme failed to address the evidence of film footage belonging to Free Gaza, which was stolen by the Israeli commandos.
- c) Free Gaza was not given an appropriate and timely opportunity to respond to the allegations made about it in the programme. In particular, time was given to an

Israeli spokesman to justify the actions of the Israeli military but the programme did not given similar time or weight to the position of Free Gaza.

### **The BBC's case**

By way of background, the BBC said that Free Gaza figured only to a very limited extent in the programme and that therefore there was only a limited extent to which anything said in the programme could be taken as applying to Free Gaza or as being capable of giving rise to unfairness to Free Gaza.

The BBC said that the introduction made it clear that the programme would focus on the chain of events leading to the deaths and injuries on board the Mavi Marmara. Those events were initially presented in the context of Israeli claims and Turkish counter-claims, anticipating the later focus on the role of a Turkish organisation, the IHH. The programme then referred to Free Gaza and reflected the fact that the flotilla, which involved a total of six organizations, was initially co-ordinated by Free Gaza. The reporter said:

*"The ship sailed under the banner of the Free Gaza Movement – the largest vessel in a flotilla of six. There were 600 activists aboard – including 28 from the UK and many more from Europe".*

The programme then introduced Ms Lubna Masarwa as *"the Free Gaza co-ordinator on board"* (the Mavi Marmara) and she spoke briefly and uncontentiously about the use of the media in pursuing her organisation's objectives. The programme did not include any claim that Free Gaza's role extended to controlling or directing the actions of those on board the Mavi Marmara and the programme went on to make clear that it did not do so, when the reporter said:

*"The Mavi Marmara's mission was organised by the IHH, a Turkish humanitarian organization. There were ninety IHH volunteers on board - from all over Turkey".*

The programme then set out the IHH's Islamist connections, its alleged links with terrorist groups, its "somewhat bellicose" attitude towards Israel and its close ties to the Turkish governing party. After setting out the Israeli perspective on events as they approached the Mavi Marmara on the evening in question, the reporter returned to the scene on board, saying:

*"Late that night it was clear to the crew of the ship that a core of IHH organizers had taken control of the Mavi Marmara".*

The BBC said that, from that point on, it would have been entirely clear to viewers that the IHH were controlling and directing the activists on the deck of the Mavi Marmara. Major General Giora Eiland, retired head of the Israel Defence Forces ("IDF") inquiry into the events, distinguished between the group of activists on deck and *"the rest of the people – many of them, hundreds of them were quite innocent people, [who] did not have a clue that this was what was planned"*. The BBC said that there was no reference to Free Gaza in the programme's account of events on deck and Ms Masarwa, who had already been introduced as Free Gaza co-ordinator on the Mavi Marmara, figured only twice. First the programme included her description of what she had seen and heard from her position in the press room, from which it was apparent that she could neither have participated in the events on deck nor attempted to control or direct them on behalf of Free Gaza. She was later shown, at a point after the Israelis had taken control of the ship, appealing over the tannoy for them not to use violence, then reflecting on the events in a subsequent interview.

The BBC said that there was nothing in the programme overall which suggested that Free Gaza was in any way implicated in the chain of events that resulted in the deaths and injuries aboard the Mavi Marmara, except insofar as they had unwittingly included among the groups they were co-ordinating a small number of people who had a distinct agenda of their own.

In summary the BBC responded to the complaint as follows:

a) The BBC first responded to the complaint that Free Gaza was portrayed unfairly as a result of the misrepresentation of material facts.

i) The BBC responded to the complaint that statements from Israeli Naval Commando 13 were presented, unchallenged, as facts, while evidence from the Free Gaza Movement was barely acknowledged and was referred to as *"claims"*.

The BBC said that the *"important new evidence from both sides"* referred to by the reporter consisted primarily of interviews with key individuals who had witnessed or experienced the events on board the Mavi Marmara and were speaking on the record for the first time. These included interviews with Israeli naval commandos and the head of the IDF inquiry, retired Major General Giora Eiland. The programme also obtained the first British television interview with the head of the IHH, Bülent Yildirim, and conducted on-the-record interviews with three IHH activists on board the Mavi Marmara, a Turkish doctor who treated the wounded, other activists and Ms Masarwa. The evidence also consisted of video and photographic material obtained from sources other than Free Gaza, in particular the campaigning group Cultures of Resistance, aboard the Mavi Marmara and the Israeli authorities.

The BBC said that, apart from the interview with Ms Masarwa, none of the new evidence could be characterised as "Evidence from the Free Gaza Movement". The BBC said that this was unsurprising in view of Free Gaza's limited connection with the events on board the Mavi Marmara. The BBC said that in these circumstances, the question of whether one body of evidence was treated as *"claims"* while another was *"presented unchallenged"* could raise no issue of unfairness to Free Gaza.

ii) The BBC next responded to the complaint that the reporter asked *"...what was the real agenda of some of those people who called themselves "peace activists" aboard the Free Gaza Flotilla?"* and portrayed them as a violent Islamic activist mission seeking confrontation with Israel.

The BBC said that the two points made in this sub-head of complaint had no logical connection with each other, unless the reference to *"some of those people who called themselves "peace activists" aboard the Free Gaza Flotilla"* was taken to encompass Free Gaza. The BBC said that the programme did not dispute Ms Harrison's description of Free Gaza's membership and made plain that those on the Mavi Marmara with a more confrontational attitude were members of a distinct organization, the IHH, acting on its own initiative, according to its own agenda and in no way under the control or direction of Free Gaza.

iii) As regards the programme's reference to the Israeli commandoes as having to *"fight for their lives"*, when Free Gaza were not the aggressors and when nine of them were killed and 50 injured, the BBC said that it could not be

argued that members of Free Gaza were portrayed in the programme as the aggressors.

- iv) With reference to the complaint that the programme included footage filmed by Free Gaza and stolen by the Israeli commandos, but only included clips selected by the people who stole the film, the BBC said that, to the best of its belief, the programme included no such footage. The BBC said that most of the footage used in the programme came from the IHH, the IDF and Cultures of Resistance. The BBC said that most of the footage used in the programme which was confiscated by the IDF was shot by the IHH and that CCTV footage came from the Mavi Marmara, which was owned by the IHH. The footage was therefore not filmed or owned by Free Gaza. The BBC said that, with one exception, the programme-makers were able to establish the provenance of the relevant footage and that none of it came from Free Gaza sources. The exception was the footage of an unidentified man on board the Mavi Marmara who *“openly boasted he’d be prepared to die as a ‘shaheed’ a martyr, fighting the Israelis”*, which was obtained from the IDF but the origin of which the programme makers were unable to check. However, the BBC said that, given the conflict between what the man was saying and the aims of Free Gaza, the programme makers were confident that Free Gaza was not the source of this footage.
- v) The BBC next responded to the complaint that the programme included an audio tape of an offensive statement, in which a voice was heard to say *“Shut up, go back to Auschwitz”* and *“We’re helping Arabs go against the US. Don’t forget 9/11, guys”* and alleged that it was made by Free Gaza, when in fact, days after the event, the tape was shown to have been doctored and the Israelis stopped relying on it.

The BBC said that the programme did not say that the comments on the recording were made by Free Gaza and that the programme made it clear that the Israelis believed the comments were made *“from the flotilla”*, without specifying which ship. It was also made clear that the authenticity of the recording had been questioned and that the activists denied that any such comments were made.

The BBC added that it was incorrect to say that the Israeli’s had “stopped relying” on the recording. The IDF had acknowledged that the original recording it released had been edited to remove silences but maintained that this did not change what was said. The BBC said that the IDF stood by its claim that the comments were broadcast, but could not identify which ship sent the message.

The BBC said that, irrespective of the authenticity of the tape, the programme never attributed the comments it contained to Free Gaza.

- vi) In response to the complaint that the reporter said that *“the question of who shot first remains disputed”*, despite the fact that Free Gaza did not shoot or carry any weapons, the BBC said that it was a matter of fact that the question of who shot first remained disputed. The BBC also said that the programme distinguished clearly between Free Gaza and those involved in the confrontation with Israeli forces on the deck of the Mavi Marmara and made no suggestion that any member of Free Gaza shot first, or at all.

- vii) As regards the complaint that the reporter made a false claim that two thirds of the medicines carried on the flotilla were out of date, the BBC said that this claim was made as part of an analysis of the real motive of the IHH. The programme concluded that the aim of the IHH was primarily to raise international awareness of the blockade on Gaza and the subsequent IHH report on the matter described the aim of the flotilla as *“to bring Gaza, which had fallen off the international agenda, back onto the agenda of decision-making states in a forceful manner and in this way to form a powerful initiative to lift the embargo in the region”*.

The BBC said that the programme specifically referred to aid which had been delivered by the IHH, rather the flotilla in general.

- b) The BBC next responded to the complaint that Free Gaza was portrayed unfairly as a result of the omission of material facts.
- i) In response to the complaint that the programme did not show the testimonies of over 30 British passengers on the flotilla, several of whom, including Ms Harrison, were interviewed at length by the programme makers, the BBC said that the programme makers conducted extensive interviews, both on and off the record, with activists, organisers and others to establish what happened on board the Mavi Marmara and why.

The BBC said that, in an investigation of this kind, it was imperative to collect evidence from the widest possible range of first-hand sources and that it was therefore inevitable that the great bulk of the evidence would not be used in the final programme. As the programme focused on events on board the Mavi Marmara, it gave priority to those on the flotilla who had been eye-witnesses to those events and it was not unfair to Free Gaza not to include interview material with Free Gaza members on other vessels. Furthermore the programme included a contribution from a member of Free Gaza who was on board the Mavi Marmara, Ms Masarwa. The BBC said that an email exchange between Ms Harrison and the programme’s producer made it clear that Ms Harrison considered the selection of Ms Masarwa entirely appropriate.

The BBC said that, in any event, as the programme made clear, Free Gaza were not engaged in the confrontation or the defence of the ship and so were not primary witnesses.

- ii) In response to the complaint that the programme failed to address the evidence of film footage belonging to Free Gaza, which was stolen by the Israeli commandos, the BBC said that only one shot was taken from footage originated by members of the flotilla and seized by the Israelis (see response at head a) iv) above). All other footage of events of the Mavi Marmara was provided by IHH or Cultures of Resistance. The BBC also said that the programme’s account of events which led to fatalities aboard the Mavi Marmara was based on a range of eye-witness evidence as well as the film footage.
- c) The BBC then responded to the complaint that Free Gaza was not given an appropriate and timely opportunity to respond to the allegations made about it in the programme.

The BBC said that Free Gaza was not the subject of allegations in the programme and that the substantive allegations in the programme concerned the

Israeli forces and the IHH and its associates. The programme made clear that Free Gaza was neither in control of the Mavi Marmara at the relevant time nor directing the events which led to the fatalities on board. The BBC also said that, insofar as the views of Free Gaza were relevant, they were represented by Ms Masarwa.

### **Free Gaza's comments**

In response to the BBC's background comments, Ms Harrison said that much of the programme could be taken as applying to the flotilla as a whole and Free Gaza as a part of it. She said that when the presenter said at the beginning of the programme "*But did Israel fall into a trap and what was the real agenda of some of those people who called themselves "peace activists" on board the Free Gaza flotilla?*", it was far from clear that he was referring to only a small number of IHH passengers. There followed several references to Free Gaza and to the flotilla collectively as a group. Ms Harrison said that the flotilla sailed as and was attacked as one group and that the programme makers did not differentiate the actions of Free Gaza from IHH or other flotilla partners. The programme therefore misrepresented the flotilla in its entirety and Free Gaza as part of that.

Ms Harrison said that the presenter stated that "*The ship sailed under the banner of the Free Gaza Movement*" and then introduced Free Gaza's co-ordinator on board the Mavi Marmara. The programme therefore showed Free Gaza to be an organiser of the flotilla and as having had a presence on the boat in question, but did not make "abundantly clear" that Free Gaza had no role in what happened on the Mavi Marmara. As the group was widely known to have organised nine voyages and co-ordinated the flotilla and as it did not exist for any other purpose, its involvement would be reasonably inferred.

Ms Harrison also said that, although Free Gaza was the name of just one movement in the coalition, the programme used it to describe the whole flotilla. The reference to the flotilla as the Free Gaza Flotilla at the start and end of the programme meant that what was said in the programme would be taken as applying to Free Gaza, the movement. The actual name of the flotilla, used by coalition members and media, was the Freedom Flotilla, but the programme did not use that name, instead referring to the coalition as Free Gaza. In these circumstances, the viewers would be unlikely to make the distinction between Free Gaza and the Freedom Flotilla.

Ms Harrison then commented on the BBC's statement in relation to her specific complaints.

- a) Ms Harrison responded to the BBC's response to the complaint that Free Gaza was portrayed unfairly as a result of the misrepresentation of material facts as follows:
  - i) As regards the complaint about the programme's reference to "*important new evidence from both sides*", Ms Harrison said that the BBC had not acknowledged the evidence which she gave, as a Free Gaza member, to the researcher. Ms Harrison said that, in an interview lasting around an hour, she told the researcher that, from the bridge of a vessel close to the Marmara, she had seen and heard the Israeli soldiers firing on those on the decks of the Marmara before they got on board and described the attempts of the passengers to defend themselves. Ms Harrison said that, although this was not filmed, it was not just a "*claim*" but was eye witness evidence from Free

Gaza that was directly relevant to the programme's statement that "*The IHH claim they were acting in self defence*".

