

Ofcom broadcast bulletin

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Introduction

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

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

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

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

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

Standards cases

In Breach

Word Association

Quiz Call, 24 September 2006, 16:00

Introduction

In this quiz, viewers were invited to name “things in Australia.” Successful callers identified six of twelve possible answers, which included Sydney Opera House and Kangaroo Island. When only one more call was due to be put through to the studio, six answers remained to be identified, with a prize for any correct answer set at £1,500.

A clue to one of the answers was provided on screen. It read, “ALICE * * * * *?” The presenter stated: “Alice something.” Pointing to the clue, he said: “We’re giving away £1,500 for that clue.” He mentioned that there were seven asterisks. The clue then changed to “ALICE _ _ _ _ _?” The presenter said: “I know you’ve worked this out now guys...”, but added later: “It could be a tricky one, I don’t know the answer.” However, he encouraged viewers to use the clue, rather than attempt one of the other five possible answers. The last caller through to the studio suggested “Alice Springs” was the answer, which was incorrect. The presenter revealed all the remaining answers, which included the event, “Alice Springs Camel Cup.”

Two viewers believed this was unfair. Rule 2.11 of the Ofcom Broadcasting Code (“the Code”) states: “Competitions should be conducted fairly...”. Ofcom asked Channel 4, which ran *Quiz Call* at the time of the broadcast but now no longer operates the service as a stand-alone channel, for its comments.

Response

Channel 4 agreed that the clue on screen, which included seven asterisks and then seven dashes, may have suggested that a seven letter answer was required. The presenter then made an assumption that the answer was “Alice Springs”, wrongly stating that they were looking for a seven letter word that follows Alice. Channel 4 said that the presenter’s assumption was incorrect, the producer did not realise and, unfortunately, the presenter was not therefore prompted to rectify the mistake at the time.

Channel 4 apologised for the error and confirmed that *Quiz Call’s* producers and presenters had been reminded by its compliance team that presenters should not assume the correct answers to competitions on air. The broadcaster added that the presenter in this case no longer worked for *Quiz Call* and regretted the “isolated incident.”

Decision

For a competition to be conducted fairly, Ofcom considers it should not be suggested to viewers that a competition is easy (as the presenter did in this instance), when it is in fact difficult or vice versa. We therefore welcome the broadcaster’s apology and the reminder it issued to producers and presenters – to avoid presenters making

assumptions on air about the correct answers to competitions. A clue which is broadcast must always be completely accurate, especially if it clearly invites viewers to attempt one specific answer (of many) and makes that answer appear easy.

Irrespective of the presenter's assumption and comments, the clue on screen clearly indicated that the correct answer was "Alice" followed by a single seven letter word. Most viewers would have therefore called to provide the specific answer for which the clue had been given, believing it be easy (i.e. "Alice Springs"). The broadcaster's 'correct' answer ("Alice Springs Camel Cup") was almost impossible for callers to have considered, given the clue that was screened.

Ofcom considers that the integrity of such competitions, particularly where viewers are encouraged to spend money by calling premium rate telephone lines, is essential. Broadcasters must ensure that they observe the highest standards.

The competition was not therefore conducted fairly and was in breach of Rule 2.11 of the Code.

Breach of Rule 2.11

Ofcom has serious concerns about a growing trend of complaints on the conduct of some competitions and quizzes. Please see the Note to Broadcasters in this issue.

Quiz Call

Five, 17 September 2006, 01:05

Introduction

A viewer questioned the validity of an answer in a competition called *Piggy Bank* in the *Quiz Call* programme broadcast on Five. (*Quiz Call* was previously run as a channel. It is now broadcast as a programme, on Five). The viewer did not believe that 960 pence was a possible solution to the quiz question.

When investigating, we noticed that in the current case, the presenter opened the *Piggy Bank* competition by stating:

"The first game is very simple ... I don't know the answer to this game but I do know it's very, very easy. Have a look at all the coins and what you need to do is add the pence - it's as easy as that. So call me. Maybe the first person coming through will get this right tonight."

Ofcom was aware of the nature and methodology of this competition as it was identical to *Piggy Bank* featured in a previous *Quiz Call* broadcast on Five, about which Ofcom published a finding in broadcast bulletin 78 (http://www.ofcom.org.uk/tv/obb/prog_cb/obb78/). In this previous case, Five had said that the show's approvals team categorised *Piggy Bank* as a "difficult mathematics" game.

Five was asked to comment on these points in the light of Rule 2.11 of the Broadcasting Code which requires that: "Competitions should be conducted fairly...".

Response

Five confirmed that the methodology behind the solution was identical to that used previously and detailed how it had been applied in the current case.

The broadcaster quoted comments made by the presenters during the broadcast that indicated the competition may be more difficult than had been stated at the outset. Five did not therefore believe the programme, taken as a whole, was misleading. Nevertheless, it acknowledged that *"the presenter's comments that the game was "easy" were not ideal."*

Five also reminded Ofcom that, as a result of the previous case, it would be holding a further seminar with the programme's personnel, *"to ensure they understand the detail, meaning and importance of Rule 2.11."*

Decision

The methodology provided by Five confirmed the correct answer (960 pence), when applied in this case. As before, it appeared to us capable of producing only the correct answer and was therefore fair to viewers who had decided to participate.

We welcome Five's steps to aid compliance. However, current Ofcom guidance says that, for a Call TV quiz to be run fairly, "we believe an audience should not be misled by a broadcaster stating or implying that a competition is simple if it is actually difficult/cryptic." While we acknowledge the presenters' later comments when

conducting this competition, as quoted by Five, the first presenter opened the competition by stating that it was easy. In the following twenty minutes she made no attempt even to imply that it may have been more difficult.

At any stage of a competition – especially at the beginning – the apparent difficulty of a competition is likely to be a significant factor when a viewer considers whether or not to participate. It is therefore essential that the viewers are not misled. In this case, viewers were likely to participate because they believed the competition was easy, when it was not.

The competition was not conducted fairly and the broadcast therefore breached Rule 2.11.

Breach of Rule 2.11

Ofcom has serious concerns about a growing trend of complaints on the conduct of some competitions and quizzes. Please see the Note to Broadcasters in this issue.

Note to Broadcasters

Call TV Quiz Services and Rule 2.11

Ofcom has serious concerns about a growing trend in complaints relating to the conduct of some competitions and the potential loss of trust between the broadcaster and audience.

It is a requirement of Ofcom's Broadcasting Code that competitions are conducted fairly. In particular, it is essential that the demands of any competition on its audience are reasonable.

Ofcom is currently investigating other cases, but we consider it necessary to remind broadcasters that they must take particular care in ensuring that there are rigorous compliance procedures in place to prevent the broadcast of:

- wrong answers as correct;
- inaccurate and/or misleading clues and
- challenges that are almost impossible for anyone in the audience to meet.

Broadcasters are reminded that, in line with its normal procedures, Ofcom will consider the imposition of statutory sanctions for broadcasters seriously, deliberately or repeatedly breaching the Code.

Separately to investigating specific cases under the Broadcasting Code (which are published in the broadcast bulletin), Ofcom has announced a wider inquiry into the use of premium rate telecoms services ("PRS") in television programmes. This follows a series of apparent compliance failures in the operation of and editorial standards in television programmes that use PRS.

Details of the inquiry's terms of reference can be found at http://www.ofcom.org.uk/media/news/2007/03/nr_20070322a

The Extreme Truth

Men & Motors, 15 March 2006, 23:30

Introduction

This programme featured couples who were hypnotised to reveal their most intimate secrets including their most extreme sexual experiences and secret sexual fantasies. These experiences and fantasies were re-enacted (filmed in soft focus and black and white) as they are described by the person under hypnosis. During the programme there were portrayals of vaginal, oral and anal sexual acts.

A viewer objected to the explicit nudity and sexual content within the programme. ITV, the broadcaster responsible for *Men & Motors*, was asked to comment in the light of Rules 1.24 (adult sex material), 2.1 and 2.3 (generally accepted standards) of the Broadcasting Code (“the Code”).