- ii) Ms Harrison next commented on the BBC's response to her complaint that the reporter asked "...*what was the real agenda of some of those people who called themselves "peace activists" aboard the Free Gaza Flotilla?*" and portrayed them as a violent Islamic activist mission seeking confrontation with Israel. Ms Harrison said that using the name of the Free Gaza group rather than the actual name of the flotilla affected Free Gaza and, having named the group in this context, the programme did nothing to distinguish Free Gaza from what it went on to portray.
- iv) As regards footage included in the programme, Ms Harrison said that, although the BBC acknowledged that the programme included footage taken from passengers and the ship by the Israelis military, it contended wrongly that the footage was not filmed by Free Gaza. Ms Harrison said that the Cultures of Resistance journalists were in fact Free Gaza passengers. She said that, even if Free Gaza had had no involvement in the filming, the fact that the BBC broadcast stolen footage, selected by those who seized it, and to which Free Gaza had not had access to was inherently unfair to Free Gaza.
- v) Ms Harrison then commented on the BBC's statement in respect of the broadcast of the "offensive" recording. She said that the reference to the recording coming "*from the flotilla*", without specifying which ship, clearly included Free Gaza. Ms Harrison said that the BBC had not addressed the finding of the United Nations Human Rights Council ("UNHRC")<sup>1</sup> that the offensive comments were not made from the ships in the flotilla. Ms Harrison said that, although the reporter said "*The flotilla's organisers insist they did not hear these comments being made*", she then said "*For the Israelis it was a warning sign things wouldn't go that smoothly*", suggesting that an acceptance on the part of the reporter that the statements were made. Ms Harrison said that the programme makers should have carefully considered the authenticity of the recordings before including offensive, damaging and disputed comments and, being aware the recording was disputed, they should have given flotilla organisers opportunity to put their side.
- vi) As regards the programme's reference to "*who shot first*", Ms Harrison said that the BBC continued to state that both sides shot, despite the fact that Free Gaza contended that flotilla passengers did not shoot at all. Ms Harrison said that the UNHRC report found no evidence that the flotilla participants used or had firearms. The report also found that "live ammunition was used from the helicopter onto the top deck prior to the descent of the soldiers" and that the Israeli accounts were "so inconsistent and contradictory with regard to evidence of alleged firearms injuries to Israeli soldiers that it has to reject it".
- vii) Ms Harrison then responded to the BBC's statement about the medicines carried on the flotilla. Ms Harrison said that it was not clear that the presenter was referring only to aid from IHH, as she did not say how she could identify which ship the aid came from once it had been seized, searched and

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<sup>1</sup>Human Rights Council Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attack on the flotilla of ships carrying humanitarian assistance (22 September 2010)

transferred, and it may well have come from any of the flotilla partners, including Free Gaza. Ms Harrison said that the reporter admitted that she only saw “some” of the aid, as selected by the Israelis and beyond the flotilla partners' control. In these circumstances, Ms Harrison said that she could not have known that “*two thirds of the medicines were out of date and useless*” and should have given the flotilla partners the opportunity to detail their cargo.

b) Ms Harrison then commented on the BBC's response to the complaint that Free Gaza was portrayed unfairly as a result of the omission of material facts as follows:

i) Ms Harrison commented on the BBC's statement in respect of the complaint that the programme failed to represent the experiences of other eye witnesses to the attack on the flotilla, such as Free Gaza passengers on the Mavi Marmara and other boats and the British passengers on the Mavi Marmara.

Ms Harrison said that the absence of these accounts created the false impression that the casualties were solely or mainly activists who were physically defending the ship when they were killed or injured. Ms Harrison also said that, contrary to the BBC's assertion, Free Gaza activists were primary witnesses to the attack while others on board the Mavi Marmara witnessed the behaviour of the soldiers and of the passengers who defended the ship and that inclusion of their evidence would have resulted in a very different programme. Ms Harrison also said that failing to represent the experiences of other groups of passengers on the Mavi Marmara and passengers on other boats constituted unfairness to Free Gaza and the Freedom Flotilla, as the absence of other accounts created the impression that the activists who defended the ship were representative of the entire flotilla. Ms Harrison said that the BBC had not addressed the significant differences between the UN's findings and its own assertions.

### **The BBC's Comments**

The BBC said that, while it was true to say that some of the programme could and should be taken to apply to the flotilla as a whole, it was perverse to suggest that actions and attitudes explicitly attributed to the IHH would have been taken as applying to Free Gaza, in a context which made clear that it was IHH members and their associates, not Free Gaza or its members, who were in control of the Mavi Marmara at the relevant time.

a) The BBC responded to Ms Harrison's comments on its statement regarding the complaint that Free Gaza was portrayed unfairly as a result of the misrepresentation of material facts as follows:

i) As regards the complaint about the programme's reference to “*important new evidence from both sides*”, the BBC said that the programme included eye-witness evidence to the same effect as that which Ms Harrison gave to the interviewer which, because it came from those on board and on the decks of the Mavi Marmara, was to be preferred in respect of reliability to Ms Harrison's nocturnal observations from a different vessel, which was rightly “*treated as a claim*”, because it was contested by other eye-witness evidence from the Israeli side. The BBC said that, even if the programme had included no such evidence, unfairness could not have resulted to Free Gaza from an

account of events which, as the programme made clear, Free Gaza had no control over and no direct involvement in.

- ii) The BBC next commented on Ms Harrison's comments regarding her complaint that the reporter asked "...*what was the real agenda of some of those people who called themselves 'peace activists' aboard the Free Gaza Flotilla?*" and portrayed them as a violent Islamic activist mission seeking confrontation with Israel. The BBC said that the programme clearly distinguished between Free Gaza and the IHH and made clear that it was IHH members and their associates, not Free Gaza or its members, who were in control of the Mavi Marmara at the relevant time.
- iv) As regards footage included in the programme, the BBC said that no unfairness necessarily arose in the event that the material had been stolen, selected by those who seized it and broadcast without Free Gaza having had access to it. Unfairness would only arise if the use of the material in the programme created an impression that was unfair to Free Gaza, which it did not.
- v) As regards the broadcast of the "offensive" recording, the BBC said that it was inherently unlikely that an audience presented with a distinction between those members of the flotilla who had set out with pacific intentions and those who had not (namely the IHH) and who had heard the militant rhetoric of Mr Yildirim aboard the Mavi Marmara, would be at all inclined to attribute the statement in question to Free Gaza rather than to an IHH source. The BBC said that, in these circumstances, the authenticity or otherwise of the recording was immaterial to any consideration of unfairness to Free Gaza.

As regards the UNHRC report referred to Ms Harrison, the BBC said that the panel was dominated by non-aligned nations, many of them Muslim, that only one of the 15 European nations represented voted in favour of constituting the panel and none voted in favour of the panel's report. The BBC understood that the UK was unhappy with the mandate for the panel, which it considered one-sided and tending to prejudgement. The Israeli authorities had not co-operated with the panel, which reviewed no evidence from Israeli sources, and the panel did not interview Mr Yildirim, the head of the IHH. The Panel requested copies of the programme makers' interviews with Mr Yildirim and Israeli commandos, but published its report before receiving this material. The BBC said that the report asserted that there had been firing from the Israeli helicopters and that there had been "*extra-legal, arbitrary and summary executions*" by the Israelis, as well as that the recording of the offensive statement purportedly from on board a vessel in the flotilla was a fake, but adduced no evidence for these claims.

- vii) As regards the medicines carried on the flotilla, the BBC said that nothing could be clearer in associating the aid materials shown in the programme with the IHH than the words "*So what about the aid the IHH said was the reason for their mission?*".
- b) The BBC then commented on Ms Harrison's comments on its statement in response to the complaint that Free Gaza was portrayed unfairly as a result of the omission of material facts as follows:
  - i) The BBC commented in respect of the complaint that the programme failed to represent the experiences of other eye witnesses to the attack on the flotilla

and said that the programme's focus was on the circumstances which led to the fatal events on board the Mavi Marmara, the only ship on which fatalities occurred. The programme included eye-witness evidence from closer observers of those events than Ms Harrison or her colleagues on other vessels.

The BBC said that the UN report could not be regarded as superseding or correcting the programme and that, even if it could, it would do no more than corroborate Free Gaza's preferred narrative of events on board the Mavi Marmara.

## Decision

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

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

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

Before reaching a decision on the individual heads of complaint, Ofcom considered the extent to which Free Gaza was implicated in any criticisms in the programme. Ofcom noted the BBC's position that Free Gaza only figured to a limited extent in the programme and that there was therefore only a limited extent to which anything said in the programme, unless it referred specifically to Free Gaza, could be capable of giving rise to unfairness to Free Gaza. Ofcom also took into account Ms Harrison's response to this, namely that much of the programme could be taken as applying to the flotilla as a whole and to Free Gaza as part of that flotilla. Ofcom also noted Ms Harrison's position that, although Free Gaza was the name of just one member of the coalition involved in the flotilla, the programme referred to the flotilla as the Free Gaza flotilla, rather than the name used by the coalition itself, namely the Freedom Flotilla.

Ofcom noted that in the opening sequences of the programme it was clear that the Mavi Marmara was the focus of the violence. However the programme also referred at this early stage to the flotilla more generally, with the reporter asking:

*"...what was the real agenda of some of those people who called themselves 'peace activists' on board the Free Gaza flotilla?"*

A little later she referred to the fact that the Mavi Marmara "*sailed under the banner of the Free Gaza Movement*". Towards the end of the programme, the reporter said that "*the outcry ensured the flotilla achieved its aim*" and the presenter said at the end of the programme that "*...there are plans for another Free Gaza flotilla later in the year*".

Subject to the specific findings below, Ofcom took the view that, notwithstanding the BBC's view that Free Gaza figured only to a limited extent in the programme, the programme's use of references to "*the flotilla*" and "*the Free Gaza flotilla*" had the potential to cause confusion in the minds of viewers as to the extent to which overall responsibility for the peace activists' role in the events being investigated by the programme was being attributed to the members of the IHH on board the Mavi Marmara and the extent to which it was being attributed more generally to the entire flotilla and Free Gaza.

Ofcom then turned to consider the specific complaints.

- a) Ofcom first considered the complaint that Free Gaza was portrayed unfairly as a result of the misrepresentation of material facts:

In considering this part of the complaint Ofcom took account of Rule 7.1 of Ofcom's Broadcasting Code ("the Code"), which provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also took account of Practice 7.9, which states that before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

- i) Ofcom considered the complaint that the presenter said that the reporter had "*important new evidence from both sides, to piece together the real story for the first time*", but that statements from the Israeli Commando 13 were presented, unchallenged, as facts, while evidence from Free Gaza was barely acknowledged and was referred to as "*claims*".

Ofcom noted that the reference to the reporter having "*important new evidence from both sides*" came very early on in the programme, after the presenter referred to the involvement of Israeli commandos and a peace mission to bring aid to Gaza. Ofcom also noted that some of the "*new evidence*" referred to came from the Israeli side, with Major General Eiland and some of the Israeli commandos speaking to the reporter. Evidence was also included from the peace activists' side, with the head of the IHH, IHH members and other activists giving interviews. Ofcom noted that footage was included of interviews with Ms Masarwa, of Free Gaza, but that other interviews with Free Gaza activists, including Ms Harrison, were not used (for Ofcom's decision on this point, see decision head b) i) below). Ofcom noted that Ms Masarwa spoke about the use of the media to focus attention on Gaza. The programme later included her description of what she had seen and heard from the press room on the Mavi Marmara. Footage was also included of Ms Masarwa appealing for the Israelis not to use violence, then speaking to the reporter about her view that "*there is no freedom without paying a price*".

Ofcom considered that the programme included little evidence from Free Gaza, with only Ms Masarwa speaking its behalf. Nothing that Ms Masarwa said was referred to as "*claims*". In light of this, Ofcom did not consider that any contribution by Free Gaza that was used in the programme was referred to as "*claims*".

Ofcom also noted the words used by the reporter at the beginning of the programme. She said, for example: "*Israel says these commandos had to*

*fight for their lives*” and *“Turkey accuses Israel of an act of piracy”*. In Ofcom’s view it was clear from this terminology that there were two sides to the story that the programme was going to explore.

- ii) Ofcom next considered the complaint that the reporter asked *“...what was the real agenda of some of those people who called themselves ‘peace activists’ on board the Free Gaza Flotilla?”* and portrayed them as a violent Islamic activist mission seeking confrontation with Israel. Ofcom noted that Ms Harrison said that Free Gaza was comprised of peace activists of various or no religious backgrounds and that they were unarmed civilians with a humanitarian cargo, in international waters.