Response

ITV said that the series was carefully edited by a dedicated and highly experienced *Men & Motors* compliance editor. ITV acknowledged that the programme was quite sexually explicit. However, it stated that the series was aimed solely at an adult audience, very late night and in the clear context of the *Men & Motors* channel. The show was “labelled” at the outset; an on-screen caption carried the single word “EXPLICIT” and the accompanying voice-over said: *“We’d like to inform viewers that the following programme contains scenes of a sexual nature”*.

In relation to whether the content amounted to ‘adult sex material’ requiring encryption, ITV considered that it followed the guidance issued by Ofcom. In judging what material is adult sex material, Ofcom suggests that broadcasters should be guided by the definitions used by the British Board of Film Classification (BBFC) when referring to 18-rated films and ‘sex works at 18’. The BBFC states that films may fall outside the 18-rated category because the material contains “the more explicit images of sexual activity – unless they can be exceptionally justified by context and the work is not a ‘sex work’ as defined....”. The BBFC defines ‘sex works’ as “works...whose primary purpose is sexual arousal or stimulation”. The Code makes a similar differentiation. On this occasion ITV concluded that the series did not meet the definition of a ‘sex work’ and therefore did not require encryption.

However, ITV said it was keen to avoid obvious sources of widespread or general offence and, as a result of the complaint, it conducted a comprehensive internal review of the adult output broadcast on the channel. The review was conducted on the basis that the channel wanted to protect the particular context and viewer expectation it had built up over a number of years while ensuring that programming was suitably edited and appropriately presented. It included a review of the channel’s existing compliance guidelines; samples of then-current adult output; samples of the unedited material from which that output derived and some of the output at comparable times on comparable channels.

ITV also researched previous regulatory findings, including an adjudication by the ITC (the regulator responsible for broadcast content prior to Ofcom) in 2003 that made clear that material that had been or would be played on an adult encrypted channel is *“not easily transferable to open channel viewing and requires a degree of editing that goes beyond the removal or blurring of obviously explicit and inappropriate images”*.

As a result of the review, ITV produced and implemented revised guidance for general application by Men & Motors. Full details of the revised guidelines were provided, including directions on both the explicitness of individual shots and the overall tone of programmes.

ITV said it had also reviewed the information/warning announcements made on Men & Motors, which it concluded were insufficient. As a result, ITV overhauled the announcement process to deliver bespoke announcements on virtually all Men & Motors programmes which, the broadcaster believed, offered a more effective and robust model to deliver an appropriate level of viewer information and warning. ITV hoped the review would achieve real improvement in performance to meet viewer expectation and avoid unnecessary offence and complaint.

Decision

The Code requires 'generally accepted standards' to be applied to the content of television programmes (Rule 2.1). In applying these standards, broadcasters must ensure that material that may cause offence is justified by context (Rule 2.3). Context can include (but is not limited to) the editorial content of the programme, the channel on which it is broadcast and the time of broadcast, the expectation of the likely audience and any information broadcast before the programme about the nature of the content. It also includes the effect of the material on viewers or listeners who may come across it unawares.

In this case, Ofcom notes the programme was preceded by detailed information alerting viewers to its sexual content and was broadcast late in the evening on a channel that attracts a predominantly adult male audience. The channel is known for broadcasting mainly motoring based programming and, later in the schedule, programmes of a more adult nature.

However, the channel is situated in the general entertainment section of the Electronic Programme Guide. Although the editorial basis of the programme ostensibly appeared to be the impact of the revelations on the couples, the actual content was principally the portrayal of the sexual fantasies and experiences. This focus on the sexual acts, coupled with the filming techniques used, created a programme that appeared predominantly to be what the Broadcasting Code refers to as 'adult sex material' in terms of both style and intent. We consider that the degree and explicitness of the sexual activity shown and the overall tone of the programme was not editorially justified and went beyond what is generally acceptable on an unencrypted channel.