Ofcom took the view that, notwithstanding the potential lack of clarity resulting from the references to *“the flotilla”* and *“the Free Gaza Flotilla”*, the programme made clear that the violence and confrontation took place on the Mavi Marmara and only involved IHH activists and Israeli commandoes.

Ofcom noted that the reporter asked what was the agenda of *“some [Ofcom’s emphasis] of the people who called themselves ‘peace activists’...”*, making it clear that she was not necessarily referring to everyone on the flotilla or on the Mavi Marmara. A little later on the reporter began to look in more detail at the role of the IHH generally and in relation to events on the Mavi Marmara. She said of the night in question that:

*“Late that night it was clear to the crew of the ship that a core of IHH organizers had taken control of the Mavi Marmara...Video shows IHH activists cutting metal bars from the ship’s railings that night...The security cameras on the ship show the IHH men on the top deck with bars and wooden staves”.*

Ofcom considered that, in light of these and other similar references, viewers would have understood that the reporter’s question *“what was the real agenda of some of those people...”* was directed at the IHH activists on board the Mavi Marmara and that the IHH may not have been open with other organisations involved in the flotilla about its agenda. In light of this, Ofcom did not consider that the programme was intended to suggest that all the peace activists on board all six ships in the flotilla or Free Gaza as an organisation were the aggressors or had an agenda other than the stated humanitarian aim of bringing aid to Gaza.

- iii) Ofcom then considered the complaint that the programme referred to the Israeli commandoes as having to *“fight for their lives”*, but Ms Harrison said that the members of Free Gaza were not the aggressors and that nine of them were killed and another 50 injured.

Ofcom noted that, in the opening section of the programme, the reporter said that *“Israel says these commandos had to fight for their lives on the ship that night”*. It was clear, therefore, that this was the opinion of the Israelis involved in the confrontation. The reporter also stated shortly afterwards that nine activists died and another 50 were injured. Viewers would therefore have understood that some of the peace activists also had to fight for their lives. Furthermore, for the reasons set out under decision head a) ii) above, Ofcom did not consider that the programme gave the impression that Free Gaza were the aggressors.

- iv) Ofcom next considered the complaint that the programme included footage filmed by Free Gaza and stolen by the Israeli commandos, but only included clips selected by the people who stole the film.

Ofcom noted that there was a dispute between Free Gaza and the BBC as to whether stolen footage was used. Ofcom also noted that, in the opinion of Free Gaza, if the footage was filmed by Cultures of Resistance then it was, in effect, filmed by Free Gaza, as Cultures of Resistance were Free Gaza passengers.

It is not Ofcom's role to adjudicate on a dispute as to whether stolen footage was used in the programme and, in any event, in Ofcom's view the use of footage that may have been stolen would not, in itself, amount to unfairness. Unfairness would only arise if the use of the footage resulted in an unfair impression being given of Free Gaza. For the reasons set out above, Ofcom did not consider that the programme suggested that Free Gaza as a movement, as opposed to the IHH activists on the Mavi Marmara, were the aggressors. In light of this, Ofcom did not consider that the use of the footage or the selection of clips resulted in unfairness to Free Gaza.

- v) Ofcom next considered the complaint that the programme included an audio tape of an offensive statement, in which a voice was heard to say *"Shut up, go back to Auschwitz"* and *"We're helping Arabs go against the US. Don't forget 9/11, guys"* and alleged that it was made by Free Gaza. In fact, according to Ms Harrison days after the event, the tape was shown to have been doctored and the Israelis stopped relying on it.

Ofcom noted the dispute between the parties as to the reliability of the recording. Again it was not Ofcom's role to adjudicate on this dispute, but to decide whether the use of the footage resulted in unfairness to Free Gaza. Ofcom noted the content of the programme on this point:

Israeli officer: *"If you ignore this order and attempt to enter the blockaded area the Israeli Navy will be forced to take all the necessary measures in order to enforce this blockade..."*

Reporter: *"The Israelis released what they said was the radio response from the flotilla. Part of it was defiant and abusive."*

*"Shut up, go back to Auschwitz".*

*"We're helping the Arabs going against the US. Don't forget 9/11 guys".*

Reporter: *"The recording's authenticity has provoked controversy. The flotilla's organisers insist they did not hear these comments being made."*

Ofcom considered that the programme made it clear that, although they did not specify which ship they thought the recording came from, the Israelis thought it came from the flotilla. It was also clear that the recording was disputed.

Ofcom considered that, in reporting the recording and the Israeli's attribution of it to *"the flotilla"*, the programme had the potential to suggest to viewers

that Free Gaza, as a movement, was responsible for the recording. However, given that the programme did not specifically attribute the recording to Free Gaza and given that it stated both that the authenticity of the recording had been questioned and that the *“flotilla’s organisers”* insisted that they did not hear the comments being made, the programme did not allege that the recording originated from Free Gaza.

As regards the UN report, Ofcom noted the dispute between the parties as to the findings of the report and also that the report was published after broadcast of the programme. Again it was not Ofcom’s role to adjudicate on this dispute, but to decide whether the use of the footage resulted in unfairness to Free Gaza. For the reasons set out above, Ofcom did not consider that the programme was unfair to Free Gaza in this respect.

- vi) Ofcom next considered the complaint that the reporter said that *“the question of who shot first remains disputed”*, despite the fact that Free Gaza did not carry any weapons.

Ofcom noted that the reporter’s reference to the question of who shot first came after a sequence in the programme that showed how a group of IHH activists took control of the Mavi Marmara. When looking at events of the night in question, the reporter said:

*“Late that night it was clear to the crew of the ship that a core of IHH organisers had taken control of the Mavi Marmara”.*

The programme then referred repeatedly to the activities of the IHH on the Mavi Marmara that night. Ofcom took the view that by the time the reporter said the question of who shot first remained unresolved, viewers would have understood that the question was whether the Israeli commandos or the IHH activists, rather than the members of the flotilla generally or Free Gaza, had shot first.

- vii) Ofcom then considered the complaint that the reporter made a false claim that two thirds of the medicines carried on the flotilla were out of date.

Ofcom noted that at the beginning of the programme, the presenter said:

*“They said it was a peace mission bringing aid to the people of Gaza...”*

At this point it was not clear who was meant by *“They”*. There was no further reference to the aid until towards the end of the programme, when the reporter said:

*“So what about the aid the IHH said was the reason for their mission? Some of it’s arrived in Gaza from Israel and is sitting in a warehouse. Mobility scooters, hospital beds and drugs. But I found that two thirds of the medicines are out of date and useless”.*

She then inspected some of the aid and said that two thirds of the medicines were *“out of date and useless”*.

As stated at the beginning of the decision, Ofcom considered that the programme’s references to *“the flotilla”* and *“the Free Gaza flotilla”* had the potential to cause confusion. In Ofcom’s view, it was not clear at the

beginning of the programme who was being referred to in the context of the aid. However, by the point in the programme when the reporter was looking at the aid that had arrived in Gaza, it was clear that the medicines she was referring to as “*out of date and useless*” were provided by the IHH. In these circumstances, Ofcom considered that viewers would not have concluded that Free Gaza was responsible for bring aid to Gaza that was largely of no use.

Ofcom therefore found no unfairness to Free Gaza in these respects.

- b) Ofcom next considered the complaint that Free Gaza was portrayed unfairly as a result of the omission of material facts.

In considering this part of the complaint Ofcom took account of Practice 7.9 of the Code as set out under decision head a) above.

- i) Ofcom considered the complaint that the programme did not show the testimonies of over 30 British passengers on the flotilla, several of whom, including Ms Harrison, were interviewed at length by the programme makers.

As set out under decision head a) i) above, Ofcom noted that the programme included footage of interviews from representatives of both the Israeli and the peace activist sides and that the programme made it clear that there were two sides to the story. It is not incumbent on programme makers to include footage of all interviews conducted in the making of a programme or to use any particular interviews, provided that omission of such footage does not result in unfairness. These are editorial matters for the broadcaster, provided the Code is complied with. In this case Ofcom took the view that Free Gaza as a movement was not the focus of criticisms in the programme and that it was clear that the programme was focusing primarily on the role of the IHH on the Mavi Marmara. In these circumstances, no unfairness resulted to Free Gaza from the omission of the interviews with Ms Harrison or the other British passengers interviewed.

- ii) Ofcom considered the complaint that the programme failed to address the evidence of film footage belonging to Free Gaza, which was stolen by the Israeli commandos.

As set out under decision head a) iv) above, Ofcom noted the dispute as to whether stolen footage was used in the programme. For the reasons set out at decision head b) i) above, it is not incumbent on programme makers to use all footage available to them. Ofcom noted that Ms Harrison had not identified any specific footage that she considered should have been included in the programme. Notwithstanding this, Ofcom considered that the selection of footage was a matter for editorial discretion and that the programme made clear that there were two sides to the story, both of which were represented in the programme. It was also made clear in the programme that Free Gaza, as a movement, was not an aggressor in the events on the Mavi Marmara.

Ofcom therefore found no unfairness to Free Gaza as a result of omission of material.

- c) Ofcom then considered the complaint that Free Gaza was not given an appropriate and timely opportunity to respond to the allegation made about it in the programme. In particular, time was given to an Israeli spokesman to justify

the actions of the Israeli military but the programme did not give similar time or weight to the position of Free Gaza.

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

Ofcom noted that the programme included footage of an interview with Free Gaza representative, Ms Masarwa. In any event, for the reasons set out at decision heads a) and b) above, Ofcom took the view that the programme did not make any allegations of wrongdoing or incompetence or other significant allegations about Free Gaza. In these circumstances it was not incumbent on the programme makers to give Free Gaza an appropriate and timely opportunity to respond.

Ofcom therefore found no unfairness to Free Gaza in this respect.

**Accordingly Ofcom has not upheld the complaint from the Free Gaza Movement of unfair treatment in the programme as broadcast.**

## Not Upheld

### Complaint by Ms Nadia Almada

*Ultimate Big Brother*, Channel 4, 24 to 29 August 2010 and  
*Big Brother's Big Mouth*, Channel 4, 3 September 2010

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**Summary:** Ofcom has not upheld this complaint of unfair treatment in the programme as broadcast.

Between 24 August and 10 September 2010, Channel 4 broadcast *Ultimate Big Brother*, the eleventh and final series of its reality programme *Big Brother*. This final series featured housemates from previous series of *Big Brother* and a smaller selection of housemates from *Celebrity Big Brother*.

The complainant, Ms Nadia Almada, had been the winner of *Big Brother 5* in 2004. Ms Almada is a transsexual and her gender reassignment operation had been completed before she participated in the 2004 series.

Ms Almada entered the Big Brother House ("the House") with the other housemates for *Ultimate Big Brother* on the first day. She was the third housemate to be evicted from the House, which she left on 3 September 2010.

During her stay in the House, two major confrontations between Ms Almada and another housemate, Coolio (a former rap singer), were broadcast on *Ultimate Big Brother*. The first confrontation (on 28 August 2010) occurred when Coolio made provocative statements and teased and mimicked other housemates. Ms Almada responded to Coolio and a heated argument developed, with both protagonists shouting at each other. The second major confrontation occurred the following morning (on 29 August 2010) after Ms Almada discovered that Coolio had hidden her shoes in a duvet cover. Ms Almada reacted strongly and angrily to his behaviour. Both Ms Almada and Coolio spoke to the programme makers separately to discuss the incident and their apparently volatile relationship. Coolio decided later that morning to leave the House. Edited footage of both incidents was included in the programmes broadcast on 28 and 29 August 2010, as were the reactions of the other housemates to the incidents.

During an edition of *Big Brother's Big Mouth*, a companion programme to *Ultimate Big Brother*, broadcast on 3 September 2010, the presenter, Ms Davina McCall, introduced a guest, the comedian Mr Jarred Christmas, by stating:

*"He has the charm of Coolio and the warmth of Ulrika. And he has the boyish good looks of Nadia".*

Ms Almada complained to Ofcom that she was treated unfairly in the programmes as broadcast.

In summary, Ofcom found the following:

- Ofcom was satisfied that Ms Almada was not portrayed unfairly in the programmes as broadcast and that the incident involving Coolio hiding her shoes and her reaction to it had not been edited unfairly to portray her as being "unreasonable".

- Ofcom recognised the potentially offensive and personally hurtful nature of Ms McCall's comments to Ms Almada. However, given the light hearted tone of the programme and the context in which Ms McCall's comments were made, Ofcom considered that it was unlikely that viewers' opinions of Ms Almada would have been materially affected in a way that was unfair to her.

## Introduction

### *Ultimate Big Brother*

Between 24 August and 10 September 2010, Channel 4 broadcast *Ultimate Big Brother*, the eleventh and final series of its reality programme *Big Brother*. The final series featured contestants ("housemates") from previous series of *Big Brother* and a smaller selection of housemates from *Celebrity Big Brother*.

The complainant, Ms Nadia Almada, was the winner of *Big Brother 5* in 2004 and entered the Big Brother House ("the House") with the other housemates for *Ultimate Big Brother* on the first day. She was the third housemate to be evicted from the House, which she left on 3 September 2010. Footage of Ms Almada's stay in the House was included in all editions of the programme broadcast between 24 August 2010 and 3 September 2010.