It is important that broadcasters differentiate between programmes that contain explicit sexual material that is exceptionally justified by the context of the programme and material that appears to be shown for the purpose of sexual arousal or stimulation. Material that falls in the latter category should be broadcast only under encryption with appropriate protection mechanisms in place.

We consider this programme was in breach of the Code and welcome the steps taken by the broadcaster to improve compliance in this area. We expect these improved compliance procedures to prevent this or similar material from being broadcast without encryption in future.

Breach of Rules 1.24, 2.1 and 2.3

Channel 9 (Restricted Television Service Licence)

24–25 January 2007

Introduction

Channel 9 is a local channel broadcast in Londonderry, Northern Ireland. Six viewers complained that the channel had stopped broadcasting local content, as required by its licence.

Ofcom asked Channel 9 to provide a sample of content from a 24 hour period chosen at random and its comments in respect of Part I (b) of the Annex to its licence, which states: *“The Licensed Service will provide content which covers local news, weather, and sport, local current affairs, local interest and local interactive programming. Some Irish language and religious output will be introduced. A local text service will be provided 24 hours a day”.*

Response

Channel 9 said it was unable to provide Ofcom with a copy of the requested broadcast as it had experienced problems with its logging system. However, the broadcaster stated that it normally stopped producing local original material during the summer months and ran a ‘summer schedule’ of other material instead. However due to serious staff problems and logistical difficulties, this schedule had continued beyond the summer without any further local content being broadcast. The channel explained that once new editorial staff had been recruited, it would begin broadcasting local original content again. In addition, a planned expansion of technical facilities would enable the broadcast of novel and enhanced local content.

In later correspondence with Ofcom, the channel stated that the expansion work had been delayed and staff problems had continued. It provided Ofcom with details of its future schedule plans, indicating the inclusion of new local content.

Decision

Ofcom noted Channel 9’s explanations for this situation and the efforts the broadcaster has made to rectify it. However Ofcom considers a breach of a broadcaster’s licence obligations of this nature as serious and significant. This will be held on record and further regulatory action will be considered if a similar breach occurs again.

Further, it is a condition of a television broadcaster’s licence that recordings of its output are retained for 60 days after transmission and that Ofcom is provided with any material on request. Failure to supply this recording was a serious breach of Channel 9’s licence. This will also be held on record.

The channel was in breach of Part I (b) (The Licensed Service) and Condition 9 (Retention and production of recordings) of its licence.

Breach of Part I (b) and Condition 9 of its licence

Not In Breach/Resolved

After You've Gone

BBC1, 12 January 2007, 20:30 & 14 January 2007, 17:10

Introduction

This sitcom features the relationship of divorced handyman, Jimmy, with his two teenage children, ex-wife and former mother-in-law. This episode was transmitted at 20:30 on 12 January 2007 and then repeated the following Sunday at 17:10.

12 January 2007, 20:30

Three viewers complained that they were offended by the use of language such as “shag”, “crap”, “bollocks” and “tits”. In particular, one was concerned about the use of “Christ” as a swear word.

Two further viewers complained about the use of such language before the watershed, particularly as the programme’s family storyline appealed to younger viewers.

14 January 2007, 17:10

Five viewers complained about the offensive language in this repeat episode.

27 further viewers complained that the swearing was unsuitable for transmission on a Sunday afternoon when young children were watching.

As regards the three complaints of offensive language relating to the 12 January transmission and the five complaints on this issue regarding the 14 January transmission, Ofcom did not ask the BBC for its comments in the context of Rule 2.3 (generally accepted standards). It considers that this level of language is generally acknowledged as mild by the majority of adult viewers and was justified by the editorial context of the programme, a light-hearted comedy.

However, Ofcom did ask the BBC to comment on both transmissions in respect of Rules 1.3 and 1.16 of the Broadcasting Code (“the Code”). Rule 1.3 states that: “Children must also be protected by appropriate scheduling from material that is unsuitable for them”. The Code defines the meaning of “children” as people under the age of fifteen years and it judges “appropriate scheduling” according to:

- the nature of the content;
- the likely number and age range of children in the audience, taking into account school time, weekends and holidays;
- the start and finish time of the programme;
- the nature of the channel or station and the particular programme; and
- the likely expectations of the audience for a particular channel or station at a particular time and on a particular day.

Rule 1.16 requires that: “Offensive language must not be broadcast before the watershed, or when children are particularly likely to be listening, unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed. “

Context includes, but is not limited to, the editorial content of the programme, the time of the broadcast, the likely size and composition of the potential audience and the likely expectation of the audience.

Response

12 January 2007, 20:30

The BBC acknowledged that language that had the potential to offend was used several times in this programme, but the Corporation did not believe it was inappropriate for broadcast in the 30 minutes immediately before the watershed. The broadcaster referred to evidence that this type of language is acceptable to the typical audience for this time slot, pointing to Ofcom's own research study, *Language and Sexual Imagery in Broadcasting: A Contextual Investigation*, which notes: "There was general agreement that many words have become tolerated and almost 'every day'. These words were wide ranging and included 'toilet words', words for sexual body parts and profanity".

The BBC also said that the language was further justified by the dramatic context, with much of the humour coming from clash of class attitudes between handyman Jimmy and his former mother-in-law, Diana, who thinks herself socially superior. Jimmy's character is clearly used to the kind of predominantly male environments where coarse language is more acceptable, while Diana only uses terms such as "tits" that transgress the stereotype she represents for comic effect, without being unduly offensive.

14 January 2007, 17:10

The BBC admitted that while it believed such language was acceptable at 20:30, it was not suitable for broadcast on a Sunday afternoon when many children would be watching. The broadcaster recognised from the volume of complaints, both to Ofcom and directly to the BBC, that it had misjudged this transmission and apologised for any offence caused. This had been quickly recognised - a few days after the broadcast an apology was posted on the BBC's complaints website, with a commitment to make the series more appropriate for this timeslot. The remaining episodes were edited to remove much of the coarse language.

Decision

12 January 2007, 20:30

While Ofcom recognises that some viewers would prefer children to be protected from any swearing or offensive language before 21:00, the guidance to the Code which is based on extensive research recognises that "milder language in the early part of the evening may be acceptable, for example, if mitigated by a humorous context." Ofcom's research study *Language and Sexual Imagery in Broadcasting* notes that words such as "crap", "bollocks" and "Christ" were considered mild swearing by the majority of respondents. Nevertheless, the Code requires the use of such language should not be frequent before the watershed.

In the light of this Ofcom considers that it is acceptable for mild swearing to be scheduled in the period directly preceding the watershed, as long as it is not frequent and is justified by the context as required by the rule. In this case the frequency and type of language used were in keeping with the comedic context of this programme

and in particular, the types of characters portrayed. The language was not used aggressively.

Therefore Ofcom finds that this broadcast was not in breach of the Code.

Not In Breach

14 January 2007, 17:10

A pre-transmission announcement did advise viewers that this broadcast was a "*cheeky new comedy with plenty of colourful language*". Ofcom, however, considers that the majority of the audience watching BBC1 at this time would not have expected young children who are available to watch at this time to be exposed to the use of swearing.

Despite the fact that the swearing in this episode was mild and justified by its context at 20:30, Ofcom does not consider this type of language to be suitable for transmission on a Sunday afternoon at 17:10 when many young children are watching.

Ofcom acknowledges the steps taken by the BBC to ensure that future episodes were suitable for transmission in the 17:10 slot. In view of the BBC's acknowledgement of its misjudgement in the scheduling of this broadcast, its swift response and apology on its website and the actions taken, Ofcom considers the matter resolved.

Resolved

Broadcasting Code Guidance Update

Rule 9.14

We have received a number of queries from the broadcast industry about the inclusion of text numbers in sponsor credits. Specific concerns centre on whether it is acceptable under Rule 9.14 of the Code to include a prefix when featuring a text number in credits e.g. “text XYZ to 12345”.

Rule 9.14 requires sponsorship on television to be clearly separated from advertising. Sponsor credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. Credits may however include basic contact details of the sponsor.