During her stay in the House, two major confrontations between Ms Almada and another housemate, Coolio, were broadcast. The first confrontation (on 28 August 2010) occurred on the evening in which the first housemate was evicted from the House. Coolio, who had been one of the two housemates up for eviction, was shown making provocative statements, generally, and teasing and mimicking other housemates. Ms Almada responded to Coolio and a heated argument developed, with both protagonists shouting at each other.

On the following morning (29 August 2010), Ms Almada gave Coolio a replacement battery for his microphone, which was seen by both as a "peace offering" for the argument the previous evening. However, later that morning, Coolio was shown hiding Ms Almada's shoes in a duvet cover. Upon discovering what Coolio had done, Ms Almada confronted him and reacted strongly and angrily to his behaviour. After the argument, Ms Almada and Coolio spoke to the programme makers separately in the Diary Room to discuss the incident and their apparently volatile relationship. Coolio was shown being reminded of the House rules relating to abusive and unpleasant behaviour towards other housemates. While in the Diary Room, Coolio decided that he wanted to leave the House, which he did.

Edited footage of both incidents was included in the programmes broadcast on 28 and 29 August 2010 as were the reactions of the other housemates to them.

### *Big Brother's Big Mouth*

On 3 September 2010, Channel 4 broadcast an edition of its *Big Brother* companion programme, *Big Brother's Big Mouth*. During this programme, the presenter, Ms McCall, introduced the comedian Mr Jarred Christmas, who was a guest on the programme, by stating:

*"He has the charm of Coolio and the warmth of Ulrika. And he has the boyish good looks of Nadia".*

Ms Almada complained to Ofcom that she was treated unfairly in the programmes as broadcast.

## **The Complaint**

### **Ms Almada's case**

#### *Ultimate Big Brother*

In summary, Ms Almada complained that she was treated unfairly in the programmes as broadcast in that:

- a) The footage shown in the programmes as broadcast was edited in such a way as to portray her unfairly. In particular, her behaviour towards Coolio in the confrontation over the incident with her shoes portrayed her as unreasonable.

By way of background, Ms Almada said that Coolio had repeatedly made references to her transgender status and had harassed and bullied her. He had also asked her whether she still had "male parts" and continually made "transphobic and homophobic" comments over many days, despite repeated warnings by the programme makers about his conduct. Ms Almada said this behaviour culminated in the confrontation over the shoes. However, because neither the abuse nor warnings were broadcast, the confrontation appeared to have provoked Coolio's departure, when in fact he had been told to leave the house because of his abusive and threatening behaviour towards her.

#### *Big Brother's Big Mouth*

- b) Ms McCall's comments about Ms Almada's transgender status portrayed her unfairly. In particular, Ms Almada said that Ms McCall's comments that she had "boyish good looks" and she had a "big one" amounted to "transphobic and offensive comments" about her.

### **Channel 4's case**

#### *Ultimate Big Brother*

- a) In summary and in response to Ms Almada's complaint that the programmes were edited in such a way as to portray her unfairly, Channel 4 said that the programmes fairly and accurately represented the events in the House and the relationship between the complainant and Coolio. No footage was unfairly edited.

Channel 4 said that the programmes were not edited to suggest that Ms Almada's reaction to Coolio hiding her shoes was unreasonable and that the programme that featured this incident made it clear that Ms Almada's reaction was due to a combination of events leading up to him hiding the shoes. This included a vocal and tense dispute Ms Almada and Coolio had the previous night, a fair summary of which was included at the start of the programme.

Channel 4 said that programmes were not edited to suggest that the complainant acted unreasonably, but provided viewers with a fair summary of the full context of Coolio's "prank", including that it followed behaviour the previous night which Ms Almada found to be provocative.

Channel 4 said that the programme makers made a decision – which was referred to senior executive, editorial and legal levels in accordance with the programme’s procedures – to exclude footage from the programme broadcast showing Ms Almada’s complete reaction to Coolio’s “prank”, as this included very graphic footage of her retaliating by spitting on Coolio’s duvet and then wiping her crotch with it. These scenes were omitted because the producers had felt that their inclusion might have exceeded the expectations of viewers in terms of taste and standards. Channel 4 said that this omission had the effect of representing Ms Almada’s reaction as being more moderate than it actually was.

Channel 4 said that the unedited footage revealed no evidence that Coolio made transphobic or homophobic remarks in relation to Ms Almada or referred to her “male parts”. Coolio and the complainant had discussed in an intimate and friendly manner her personal transition to becoming ‘Nadia’ and Ms Almada had displayed no signs of being offended by that conversation and had responded openly to Coolio’s questions. During Ms Almada’s time in the House, she had never complained to fellow housemates, the programme makers in the Diary Room or otherwise that Coolio had made transphobic or homophobic remarks in relation to her.

While Coolio’s behaviour might be described as provocative, Channel 4 said that neither it nor the programme makers, after considering the full context of the events which unfolded, considered that his behaviour to be bullying or harassing, certainly not of a serious degree and/or over “many days”. Both arguments were resolved naturally by either Coolio or Ms Almada leaving the room and/or entering the Diary Room to discuss their concerns with the programme makers.

Channel 4 said that, in any event, the programme makers had dealt with the heightened tensions between Ms Almada and Coolio after the incident with her shoes expeditiously and responsibly, with separate Diary Room discussions with Coolio and Ms Almada. Channel 4 said that the programme makers did not issue Coolio with any warnings, as they did not consider that his behaviour was of a degree to warrant a warning. However, immediately after Ms Almada raised her concerns with the programme makers after the shoe incident, Coolio was reminded of the House rules relating to “unacceptable behaviour, serious harassment or abusive behaviour directed at another housemate”. As a result of these discussions, Coolio decided to leave the House and he had no further contact with the complainant.

Channel 4 said that during the periods of heightened emotions between Coolio and Ms Almada, she had articulated herself robustly and passionately. At all times she had support from other housemates and used the Diary Room procedure to air her concerns. After Coolio left the House, Channel 4 said that Ms Almada continued to participate actively in the House and did so for the remaining seven days she was in the House, remaining upbeat, jovial and passionate.

### *Big Brother’s Big Mouth*

- b) In summary and in response to the complaint that the comments made by Ms McCall about Ms Almada’s transgender status portrayed her unfairly, Channel 4 said that it regretted that Ms Almada was upset by the comments, but rejected any suggestion that it amounted to an unfair portrayal of Ms Almada.

Channel 4 said that the programme had an established reputation for its irreverent humour and outspoken content and this would not have exceeded the expectation of the audience watching at the late time of night when it was broadcast. The comment in question was part of light-hearted banter and introduction of the comedian, Mr Christmas and was not used with the intention of describing or offending members of the transgender community and was in keeping with the established nature of the programme.

Channel 4 said that, although the comments used by Ms McCall might not have been to the complainant's taste, they did not exceed the typical language used in *Big Brother's Big Mouth* in respect of other housemates. The whole editorial purpose of the programme was to discuss and debate in a frank, but light-hearted, tongue in cheek manner intricate detail of all types of issues and characteristics related to housemates. All housemates, particularly returning housemates such as Ms Almada, would have known full well that their lives and characteristics would be subject to critique.

Channel 4 said that the comments complained of could not reasonably be viewed as unfair or transphobic when seen in the context of the programme. Ms McCall's comment about "*the boyish good looks of Nadia*" did not refer to Ms Almada in a derogatory or transphobic manner. It said that the words could be used to describe any person and must be viewed in the context of the programme as a whole. The programme and contributors included in it were clearly supportive of Ms Almada and referred to her using her preferred gender pronoun. She was never referred to as "he" or a "man" because she defines herself and is accepted by today's society as a female. Channel 4 also said that Ms Almada had always been a favourite of Ms McCall, who had often declared her to be one of her all-time favourite housemates. This would have been well-known to the average viewer of *Big Brother's Big Mouth*. Channel 4 said that Ms McCall had subsequently issued an apology in the press to Ms Almada for any upset her comment may have caused, once again reiterating that "Nadia has always been one of my favourite housemates of all time".

Channel 4 said that after reviewing the relevant programme it could not locate any reference to Ms Almada having "a big one".

## Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included recordings of the programmes as broadcast and transcripts, both parties' written submissions. It also considered recordings of the unedited footage of the incidents involving Ms Almada and Coolio.

As a preliminary point, Ofcom noted that Ms Almada had taken part in series five of *Big Brother* and had been the winning housemate. She had also taken part in *Ultimate Big Brother* in which winners of the previous series of the programme competed to win the final, eleventh series. Ofcom considered that, as a participant in the final series, Ms Almada would have been aware that any of her actions in the House could be filmed and were likely to be widely scrutinised and discussed. As part of reaching a decision on Ms Almada's complaint, Ofcom took this background into account.

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

### *Ultimate Big Brother*

- a) Ofcom considered first the complaint that the programmes as broadcast were edited in such a way as to portray Ms Almada unfairly – in particular, that Ms Almada's behaviour towards Coolio over the incident with her shoes as shown in the broadcast portrayed her as unreasonable.

In reaching a view on this head of complaint, Ofcom considered Practice 7.6 of the Code. This states that when a programme is edited, contributions should be edited fairly. It also considered Practice 7.9 which states that broadcasters must take reasonable care to satisfy themselves that the material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

In deciding whether or not Ms Almada's response to the incident with her shoes was portrayed unfairly, Ofcom first considered the nature of the relationship that existed between Ms Almada and Coolio. Ofcom noted that while the relationship between them in the first few days was not particularly close, it appeared to Ofcom that it was at least amicable. During these early days, Ofcom noted that Coolio and Ms Almada had a sincere conversation about her transgender status and her transition. However, Ofcom also accepted that as their time in the House went on, their relationship deteriorated, which led to a number of incidents and disputes between them.

Having watched the relevant editions of *Ultimate Big Brother* and the unedited footage of the incidents involving Coolio and Ms Almada, Ofcom noted that the first major confrontation between the two had taken place on an evening when one of the housemates was evicted. Coolio (who had been one of the housemates up for eviction) had begun to tease some of the other housemates and had made comments such as "*the game starts now*" and "*this is my house*". Ofcom noted that, while the other housemates did not respond to Coolio's remarks, Ms Almada, who had been provoked by Coolio's mimicking of her, did reply and a heated argument ensued between them. Ofcom noted that while Ms Almada appeared to be upset and angered by Coolio's behaviour, her concerns appeared to have been resolved after speaking to the programme makers about her concerns in the Diary Room.

Ofcom noted that the second major confrontation between Ms Almada and Coolio occurred the next morning and was caused by Coolio's "prank", in which he hid

all Ms Almada's shoes in a duvet cover. Upon discovering this, Ms Almada had reacted by shouting at him.

Ofcom noted the full unedited exchange between Ms Almada and Coolio (and other housemates):

Ms Almada: "Grow up, grow up you ridiculous stupid man!"

Ulrika: "Oh shit."

Ms Almada: "You stupid stupid man. He has just put all my shoes with everything else in a fucking duvet! If I didn't come in there, he would have taken my fucking everything. What is the fuck is going in here? How old is this disgusting, stupid dick head of a man. How stupid are you?! Can he put them all back? Can he put them all back? Grow up! Grow up! Pathetic little. Is my fucking clothes in here? Is my fucking clothes in here? 'Cause honestly I will make you fucking wash every single piece of it."

Chantelle: "Nadia, he just put your shoes in there, he didn't put your clothes in there."

Ms Almada: "What is wrong with you? What is wrong with this stupid, sad little man? Get a grip! You're a father, be example for your family! Be proud to be fucking American."

Coolio: [Indistinct].

Ms Almada: "You stupid bastard! Do you know what? I want them over there now. I want them all there! You dickhead of a man."

Coolio: "Well then, if you want them there you have to put them there yourself! I was just making a joke."

[At this point of the argument, Ofcom noted that Ms Almada appeared to spit on Coolio's duvet and wipe her crotch and buttocks with it.]

Ms Almada: "Look, look I spit on it, look! That is all yours now, that is all yours, look. My arse and my fucking cunt is on it."

Coolio: "It does not bother me one bit."

Ms Almada: "You disgusting bastard!"

Coolio: "You disgusting cunt!"

[At this point, Ofcom noted that Ms Almada had moved into the living area while Coolio remained in the bedroom.]

Coolio: "Making such a big deal outta nothing. Really making yourself look stupid."

Ms Almada: "Why would he do that? I just walked in and he was there dragging everything and I looked over and I see there's no shoes there's nothing there – only my stuff obviously."

Coolio: "How was I supposed to know? She walked in."

Nikki: "Why did he do that?"

Ms Almada: "Because he's stupid. He's a stupid little man! I can't believe I just wiped my fucking pussy on it...[laughter] Oh my God, I can't believe I did that. I have never been so vulgar in my life. I have never been so vulgar in my whole damn life!" [laughter].