Rule 9.14 is derived from European legislation, the Television Without Frontiers Directive. This contains specific requirements relating to the amount of television advertising a broadcaster is allowed to transmit and also specific requirements for broadcast sponsorship arrangements. Sponsorship does not count towards the amount of time a broadcaster is allowed to use for advertising and therefore the Code requires credits to be distinct from advertising.

We have considered whether the presentation of a text number in the manner described constitutes an advertising message e.g. a ‘call to action’ or is likely to be viewed by audiences merely as another form of contact information.

In reaching our decision, we have considered the degree of information it is necessary to provide for contact to be made using different routes (telephone, internet address etc.). If a sponsor credit contains contact information, we expect this to be the minimum necessary to allow the viewer to make contact with the sponsor. We understand that in the case of text messaging it is common practice for companies to prefix a text number with specific information. It is this prefix that facilitates connection.

A text number that includes a prefix is therefore likely to be viewed by Ofcom as basic contact information. The inclusion of such information alone in a sponsor credit is unlikely to breach Rule 9.14. Broadcasters should remember however that if the prefix itself is likely to be viewed as an ‘advertising message’, its inclusion in a sponsor credit is unacceptable.

Following the recent enquiries and also other queries regarding the interpretation of Rule 9.14, Ofcom is replacing the current Code guidance on this rule with the following text. This revised guidance comes into effect as of the date of this broadcast bulletin.

Rule 9.14 No advertising messages or calls to action (Television)

The purpose of a sponsor’s credit is to inform viewers that a programme is sponsored and let them know the identity of the sponsor.

Credits do not count towards the amount of airtime a broadcaster is allowed to use for advertising. The Television Without Frontiers (TWF) Directive limits the amount of advertising a broadcaster can transmit and requires that

advertising is kept separate from other parts of the programme service (Articles 10 and 18). Rule 9.14 is designed to ensure sponsor credits are distinct from advertising. It prevents sponsor credits becoming 'quasi' advertising by, for instance, being used for the sort of sales propositions that should be confined to advertisements.

In addition to the rules on advertising separation and minutage, Rule 9.14 also reflects the TWF Directive requirements that sponsored programmes:

- *"... must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or end of the programmes" (Article 17b).*
- *"... must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services" (Article 17c).*

Each statement made in a credit will be judged on its own merit and in light of all the circumstances, but the following guidance may be helpful when applying Rule 9.14.

Prominence of references to products/services

Broadcasters should remember that the purpose of a sponsor credit is to inform the viewer of the sponsorship arrangement. The main focus of a credit should therefore be to identify that arrangement.

In relation to identifying sponsored content, the European Commission has stated that "for the purposes of identifying the sponsor, [the TWF Directive] allows reference not only to the name or logo of the sponsor, but also to its products or services, provided they are not given undue prominence"¹.

Therefore, as part of the credit achieving its purpose of identifying the sponsorship arrangement, brief descriptions of the sponsor's products/services may be acceptable. To avoid issues of undue prominence, care needs to be taken to ensure that references to products/services do not overshadow the sponsorship message.

Encouraging the purchase or rental of the sponsor's products/services

As well as brief product descriptions, sponsors may include basic contact details and brief descriptions of their business in credits. The principal emphasis of the credit must be on sponsorship arrangement. If sponsor credits contain contact details, these should include the minimum information necessary to allow viewers to make initial contact with the sponsor should they so wish. Contact details may include a description of the means of contact (e.g. tel:, text:) but must not invite or exhort viewers to contact the sponsor. Any direct appeals to the viewer to buy or try the sponsor's goods or services or to contact the sponsor for more information are likely to breach Rule 9.14.

¹ Issue 5, Issues Paper for the audiovisual conference in Liverpool/Commercial Communications July 2005

Mandatory price information (such as the cost of premium rate services) is acceptable provided it does not form part of an advertising message. Any price information that is not mandatory will normally be considered an advertising message.

Special promotional references

Specific or detailed descriptions of a sponsor's business or products are likely to be viewed as promotional and are therefore unacceptable. Brief statements (straplines etc.) may be acceptable in credits but claims that are capable of objective substantiation, particularly those that are comparative, may breach this rule.