Ofcom then noted how the full exchange between Coolio and Ms Almada had been edited and presented in the programme as broadcast:

Ms Almada: *"How old is this disgusting...stupid...[BLEEP]<sup>1</sup>... of a man. How stupid are you? Can you put them all back? Put them all back...Is my [BLEEP] clothes in here? 'Cause, I honestly I'll make you wash every last piece of it."*

Chantelle: *"Nadia, he just put your shoes in there. He didn't put your clothes in there."*

Ms Almada: *"What is wrong with this stupid, sad little man? Get a grip, you're a father be an example of your family. You know I want them all there now. I want them all there. [BLEEP] of a man."*

Coolio: *"Well then, if you want them there you have to put them there yourself! I was just making a joke."*

Ms Almada: *"Here look I spit on it, look. That's all yours now. All yours. You disgusting [BLEEP]..."*

Coolio: *"Making such a big deal outta nothing. Really making yourself look stupid."*

Ms Almada: *"Why? Why isn't everything calm and easy? Why did he do it?"*  
*"I've never been so vulgar in my whole life."*

Ofcom recognises that programme makers and broadcasters can quite legitimately select and edit material from unedited footage for inclusion in a programme. This is an editorial decision and would be, in Ofcom's view, unreasonable for an individual to expect a broadcaster to cede editorial control or to include footage of their contribution in full. Broadcasters must, however, ensure that where it is appropriate to include footage of a contributor to a programme that it is done in a fair manner.

Having examined the unedited footage of the incident along with the footage that was included in the programme broadcast on 29 August 2010 (as well as reading transcripts of both), Ofcom recognised that the programme makers edited the footage of the incident for broadcast. In particular, it noted that the expletives were edited out as was the scene in which Ms Almada wiped her crotch and buttocks with Coolio's duvet. It also noted that some of the comments by Coolio and the other housemates had been edited out. Ofcom considered that, although

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<sup>1</sup> [BLEEP] denotes the editing of expletives from the unedited footage.

the footage of the incident was not shown in its entirety in the broadcast, Ms Almada's reaction to Coolio's "prank" was presented in the programme in a fair manner and was a truthful depiction of the incident. In Ofcom's view, it would have been clear to viewers that Coolio had provoked Ms Almada by hiding her shoes and that she had reacted angrily. Ofcom considered that, by not including the scene of Ms Almada wiping Coolio's duvet with her crotch, the programme makers had moderated her response rather than depicting her reaction as "unreasonable".

Given all the factors set out above, Ofcom concluded that the shoe incident had not been edited in a way that was unfair to Ms Almada and that the footage included in the programme fairly reflected Ms Almada's reaction and her reasons for it.

Ofcom went on to consider whether or not the programmes, overall, portrayed Ms Almada and her reactions to Coolio unfairly in the programmes as broadcast.

Ofcom first noted the introduction to the edition of the programme broadcast on 29 August 2010 in which the incident in which Coolio hid Ms Almada's shoes featured:

Voice over: *"Previously..."*

Ms McCall: *"The first person to leave the house is...John..."*

Coolio: *"I'm on there all day."*

Nikki: [crying] *"I hate him [i.e. Coolio]. I hate him so much."*

Coolio: [to Ms Almada] *"You're actually doing the wrong thing I can talk to whoever I want to talk to. This is my House..."*

Voiceover: *"Tonight..."*

Ms Almada: *"Get a grip, you're a father be example of your family."*

Coolio: *"Damn, you're making such a big deal out of nothing."*

Ms Almada: *"I want them all there."*

Ofcom considered that the introduction to the programme clearly signposted to viewers that the situation in the House and Coolio's relationship with some of the other housemates had deteriorated and his provocative behaviour was causing confrontation and upset. Ofcom took the view that it was clear that the context in which footage of Ms Almada and Coolio was to be shown was that of Coolio being aggressive and confrontational towards other housemates and that the bad feeling generated by the previous evening's argument had not abated. Ofcom considered that the introduction fairly summarised the dispute from the previous evening and the fact that it had not been resolved.

Ofcom has already considered the detail concerning the shoe incident in the preceding paragraphs. However, Ofcom noted that immediately after confronting Coolio about hiding her shoes, Ms Almada had gone into the Diary Room to discuss the incident with the programme makers. An extract of her conversation in the Diary Room was included in the programme (as was her conversation with

another housemate) and, although Ms Almada was obviously angry at Coolio's behaviour, she had explained why she had reacted in the way she did. In particular, Ofcom noted the following comments made by Ms Almada to the programme makers in the Diary Room immediately after the shoe incident:

*"Oh my God, I'm becoming a monster. I am becoming literally a monster; a vulgar, disgusting, human being. I am losing my dignity. I am losing my self-respect...I have my dignity, it might not be much, but it's all I have that's left of me".*

After leaving the Diary Room, Ms Almada was shown talking to other housemates about Coolio and her reaction to him. In particular, Ofcom noted that Ms Almada said to one housemate:

*"What we have in here that is only ours is our belongings. Everything else is everyone else's...but those belongings are yours and mine. It's the only thing we can hold on to...and he went and messed around with that."*

From the inclusion of these extracts in the programme, it was clear to Ofcom from that Ms Almada regretted her reaction and felt that the argument the previous evening and the incident with the shoes had culminated in her humiliating herself and losing her dignity. These explanations were included in the programme and Ofcom took the view that viewers were placed in a position to understand her reaction to Coolio.

Ofcom also noted that some of the other housemates expressed their support for Ms Almada with regard to Coolio's behaviour towards her and their concerns about what appeared to some his unpredictable personality.

The programme also included footage of Coolio speaking to the programme makers in the Diary Room about the incident and his relationship with Ms Almada. Ofcom noted that Coolio was clearly reminded of the rules of the House about abusive and unacceptable behaviour directed at other housemates and that he explained that he had only been joking with Ms Almada. Having watched the full unedited footage of Coolio's Diary Room conversation, it was clear to Ofcom that, while his relationship with Ms Almada was not the only issue put to Coolio by the programme makers, it was a contributing factor to his decision to leave the House. Ofcom noted the following exchange between Coolio and the programme makers included in the programme:

Programme makers: *"If you are having difficulties with several of the housemates and this situation cannot improve then where do you think we go from here?"*

Coolio: *"I don't know Big Brother I don't know. For the record let me say that if Big Brother feels that the house would be better without me in it, then I will gladly pack my things and go because I don't want there to be tension or the atmosphere in the house... Just let me the [BLEEP] out man and that's that. Just open one of these doors bro' and let me out".*

Ofcom noted that Coolio was then shown leaving the House. After he had left, Ofcom noted that a couple of the housemates expressed their relief at Coolio's

departure, as they had felt uneasy and “*on edge*” around him because of his behaviour and “*shouting at Nadia*”.

Having carefully examined the unedited footage of the interaction between Coolio and Ms Almada during Coolio’s stay in the house, Ofcom found no evidence to corroborate Ms Almada’s assertion that Coolio had made repeated homophobic or transphobic comments directed at her. Ofcom noted that at no time during her conversations with other housemates or the programme makers in the Diary Room did Ms Almada complain that Coolio had made homophobic or transphobic comments to her. It also did not consider that Coolio had been warned, repeatedly or otherwise, by the programme makers about his behaviour towards Ms Almada.

Ofcom considered that the programmes as broadcast (and in particular, the programme broadcast on 29 August 2010) made it clear to viewers that Ms Almada’s reaction to Coolio hiding her shoes had been the result of a series of incidents between the two housemates. It was also clear from the programme’s introduction, in Ofcom’s view, that Coolio had been provocative towards Ms Almada and that the arguments between them had arisen out of his behaviour rather than hers. Ofcom recognised that Ms Almada’s reaction to Coolio hiding her shoes had been angry, but considered that it was clear from the programme that it was the culmination of incidents involving her and Coolio. Ofcom also recognised that the programme included Ms Almada’s explanation of her reaction and made it clear that she regretted her reaction.

It was clear from the programme that some of the other housemates supported and sympathised with her and that she had expressed her concerns about Coolio’s behaviour to the programme makers in the Diary Room. Ofcom also took the view that the programme was explicit in depicting Coolio’s departure from the House as being triggered, in part, by his behaviour towards Ms Almada and that his behaviour had been deemed by the programme makers to be unacceptable.

Ofcom considered that the programmes had fairly depicted the incidents between Ms Almada and Coolio and the context in which they took place. In Ofcom’s view, given the level of provocation from Coolio towards Ms Almada, viewers would have understood her angry reaction to Coolio, who she believed had intruded into her personal domain by hiding her shoes, and that it was unlikely that this footage would have materially affected viewer’s opinion of her.

Given all the factors detailed above, Ofcom was satisfied that Ms Almada was not portrayed unfairly in the programmes as broadcast and that the incident involving Coolio hiding her shoes and her reaction to it had not been edited unfairly to portray her as being “unreasonable”. Ofcom therefore found no unfairness to Ms Almada in this regard.

### *Big Brother’s Big Mouth*

- b) Ofcom next considered the complaint that Ms McCall’s comments about Ms Almada’s transgender status portrayed her unfairly. In particular, Ms Almada complained that the comments that she had “*boyish good looks*” and she had a “big one” amounted to “transphobic and offensive comments” about her.

Ofcom again considered whether the portrayal of Ms Almada was consistent with the broadcaster’s obligation to ensure that material facts had not been presented in a way which was unfair (as outlined in Practice 7.9 of the Code).

Having carefully examined the programme and read a transcript of it, Ofcom noted that no reference was made in the programme to Ms Almada having a “big one”. Ofcom therefore did not consider this element of the complaint any further.

Ofcom then noted the comments made in the programme by Ms McCall that related to Ms Almada when introducing the comedian, Mr Christmas:

*“He has the charm of Coolio and the warmth of Ulrika. And he has the boyish good looks of Nadia”.*

Ofcom noted first the nature of *Big Brother’s Big Mouth*. It is a regular, irreverent and humorous review of events in the House shown during series of *Big Brother* and frequently includes jokes and banter. Ofcom considered that Ms McCall’s reference to Ms Almada’s appearance was in keeping with the general light-hearted tone of the programme. Notwithstanding the tone of the programme, Ofcom is of the view that Ms McCall’s comments had the potential to be offensive and that it was likely that Ms Almada would have been personally hurt by them. However, despite the potentially hurtful nature of Ms McCall’s comments to Ms Almada, Ofcom recognised that they had not been made with the intention of offending or upsetting her Ms Almada in the way that they in fact had<sup>2</sup> and that they did not amount to a derogatory comment on her transgender status.

Ofcom concluded that, in light of the general nature and tone of the programme and the context in which Ms McCall’s comments were made, it was unlikely that viewers’ opinions and understanding of Ms Almada would have been materially affected in a way that was unfair to her. Therefore, Ofcom found no unfairness to Ms Almada in this respect.

**Accordingly, Ofcom has not upheld Ms Almada’s complaint of unfair treatment in the programme as broadcast.**

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<sup>2</sup> Ofcom recognised that Ms McCall had apologised publicly for any upset her comments had caused Ms Almada.

## Not Upheld

### Complaint by Mr Andrew Hayman

*The Taking of Prince Harry, Channel 4, 21 October 2010*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Mr Andrew Hayman.

*The Taking of Prince Harry* was a drama-documentary which looked at what would happen if Prince Harry was taken prisoner while serving in The British Army in Afghanistan. In particular it considered how the response of the British Government would be managed, who would be in charge and how negotiations would be carried out. One of the contributors to the programme was Mr Andrew Hayman, former Assistant Commissioner in charge of counter-terrorism for the Metropolitan Police.

In summary, Ofcom found that the programme did not imply that Mr Hayman was complicit in or in any way responsible for the editorial decisions taken in the making of the programme and therefore he was not treated unfairly in this respect.

#### Introduction

On 21 October 2010, Channel 4 broadcast a drama-documentary entitled *The Taking of Prince Harry*. The programme looked at what would happen politically and militarily if Prince Harry was taken prisoner while serving in the British Army in Afghanistan, how the response would be managed, who would be in charge and how negotiations would be carried out.

The narrator said that the programme makers had:

*"...invited a number of experts with first-hand knowledge of hostage crises to think this scenario through".*

The four experts were then introduced with a graphic device, specifically a carousel of their photographs and brief details of each. They were: Mr Andrew Hayman, former Assistant Commissioner in charge of counter-terrorism for the Metropolitan Police; Colonel Richard Kemp, a former commander of British forces in Afghanistan; Mr Gary Noesner, an FBI agent with 30 years' service as a hostage negotiator; and, Mr Richard Barrett, a former MI6 officer.

The narrator said:

*"We asked these experts some basic questions. What would happen if Prince Harry was captured? How would the British Government respond? How would the situation on the ground unfold?... This film is built around what they told us".*

Mr Hayman complained to Ofcom that he was treated unfairly in the programme as broadcast.

## The Complaint

### Mr Hayman's case

In summary, Mr Hayman complained that he was treated unfairly in the programme as broadcast in that:

- a) His contribution to the programme was obtained without his "informed consent".

In particular, Mr Hayman complained that he was never informed of the actual nature of the programme being made or its title. He said that he had agreed to be interviewed having understood that his interview was for a general programme on hostage taking. It was only a few days before transmission that he discovered that the primary purpose of the programme was a drama reconstruction of the kidnapping of Prince Harry entitled *The Taking of Prince Harry*. It was only on transmission that he discovered that he was described as one of the "experts involved in the making of this film".

By way of background, Mr Hayman said that he would never have agreed to be interviewed had he been made aware of the exact nature of the programme.

- b) The programme portrayed him unfairly because it suggested that he was more than an interviewee for the programme and that he was completely complicit in, and consented to all the contents of, a programme that in his view had been legitimately criticised for its potential to undermine the security and morale of British troops in Afghanistan. In particular, Mr Hayman said that the graphic device, used in the programme to show the four experts (of whom he was one) as distinct from other interviewees in the programme, and the commentary that accompanied it (i.e. the repeated references to "our experts") gave the impression that he was more than just an interviewee and he was somehow party to the construction of the programme, and meant that his contribution was taken from one of an occasional 'talking head' to a major and significant element of the programme designed to give authenticity to the subject matter.

By way of background, Mr Hayman said that "The Taking of Prince Harry" was not the kind of programme that he would ever knowingly have contributed to or been one of the "experts involved in the making" of.

### Channel 4's case

Channel 4 said that the programme examined a new tactic of modern warfare, namely kidnapping for political ends, by looking at the scenario of Prince Harry having returned to serve in Afghanistan and being taken captive. The broadcaster said that programme looked at how this situation would be handled both politically and militarily and questioned whether Britain was prepared for such an event. It argued that it was in the public interest for it to broadcast a programme that considered the possible risks and consequences of high profile persons being exposed to the threat of kidnap by their presence in a war zone.

In summary Channel 4 responded to Mr Hayman's complaint that he was unfairly portrayed in that the programme suggested he was more than an interviewee and was completely complicit in and consented to all the contents of the programme as follows.

It said that the central point in Mr Hayman's complaint was that he "expected to be shown as a contributor to a programme about hostage taking but not to be effectively cast as one of the programme makers" and argued that no reasonable viewer would have concluded that he was one of the programme makers.

Channel 4 added that the film in which the scenario unfolded was introduced with the following commentary: "*We invited a number of experts with first-hand knowledge of a hostage crisis to think this scenario through. The film is built around what they told us*". It argued that that given the inclusion of this commentary it would have been immediately clear to viewers that there were two distinct classes of person identified: "the experts" (who were all identified visually) and "we/us" i.e. the programme makers. It said that the end credits would have also made this clear to viewers.

Channel 4 noted Mr Hayman's concern about the graphic device which featured the contributing experts. It argued that that this device simply served to remind viewers of the statement that the programme makers had asked experts for their opinions and that the film was based on their responses. It said that the device was used twelve times, once to introduce all four experts and eleven times to highlight one of them. It added that on these occasions the images of the experts were not only rotated but came to halt over the image of the expert whom the film would turn to next for a comment which would help to inform the next step in the unfolding story. The broadcaster said that on only two of the eleven occasions did the graphic fall on Mr Hayman (adding, by way of comparison, that it had fallen six times on Colonel Kemp) and that both were uncontroversial. In the first he identified the cell structure of the police response to the scenario (Gold, Silver and Bronze) and in the second he opined that the hostage negotiator would be sent to the country where the hostage had been taken. Channel 4 said that Mr Hayman appeared, independently of the graphic device, a further five times.

It argued that given the degree to which he was used and where, when and how he appeared, it was unsustainable to suggest: that a reasonable viewer would have thought he was responsible, even in part, for the whole narrative structure of the programme; that he was "completely complicit" with it; or that he played any role other than an expert who agreed to be interviewed and whose interview was included in the film to inform viewers about matters in which he had expertise.

### **Mr Hayman's comments on Channel 4's statement**

Mr Hayman commented on to Channel 4's statement in response to his complaint of unfair portrayal as follows.

With regard to his complaint about informed consent Mr Hayman: noted the comprehensive nature of Channel 4's response to this head of complaint; expressed his gratitude for Channel 4's expression of regret that as a result of an administrative error an email, which included information about the planned content and nature the programme, was misdirected and did not reach him; and, withdrew this head of his complaint<sup>1</sup>.

He said that Channel 4's response to his complaint that he was portrayed as having a role in the making of the programme which was more significant than simply being an interviewee rested solely on its assertion that viewers would not be left with this impression.

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<sup>1</sup> Given that this head of complaint was withdrawn Ofcom has not included a summary of Channel 4's response to this point within this Decision.

Mr Hayman said that the graphic device and the accompanying voiceover references gave an exaggerated and misleading impression of his involvement. In particular, he argued that the references to “*the experts involved*” and “*our experts*” elevated him from somebody who appeared in the programme to somebody who had a say in its making and conveyed a special status that was not applied to all interviewees, and which thereby gave viewers the perception that his contribution should be regarded with more significance.

Mr Hayman refuted Channel 4’s assertion that the number of times the graphic device fell on his image made any difference, given that his image was visible every time the device was used. He concluded that the programme makers converted him from a contributor to a creator and said that therefore viewers would assume that he was someone who supported the making of this drama-documentary whereas if he had remained as a simple interviewee this misleading impression would not have been given.

### **Channel 4’s response to Mr Hayman’s comments**

Channel 4 said that Mr Hayman was not listed in the end credits as a programme maker or as being someone responsible for the making of the programme. Channel 4 did not accept that the graphic device used suggested that the complainant was a programme maker.

The broadcaster did not dispute that the programme makers had not advised the complainant that they intended to use the graphic device or that his image would be incorporated in it but said that it was unnecessary for them to have done so as no issue of fairness or privacy arose from its use.

Channel 4 said that the graphic device let viewers know that the narrative that unfolded following the hypothetical kidnapping was based not on the speculations of the programme makers but the accumulated evidence of the experts. Channel 4 said that Mr Hayman’s image was used precisely in his area of expertise: namely, the workings of COBRA (Cabinet Office Briefing Room A)<sup>2</sup> and the general police tactics in security situations like a hostage incident.

Channel 4 acknowledged that viewers may have thought that the complainant was someone who supported the making of this drama-documentary, by virtue of his having agreed to be interviewed for it. However it argued that viewers would not have thought that he was responsible for its creation either in whole or in part and that viewers were very unlikely to have concluded that the experts interviewed had got together to devise and create 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 and unwarranted infringement of privacy in, or in the making of, programmes included in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of

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<sup>2</sup> COBRA is a multi-agency committee (with members appropriate to the situation at hand) convened by the British Government to deal with emergencies named after the room where it often meets.

freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, both parties' written submissions the pre-broadcast correspondence between the parties and the unedited recordings of Mr Hayman's interview for the programme.

Ofcom noted that Mr Hayman withdrew head a) of this complaint (that he was treated unfairly in the programme as broadcast in that his contribution to the programme was made without his informed consent). Accordingly, this Decision is restricted to Mr Hayman's complaint that he was portrayed unfairly in the programme as broadcast in that it suggested that he was more than an interviewee for the programme and that he was completely complicit in, and consented to, all the contents of the programme.

In considering this complaint Ofcom had regard to Rule 7.1 of the Ofcom Broadcasting Code ("the Code"), which provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. It also paid particular regard to Practice 7.10 of the Code which states that programmes – such as dramas and factually-based dramas – should not portray facts, events, individuals or organisations in a way which is unfair to an individual or organisation.

Ofcom noted that the programme was a factually-based drama: a drama-documentary which looked at the scenario of Prince Harry, having returned to military service in Afghanistan, being taken hostage by the Taliban and subsequently sold on to Al Qaeda. The dramatisation of this scenario, which ran throughout the programme, was interspersed with extracts of interviews from a number of people including four who were introduced as "*experts with first-hand knowledge of hostage crises [who had been asked] to think this scenario through*", and thereafter variously referred to as follows: "*Our experts told us ...*", "*the experts involved in making this film told us ...*", "*our expert insiders told us ...*" and "*our experts predicted*". Ofcom noted that the programme said that the experts had been asked what would happen if Prince Harry were taken hostage; and portrayed how the British Government would respond and what would happen on the ground. It also noted that the testimony of these experts was used either to push the narrative forward or to illustrate a point which had been made by the narrator.

Ofcom noted that one of the four experts was Mr Hayman, former Assistant Commissioner in charge of counter-terrorism for the Metropolitan Police. With regard to the statement in the programme about the nature of the questions put to the experts Ofcom observed that, although Channel 4 acknowledged that an email it had sent to Mr Hayman explaining the plan for the film and notably the fact that it would include dramatised sequences showing Prince Harry being taken hostage was not received by the complainant, the broadcaster also said that once the error had come to light the programme's producer called Mr Hayman ensuring that he was in possession of exactly the same details. Subsequently Mr Hayman received a list of sample interview questions, two of which specifically mentioned the scenario of Prince Harry being taken hostage. In addition, during the recorded interview Mr Hayman gave to one of the programme makers, it was made clear to him that the programme would be about international hostage taking, in particular in Afghanistan. Ofcom also noted that this interview included a discussion of the particular concerns that would arise if a high value target, including a member of the royal family, were taken hostage and that part of this discussion included the scenario of Prince Harry

being taken hostage. In light of these observations Ofcom considers that it was not unreasonable for the programme to have presented Mr Hayman as part of a group of people whom it had asked about what would happen if Prince Harry were taken hostage, how the British Government would respond, and what would happen on the ground.

Ofcom noted that Mr Hayman was introduced, alongside the other three experts, by means of a graphic device, specifically a carousel with an image and the name of each of the four experts, and information on their former positions and experience. Mr Hayman was shown in the programme seven times and his testimony included: the information that Scotland Yard's immediate reaction when a UK citizen was taken hostage was to set up an "*intelligence gathering capability*" and that the police use a three-tiered command structure in these situations; descriptions of COBRA meetings; Mr Hayman's opinion that hostage negotiators needed to be on the ground in the area where the hostage was being held; and his acknowledgement of the difficulty for and pressure on those managing the crisis when faced with propaganda videos of the hostage. On two of these occasions, the first dealing with police command structure and the second with the hostage negotiator, Mr Hayman was introduced by means of the carousel in the graphic device falling on a highlighted image of his face along with a description of what he would say next prefaced by the words "*our experts told us...*".

Ofcom considered that as one of the four experts Mr Hayman was presented as one of a group which was distinct from the other interviewees in the programme. However, in Ofcom's opinion viewers would have understood that he was distinct from the other interviewees by virtue of the fact that he had specific professional police experience which qualified him to give an opinion on certain matters relating to the scenario featured in the programme – in particular the role of the Metropolitan Police in international hostage crises, the best circumstances in which a hostage negotiator can work and the difficulties in managing such crises.

Given the way in which Mr Hayman was presented, the relatively neutral nature of his testimony, the fact that it was restricted to his area of expertise and the fact that the role of experts in programmes of this nature is well established, Ofcom did not consider that the programme indicated that he held any particular view of the scenario dramatised in the programme or that viewers would have understood him to be complicit in or in any way responsible for the editorial decisions taken in the making of the programme.

Ofcom therefore concluded Mr Hayman was not portrayed unfairly in the programme as broadcast and found no unfairness in this respect.

**Accordingly, Ofcom has not upheld Mr Hayman's complaint of unfair treatment.**

## Not Upheld

### Complaint by Mr Philip Parr

*Real Crime with Mark Austin: Gunn Law, ITV1, 18 October 2010*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Mr Philip Parr.

The programme looked at an undercover police operation in Nottingham which led to gang leader Colin Gunn being sentenced to life imprisonment for his role in the murders of John and Joan Stirland. The police investigation also exposed corruption within the Nottingham force and the programme referred to two officers who were sentenced to imprisonment for their involvement in corrupt activities associated with the Gunn gang. One of those officers was Mr Parr, who was sentenced to one year's imprisonment.

In summary, Ofcom found the following:

- The programme did not state or imply that Mr Parr passed information directly to Colin Gunn.
- The programme did not state or imply that Mr Parr was associated with Mr Gunn other than in relation to the provision of information for which he was sentenced to imprisonment.
- The programme briefly but accurately reflected Mr Parr's involvement in corrupt activities associated with the Gunn gang.

#### Introduction

On 18 October 2010, ITV1 broadcast an edition of its documentary series *Real Crime with Mark Austin*, in which reporter Mark Austin looks at real life criminal cases. In this edition, entitled *Gunn Law*, Mr Austin looked at an undercover police operation in Nottingham which resulted in Colin Gunn being jailed for life in June 2006 for conspiracy to murder John and Joan Stirland. He was also jailed for nine years for infiltrating Nottinghamshire police.

The programme showed how the Nottingham and Lincolnshire police investigated the murders of John and Joan Stirland in Lincolnshire and how the investigation led officers to the Bestwood estate in Nottinghamshire, which was run by Colin Gunn and his brother David Gunn, "*through a mixture of gratitude and fear*".