Fairness and Privacy Cases

Upheld in part

Mrs G and her daughter (a minor)

East Midlands Today, BBC1 (East Midlands), 6 April 2006

Summary

Ofcom has upheld part of this complaint. Mrs G complained that her privacy and that of her daughter was unwarrantably infringed in both the making and broadcast of this news item. Mrs G said that footage of her car and of her daughter outside her daughter's school was obtained and subsequently broadcast without her knowledge or consent. The footage featured in the item revealed the make, colour and registration number of her car and the name of her daughter's school. The item looked at some of the problems caused by the 'school run' and the steps taken by the head teacher of Mrs G's daughter's school in preventing traffic congestion outside the school.

Ofcom found as follows:

Mrs G

Ofcom was satisfied that Mrs G had no reasonable expectation of privacy in the particular circumstances of this case. Ofcom therefore found that obtaining and broadcasting this footage did not infringe Mrs G's privacy in either the making or the broadcast of the item.

Mrs G's daughter

Ofcom found that the privacy of Mrs G's daughter was not unwarrantably infringed during the making of the item. Ofcom was satisfied that the programme makers had filmed in an open manner on the public highway outside the school and she was not prevented in any way from going about her business.

Ofcom found that Mrs G's daughter's privacy was unwarrantably infringed in the programme as broadcast. In Ofcom's view, Mrs G's daughter had a legitimate expectation of privacy in the particular circumstances of this case. Ofcom considered that this expectation was heightened by the additional vulnerability afforded to her on account of her age (primary school age).

Ofcom noted from the footage that Mrs G's daughter was readily identifiable (being clearly visible as she got out of the car) and remained the focus of the footage all the way to the school gate – making the footage 'person-specific'. As she was not central to the story or the associated public interest, it was not justified to include unobscured footage of her that left her readily identifiable in the item.

Introduction

On 6 April 2006, the BBC broadcast a report on *East Midlands Today*, which featured an item on some of the problems posed by the 'school run' in three different locations in the programme's catchment area. One of the locations featured in the report was

St Peter's Primary School in Whetstone in Leicestershire where Ms Sue Bracey, the head teacher, had taken steps to prevent traffic congestion outside the school. Ms Bracey planned to publish the car registration numbers of vehicles whose drivers failed to observe the parking restrictions outside the school that had been introduced after a child had been knocked down.

The report featured footage of a number of cars that stopped on the yellow zigzagged "School Keep Clear" road markings outside the school. One of the cars filmed and shown in the programme belonged to and was driven by Mrs G. Her daughter, a pupil at the school, was also filmed and shown getting out of the car and walking to the school gates.

Mrs G complained to Ofcom that her privacy and that of her daughter was unwarrantably infringed in both the making and broadcast of the programme.

The Complaint

Mrs G's case

In summary, Mrs G complained on her own behalf and on behalf of her daughter that their privacy was unwarrantably infringed in both the making and the broadcast of the programme.

Mrs G said that the programme makers had secretly filmed her and her daughter and had included the footage in the programme without her permission. She also said that the camera crew that filmed her and her daughter was not visible. Mrs G said that she had stopped on the yellow lines outside the school for approximately 20 seconds in order to drop her daughter off as there were no other spaces available. She also said that the parents of the pupils had not been informed that they would be filmed and shown in the programme.

Mrs G said that the footage featured in the programme revealed the make, colour and registration number of her car and the name of her daughter's school. Mrs G said that she believed that this had put her and her daughter at risk of being found by an abusive partner and father.

The BBC's case

In summary and in response to Mrs G's complaint, the BBC said that the filming was conducted openly on the road outside the school with the full permission of the head teacher, Ms Bracey, and for the purposes of coverage that served the public interest. It said that Ms Bracey's decision to publish car registration numbers was part of a sequence of events that had been triggered by an accident in which a child was knocked down. This was well-known and had been reported both locally and nationally. Also parents had been informed by the school about the traffic problem. The BBC said that any parent who persisted in parking illegally would have been aware that it would be made more widely known (that is, through Mrs Bracey publishing their car registration number).