The programme also showed how the investigation exposed corruption within the police force, with informants within the force providing Colin Gunn with information about investigations. One of those officers was "*rookie detective*", Charles Fletcher, a long term friend of the Gunn family, who was jailed for seven years for his activities. The programme also featured footage of another officer, Philip Parr, who was prosecuted for passing "*sensitive information to Colin Gunn*". At the end of the programme, the commentary stated that Mr Parr and Mr Fletcher had now been released from prison.

Mr Parr complained to Ofcom that he was treated unfairly in the programme as broadcast.

## **The Complaint**

### **Mr Parr's case**

- a) He was portrayed unfairly in that:
- i) The programme stated incorrectly that he passed information directly to Colin Gunn. This was not the case, as was shown during the court proceedings. In fact Mr Parr had provided information to help out a friend, but had not known who the intended recipient was.
  - ii) The programme wrongly implied that he was associated with Colin Gunn.
  - iii) The programme incorrectly portrayed him in the same context as Mr Fletcher, although this was not the case, as was shown during the court proceedings. The programme failed to show the limited nature of his involvement and the circumstances of that involvement.

### **ITV's case**

By way of background ITV said that the programme was justified in referring, in passing, to Mr Parr's criminal conviction for passing information to the gang, notwithstanding that Mr Fletcher's involvement with the gang was greater than that of Mr Parr, which was reflected in Fletcher's much longer sentence. ITV said that Mr Parr was a serving police officer in a position of public trust, who pleaded guilty to a serious offence, namely conspiracy to commit misconduct, and was convicted in the same proceedings as Mr Fletcher and various members of the Gunn gang. ITV said that Mr Parr's conviction was not spent and remained a matter of public record.

ITV said that the programme was concerned with a serious matter of public interest, namely the lengthy and complex police investigation that led to the imprisonment of a serious criminal gang leader and a number of his associates for the most serious crimes. ITV said that criminal misconduct by police officers in assisting criminals was also a very serious matter of public interest and that the programme was justified and entitled to refer to the conviction of both police officers as part of that investigation.

- a) In summary ITV responded as follows to the complaint that Mr Parr was portrayed unfairly:
- i) ITV responded first to the complaint that the programme stated incorrectly that Mr Parr passed information directly to Colin Gunn. Mr Parr said that this was not the case, as was shown during the court proceedings, and that in fact Mr Parr had provided information to help out a friend, but had not known who the intended recipient was.

ITV said that the programme did not state that Mr Parr passed information to Colin Gunn directly. ITV said that Mr Parr accessed confidential police records and passed information, including details of a burglary suspect and of Colin Gunn's partner's criminal record, to a friend of his. Mr Parr attended the friend's workplace to pass on this information and another conspirator was present and was seen immediately afterwards conferring with Colin Gunn in a car nearby. These two men were subsequently among the co-conspirators convicted in the police corruption case, along with Colin Gunn.

ITV acknowledged that Mr Parr had always maintained that he was not aware the information he provided was being passed on to Colin Gunn and believed he was simply helping out a friend, but said that he pleaded guilty to conspiracy to commit misconduct in a public office. ITV said that in these circumstances it was fair to report, in a programme primarily concerned with Colin Gunn, that Mr Parr was another police officer who, like Mr Fletcher, was convicted and jailed for passing on information to Gunn.

- ii) As regards the complaint that the programme wrongly implied that Mr Parr was associated with Colin Gunn, ITV said that the programme rightly, accurately and fairly implied that Mr Parr was associated with Colin Gunn. ITV said that it could not be unfair to associate Mr Parr with Colin Gunn, given they were both convicted of conspiracy together. ITV also said that, at the time of the proceedings, the convictions of Mr Fletcher and Mr Parr were widely reported in the press in terms that explicitly linked them both with Colin Gunn.

For example, ITV Central news reported the convictions of Mr Fletcher and Mr Parr together as “Nottinghamshire police officers who leaked information to suspected criminals”. The BBC reported that “Two former police officers, Charles Fletcher and Philip Parr, were found to be feeding information through to Gunn and his organisation”. Similarly The Times stated that “Two Nottinghamshire police officers, Charles Fletcher and Philip Parr, have already been sentenced for passing sensitive information to him”. ITV said that the programme did no more than reiterate a matter of public interest and public knowledge, namely Mr Parr’s conviction for passing information to the Gunn gang.

- iii) ITV then responded to the complaint that the programme incorrectly portrayed Mr Parr in the same context as Mr Fletcher, although this was not the case, as was shown during the court proceedings and that the programme failed to show the limited nature of his involvement and the circumstances of that involvement.

ITV said that the programme set out in some detail Mr Fletcher’s involvement with the Gunn gang, reflecting his greater degree of involvement with the gang, which was also reflected in the sentence of seven years’ imprisonment that he received, compared with Mr Parr’s sentence of 12 months’ imprisonment. ITV said that the context of the convictions of Mr Fletcher and Mr Parr was essentially the same, namely they were police officers providing information to a criminal gang in breach of their duty and the public trust.

ITV said that, during the preparation of the programme, the assistant producer met with Mr Parr to offer him the opportunity to take part in a filmed interview, but Mr Parr later confirmed that he did not wish to do so.

ITV said that the programme was not required, as a matter of fairness to Mr Parr, to reflect all the details of his conviction or his own assertion that he did not know the information he was passing on was intended for use by Colin Gunn. ITV said that the information provided by Mr Fletcher was directly linked to the investigation of the Stirland murders, which was directly relevant to the central story pursued in the film and therefore was discussed in more detail. The programme did not suggest that the information Mr Parr disclosed was connected to that particular crime by the Gunn gang, but nevertheless, it was editorially justified and proportionate to refer briefly to the fact that the

Gunn investigation also uncovered another police officer who was successfully prosecuted and jailed for passing information to the Gunn gang.

## Decision

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

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

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

- a) Ofcom considered the complaint that Mr Parr was portrayed unfairly in the programme.

In considering this part of the complaint Ofcom took account of Rule 7.1 of Ofcom's Broadcasting Code ("the Code"), which provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also had regard to Practice 7.9 which says broadcasters must take reasonable care not to present, disregard or omit material facts in a way which is unfair to an individual.

Ofcom noted that the programme looked at the investigation into the murders of Mr and Mrs Stirland in Nottingham and the undercover police operation that led officers to "*an organised crime gang built on drugs and held together by violence*". The investigation resulted in Colin Gunn, who was described as the "*seemingly untouchable gang leader...overlord of a tough council estate*", being jailed for life in June 2006. Ofcom also noted that the investigation exposed corruption within the Nottingham police force, with informants within the force providing Colin Gunn with information about the investigation. The programme said that it became clear that some corrupt officers were working for Colin Gunn and feeding information to him about investigations. One of those officers was Mr Fletcher, who, as a result of the investigation, was jailed for seven years. The programme also featured footage of Mr Parr. The reporter said:

*"The team investigating corruption had also found another bad apple, vice squad officer Philip Parr, seen here in a television documentary promising justice to those who broke the law".*

The programme then included footage of a different documentary in which Mr Parr explained his work targeting kerb crawlers in Nottingham, following which the reporter said:

*"Parr would now be prosecuted for passing sensitive information to Colin Gunn".*

At the end of the programme, there was an on-screen caption which stated that:

*“Colin Gunn lost his appeals, his brother David Gunn, Charles Fletcher and Philip Parr have now all been released”.*

- i) Ofcom first considered the complaint that the programme stated incorrectly that he passed information directly to Colin Gunn. This was not the case, as was shown during the court proceedings. In fact Mr Parr had provided information to help out a friend, but had not known who the intended recipient was.

Ofcom noted the wording used in the programme and considered that it was not stated in the programme that Mr Parr passed information *directly* to Colin Gunn.

Ofcom went on to consider whether the programme implied that he did so. Ofcom noted that, unlike that of Mr Fletcher, Mr Parr's involvement was not set out in any detail in the programme and that viewers may or may not have understood from the information provided that Mr Parr had passed information directly to Mr Gunn. However, Ofcom took into account the fact that Mr Parr pleaded guilty to conspiracy to commit misconduct in a public office in relation to the information that he passed on and which was ultimately given to Colin Gunn and the fact that the programme's main focus was clearly the activities of Colin Gunn and the investigation of the murders of Mr and Mrs Stirland. In these circumstances Ofcom took the view that the reference to Mr Parr passing information to Colin Gunn was a reasonable summary of what took place.

Ofcom therefore found no unfairness in this respect.

- ii) Ofcom considered the complaint that the programme wrongly implied that he was associated with Colin Gunn.

Ofcom noted that the programme did not explicitly state that Mr Parr was associated with Colin Gunn and went on to consider whether the programme implied that he was associated with him. As set out under decision head a) i) above, Ofcom considered the limited focus on Mr Parr in the programme and the fact that the main focus was the activities of Colin Gunn and the investigation of the murders of Mr and Mrs Stirland. Ofcom considered that, in light of the very limited information about Mr Parr that was included in the programme, there was no suggestion that he was associated with Mr Gunn other than in relation to the provision of information for which he was sentenced to imprisonment.

Ofcom therefore found no unfairness in this respect.

- iii) Ofcom finally considered the complaint that the programme incorrectly portrayed Mr Parr in the same context as Mr Fletcher, although this was not the case, as was shown during the court proceedings. The programme failed to show the limited nature of his involvement and the circumstances of that involvement.

Ofcom noted that the programme went into substantial detail about Mr Fletcher's activities and went on to state that he was sentenced to seven years' imprisonment for his involvement. Ofcom also noted that the

programme makers had available to them footage of an earlier documentary in which Mr Parr spoke of his police work in tackling kerb crawling. Apart from the inclusion of this footage and as set out above, the programme only touched very briefly on Mr Parr's involvement, with the commentary stating that officers had found "*another bad apple*", that Mr Parr was prosecuted and, at the end of the programme, that he and Mr Fletcher had been released. Ofcom considered that, in relation to Mr Parr, the information provided in the programme was accurate and that it was not incumbent on the programme makers to set out the full circumstances of the offence for which he was imprisoned. Ofcom noted that both officers were convicted and sentenced for conspiracy to commit misconduct in a public office, clearly a serious offence, and both were sentenced to imprisonment for their activities, albeit for significantly different periods of time.

Ofcom considered that it would have been preferable if the programme had referred to the fact that Mr Parr was sentenced to 12 months imprisonment, as opposed to the seven year sentence that Mr Fletcher received, as this would have served to underline the distinction between their respective levels of involvement in criminal activities. However, Ofcom took the view that, notwithstanding this omission and given the very different level of details about the two men's activities included in the programme, viewers were likely to have understood that, their involvement was not of the same order.

Ofcom therefore found no unfairness to Mr Parr in this respect.

**Accordingly, Ofcom has not upheld Mr Parr's complaint of unfair treatment in the programme.**

## Other Programmes Not in Breach

Up to 28 March 2011

Programme	Transmission Date	Broadcaster	Categories	Number of complaints
118 118's sponsorship of ITV4 Movies	12/03/2011	ITV4	Disability discrimination/offence	1
4thought.tv	13/03/2011	Channel 4	Religious/Beliefs discrimination/offence	3
4thought.tv	15/03/2011	Channel 4	Race discrimination/offence	3
5 News	24/03/2011	Channel 5	Sexual material	1
60 Minute Makeover	25/03/2011	ITV1	Generally accepted standards	1
90210 (trailer)	various	E4	Sexual material	4
A League of Their Own	25/03/2011	Sky 1	Offensive language	1
Ant and Dec's Push the Button	19/03/2011	ITV1	Animal welfare	12
Ant and Dec's Push the Button	19/03/2011	ITV1	Generally accepted standards	4
Ant and Dec's Push the Button	19/03/2011	ITV1	Competitions	1
Ant and Dec's Push the Button	26/03/2011	ITV1	Nudity	1
BBC News	15/03/2011	BBC News Channel	Offensive language	1
BBC News at Ten	10/11/2010	BBC 1	Offensive language	2
Bean	26/03/2011	ITV1	Generally accepted standards	1
Benidorm	11/03/2011	ITV1	Generally accepted standards	1
Benidorm	11/03/2011	ITV1	Race discrimination/offence	2
Benidorm	13/03/2011	ITV2	Race discrimination/offence	1
Body Language Secrets: How to Get What You Want	24/03/2011	Sky 1	Sexual orientation discrimination/offence	1
Brainiac: Science Abuse	19/03/2011	Pick TV	Sexual material	1
Britain's Trillion Pound Horror Story	11/11/2010	Channel 4	Due impartiality/bias	27
Caroline Quentin: A Passage Through India	15/03/2011	ITV1	Race discrimination/offence	1
Celebrity Juice	24/03/2011	ITV2	Sexual material	1
Celebrity Juice	14/03/2011	ITV2	Offensive language	1
Celebrity Parents SOS	08/03/2011	Pick TV	Religious/Beliefs discrimination/offence	1
Champions League Football	15/03/2011	Sky Sports 2	Generally accepted standards	1
Channel 4 News	16/07/2010	Channel 4	Generally accepted standards	2
Channel 4 News	11/03/2011	Channel 4	Offensive language	1
Channel 4 News	15/03/2011	Channel 4	Age discrimination/offence	1
Channel 4 Racing	15/03/2011	Channel 4	Gender discrimination/offence	1

Channel Report	26/01/2011	Channel TV	Due impartiality/bias	1
Christopher and His Kind	19/03/2011	BBC 2	Sexual material	1
Christopher and His Kind (trailer)	14/03/2011	BBC 2	Sexual material	1
Civilization: Is the West History?	13/03/2011	Channel 4	Materially misleading	1
Civilization: Is the West History?	13/03/2011	Channel 4	Due impartiality/bias	1
Coach Trip	18/02/2011	Channel 4	Generally accepted standards	1
Coach Trip	11/03/2011	Channel 4	Race discrimination/offence	1
Come Dine with Me	13/03/2011	Channel 4	Generally accepted standards	2
Come Dine with Me	21/03/2011	Channel 4	Offensive language	1
Come Dine with Me	17/03/2011	More 4	Generally accepted standards	2
Come Dine with Me Extra Portions	19/03/2011	Channel 4	Race discrimination/offence	1
Comic Relief 2011	18/03/2011	BBC 1	Disability discrimination/offence	33
Comic Relief 2011	18/03/2011	BBC 1	Gender discrimination/offence	1
Comic Relief 2011	18/03/2011	BBC 1	Generally accepted standards	19
Comic Relief 2011	18/03/2011	BBC 1	Offensive language	1
Comic Relief 2011	18/03/2011	BBC2	Offensive language	8
Comic Relief 2011	18/03/2011	BBC 1	Race discrimination/offence	1
Comic Relief 2011	19/03/2011	BBC 1	Generally accepted standards	4
Comic Relief Does Glee Club	15/03/2011	BBC 1	Voting	1
Coppers	01/11/2010	Channel 4	Generally accepted standards	1
Coronation Street	10/03/2011	ITV1	Product placement	1
Coronation Street	14/03/2011	ITV1	Harm	1
Coronation Street	17/03/2011	ITV1	Generally accepted standards	2
Coronation Street	17/03/2011	ITV1	Due impartiality/bias	2
Coronation Street	21/03/2011	ITV1	Violence and dangerous behaviour	4
Coronation Street	14/03/2011	ITV1	Generally accepted standards	1
Cowboy Builders	23/03/2011	Channel 5	Race discrimination/offence	1
Cricket World Cup	17/03/2011	Sky Sports 1	Advertising/editorial distinction	1
Cricket World Cup	19/03/2011	Sky Sports 1	Generally accepted standards	1
Currys' sponsorship of The Simpsons	various	Sky 1	Advertising content	1
Dancing on Ice	13/03/2011	ITV1	Advertising minutage	1
Dancing on Ice	27/03/2011	ITV1	Competitions	1
Dancing on Ice	20/03/2011	ITV1	Harm	1
Dancing on Ice	22/03/2011	ITV1	Generally accepted	1

			standards	
Dancing on Ice	13/03/2011	ITV1	Generally accepted standards	1
Dancing on Ice	20/03/2011	ITV1	Generally accepted standards	1
Deal or No Deal	04/03/2011	Channel 4	Competitions	1
DFS Crufts 2011	10/03/2011	More 4	Due impartiality/bias	1
Dispatches	28/02/2011	Channel 4	Due impartiality/bias	2
Doctors	16/03/2011	BBC 1	Race discrimination/offence	1
Doctors	18/03/2011	BBC 1	Violence and dangerous behaviour	1
Doctors	08/03/2011	BBC 1 Scotland	Race discrimination/offence	1
EastEnders	14/03/2011	BBC 1	Generally accepted standards	1
EastEnders	17/03/2011	BBC 1	Generally accepted standards	1
EastEnders Omnibus	20/03/2011	BBC 1	Scheduling	3
Embarrassing Bodies	18/02/2011	Channel 4	Materially misleading	1
Embarrassing Bodies	11/03/2011	Channel 4	Under 18s in programmes	1
Emmerdale	11/03/2011	ITV1	Sexual material	1
Emmerdale	14/03/2011	ITV1	Religious/Beliefs discrimination/offence	1
Emmerdale	14/03/2011	ITV1	Materially misleading	1
FA Cup 6th Round	12/03/2011	ITV1	Race discrimination/offence	1
Friday Night Dinner (trailer)	04/03/2011	Channel 4	Sexual material	1
Glee	21/03/2011	E4	Advertising minutage	2
Glee	19/03/2011	Channel 4	Generally accepted standards	1
Granada Reports	07/02/2011	ITV1 Granada	Sexual material	1
Guadalcanal Diary	16/03/2011	Film4	Generally accepted standards	1
Harry Hill's TV Burp	12/03/2011	ITV1	Sexual material	1
Harry Hill's TV Burp	19/03/2011	ITV1	Generally accepted standards	1
Harry Hill's TV Burp	26/03/2011	ITV1	Violence and dangerous behaviour	1
Harry Hill's TV Burp	18/03/2011	ITV2	Sexual orientation discrimination/offence	1
Holby City	22/03/2011	BBC 1	Violence and dangerous behaviour	1
Howzat	18/03/2011	Ary News	Due accuracy	1
ITV News	various	ITV1	Programme-related material	1
ITV News	16/03/2011	ITV1	Fairness & Privacy	1
ITV News	23/03/2011	ITV1	Due accuracy	1
James Martin Champagne	22/03/2011	Good Food	Gender discrimination/offence	1
Jamie's Dream School	16/03/2011	Channel 4	Generally accepted standards	1
Japan Tsunami promo	12/03/2011	Sky News	Generally accepted	6

			standards	
Joop's sponsorship of Law and Order	various	FX	Volume of sponsorship credits	2
Kick Off - Champions League Live	08/03/2011	Talksport	Materially misleading	1
Late Night Films promo	16/03/2011	Channel 4	Generally accepted standards	1
Let's Dance for Comic Relief	12/03/2011	BBC 1	Generally accepted standards	1
Lily Allen: From Riches to Rags	16/03/2011	Channel 4	Drugs, smoking, solvents or alcohol	1
Lily Allen: From Riches to Rags	22/03/2011	Channel 4	Offensive language	2
Lily Allen: From Riches to Rags	22/03/2011	Channel 4	Harm	1
Lily Allen: From Riches to Rags (trailer)	14/03/2011	Channel 4	Nudity	1
Live: Guru Ghar Diyan Praptiyan	23/02/2011	Sikh Channel	Elections/Referendums	2
Loose Women	11/03/2011	ITV1	Race discrimination/offence	1
Loose Women	21/03/2011	ITV1	Nudity	1
Loose Women	22/03/2011	ITV1	Harm	1
Lorraine	22/03/2011	ITV1	Due impartiality/bias	1
Louie Spence's Showbusiness	09/03/2011	Sky 1	Generally accepted standards	1
MasterChef	16/03/2011	BBC 1	Materially misleading	1
Matt Forde	12/03/2011	Talksport	Generally accepted standards	1
Meridian News	13/02/2011	ITV1 Meridian	Due accuracy	1
Midsomer Murders	09/03/2011	ITV1	Violence and dangerous behaviour	1
Midsomer Murders	14/03/2011	ITV1	Nudity	1
Midsomer Murders	17/03/2011	ITV1	Offensive language	1
Midsomer Murders	20/03/2011	ITV1	Offensive language	2
Midsomer Murders	22/03/2011	ITV1	Nudity	1
Monroe	10/03/2011	ITV1	Generally accepted standards	1
Nick Ferrari	10/03/2011	LBC 97.3FM	Generally accepted standards	1
Nigerian Idol	07/03/2011	HiTV	Advertising/editorial distinction	1
Nihal	01/02/2011	BBC Asian Network	Religious/Beliefs discrimination/offence	1
Nikon's sponsorship of Hollyoaks	21/02/2011	Channel 4	Volume of sponsorship credits	1
On Screen digital graphics	10/03/2011	MTV	Advertising/editorial distinction	1
Oops TV	07/03/2011	Sky 1	Offensive language	1
Outtake TV	19/03/2011	BBC 1	Sexual orientation discrimination/offence	2
Panth Time	22/12/2010	Sikh Channel	Religious/Beliefs discrimination/offence	1
Peep Show (trailer)	13/03/2011	Dave	Sexual material	1
Pop's Greatest Dance	12/03/2011	BBC 3	Disability	1

Crazes			discrimination/offence	
Premier League Football	05/03/2011	Sky Sports 2	Offensive language	1
Premier League Football	19/03/2011	Sky Sports 2	Generally accepted standards	1
Press Preview	14/03/2011	Sky News	Generally accepted standards	1
Promotion	13/03/2011	Comedy Central	Hypnotic and other techniques	1
Quitwithhelp.co.uk's sponsorship of The Chase	11/03/2011	ITV1	Generally accepted standards	1
Quitwithhelp.co.uk's sponsorship of The Chase	17/03/2011	ITV1	Generally accepted standards	1
Room For Improvement	14/03/2011	More 4	Race discrimination/offence	1
Ross at Breakfast	28/01/2011	The Bay (Poole)	Crime	1
Scottish Killers	14/03/2011	STV	Generally accepted standards	1
Secret Diary of a Call Girl (trailer)	various	ITV2	Sexual material	3
Seven Ages of Britain	26/03/2011	Channel 4	Religious/Beliefs discrimination/offence	1
Skins	10/03/2011	E4	Drugs, smoking, solvents or alcohol	1
Sky News	15/03/2011	Sky News	Generally accepted standards	1
Sky News	16/03/2011	Sky News	Generally accepted standards	1
Sky News	17/03/2011	Sky News	Violence and dangerous behaviour	1
Sky Sports 1	18/03/2011	Sky Sports 1	Materially misleading	1
Snapped: Women Who Kill (trailer)	14/03/2011	Crime and Investigation Network	Generally accepted standards	1
Spartacus: Gods of the Arena	21/03/2011	Sky 1	Violence and dangerous behaviour	1
Station ident	09/03/2011	Jack FM (Hertfordshire)	Offensive Language	1
Steve Allen	27/03/2011	LBC 97.3FM	Crime	1
T4	26/03/2011	Channel 4	Sexual material	1
Take Me Out	12/03/2011	ITV1	Disability discrimination/offence	1
The Big Debate	04/03/2011	BBC Radio Scotland	Race discrimination/offence	2
The Bill	23/03/2011	Watch	Crime	1
The Chase	10/03/2011	ITV1	Competitions	2
The Chase	16/03/2011	ITV1	Competitions	4
The Chase	21/03/2011	ITV1	Competitions	1
The Chase	22/03/2011	ITV1	Competitions	1
The Chase	08/03/2011	ITV1	Competitions	1
The Chris Moyles Show	03/03/2011	BBC Radio 1	Sexual material	2
The Edge of Love	12/03/2011	BBC 2	Offensive language	1
The Gadget Show	14/03/2011	Channel 5	Materially misleading	1
The Hangover	12/03/2011	Sky Comedy HD	Sexual material	1

The Jeremy Kyle Show	15/03/2011	ITV1	Crime	1
The Jeremy Kyle Show	18/03/2011	ITV1	Disability discrimination/offence	1
The Jeremy Kyle Show	25/03/2011	ITV1	Generally accepted standards	1
The Jeremy Kyle Show	15/03/2011	ITV1	Generally accepted standards	1
The Lock Up	25/03/2011	BBC 3	Generally accepted standards	1
The Milkshake! Show	14/03/2011	Channel 5	Generally accepted standards	1
The National Lottery: Secret Fortune	26/03/2011	BBC 1	Competitions	1
The One Show	14/03/2011	BBC 1	Generally accepted standards	1
The One Show	17/03/2011	BBC 1	Crime	1
The Only Way is Essex	20/03/2011	ITV2	Animal welfare	2
The Only Way is Essex (trailer)	20/03/2011	ITV1	Sexual material	1
The Restoration Man	24/03/2011	Channel 4	Offensive language	3
The Simpsons	11/03/2011	Sky 1	Generally accepted standards	1
The Slammer	26/03/2011	CBBC	Sexual material	1
The Wright Stuff	18/03/2011	Channel 5	Generally accepted standards	1
The Wright Stuff	24/03/2011	Channel 5	Harm	1
The Wright Stuff	25/01/2011	Channel 5	Race discrimination/offence	1
Three Legends Football Phone In	14/03/2011	Real Radio North East	Race discrimination/offence	1
Top Gear	06/02/2011	BBC 2	Generally accepted standards	1
Top Gear	13/02/2011	BBC 2	Harm	1
Top Gear	04/03/2011	Dave	Sexual orientation discrimination/offence	1
U105 Mornings With Frank Mitchell	09/03/2011	U105	Religious/Beliefs discrimination/offence	2
UEFA Champions League: Chelsea v FC Copenhagen	16/03/2011	ITV1	Sexual orientation discrimination/offence	1
Waterloo Road	16/03/2011	BBC 1	Generally accepted standards	2
Women in Love (trailer)	19/03/2011	BBC 1	Sexual material	1
Would I Lie To You?	02/03/2011	Dave	Offensive language	1