The BBC said that however briefly Mrs G had parked outside the school; she had still broken the law. If she had observed the law, the footage of her would never have been broadcast. Also, Mrs G was not shown in the programme herself, contrary to her complaint, and her car registration number plate was less easily legible than others appearing in the item. Both the car and her daughter were shown in the middle distance.

The BBC said that although Mrs G complained that she was concerned that she and her family may have been put at risk by the report, she had not mentioned whether or not any risk has been realised. However, the BBC said that it was concerned that Mrs G believed that she and her family had been put at risk of being found by an abusive partner and father because of the report and had taken immediate action to ensure that the sequence was not used again. Mrs G also received a verbal apology from the programme's reporter and a written apology from the BBC's Head of Region in the East Midlands with an explanation of the action taken by the BBC.

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment in programmes, and from unwarranted infringement of privacy in the making and broadcast 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 a manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

The line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. When considering and adjudicating on a complaint of unwarranted infringement of privacy, Ofcom must therefore address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted?

This case was considered by Ofcom's Executive Fairness Group. The Group had before it a complaint from Mrs G and written submissions, with supporting material, in response from the BBC. It viewed a recording of the programme as broadcast and read a transcript of it.

Ofcom considered Mrs G's complaint that the programme makers secretly filmed her and her daughter and included the footage in the programme without her permission or knowledge until it was broadcast. Mrs G also said that the footage featured in the programme revealed the make and registration number plate of her car and the name of the school her daughter attended. This, she complained, had put her and her family at risk.

Practice 8.3 of the Code states 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. Also, Practice 8.4 of the Code states that broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organisation concerned, unless broadcasting without their consent is warranted. Finally, Practice 8.20 of the Code states that broadcasters should pay particular attention to the privacy of people under sixteen. They do not lose their rights to privacy because, for example, of the fame or notoriety of their parents or because of events in their schools.

In considering Mrs G's complaints that her privacy and that of her daughter were unwarrantably infringed in both the making and broadcast of the programme, Ofcom examined the footage shown in the report and read a transcript of the commentary that accompanied the images.

Mrs G's privacy

Ofcom noted that Mrs G was not actually visible in the footage; although her car was clearly shown and the car registration number was partially visible. It also noted the BBC's assertion that the footage was taken in a public place, that is, on the public road outside the school, and that the camera crew had filmed openly.

Ofcom went on to note the context in which the filming had taken place and the context in which the footage was shown in the programme. Mrs G had stopped, albeit briefly, in a restricted area where it was prohibited to stop. In these circumstances the BBC claimed that this footage which was included in the news item was in the public interest since the item was reporting on the traffic problems associated with the 'school run' and the steps that had been taken by Ms Bracey to try to prevent further accidents outside the school. Ofcom noted that while the footage of Mrs G dropping her daughter off was taken on the public highway outside the school premises, the BBC's had obtained permission to film the school from Ms Bracey herself. This demonstrates that the broadcaster recognised the potentially sensitive issues around filming and broadcasting images in close proximity to a school.

In determining whether there had been an infringement of privacy Ofcom went on to consider whether, in the circumstances, the programme makers should have sought Mrs G's consent before broadcasting the footage.

Ofcom was satisfied that the programme makers had filmed in an open manner on the public highway outside the school and that the footage had not been taken surreptitiously (illustrated by the fact that many passers could be seen in the item acknowledging the presence of the camera). Whilst the shot specifically showed Mrs G stopping her car outside the school (in order to illustrate the issues which were the subject of the report), she was not visible. Ofcom took account of the fact that this was in a public place and that Mrs G was not engaged in any activity that might be considered intrinsically private. Ofcom also took into consideration the fact that Mrs G was committing an illegal parking offence by stopping on the road immediately outside the school, on clearly visible road markings which included the words "School Keep Clear".

Taking all the above into consideration, Ofcom was satisfied that Mrs G's consent was not required in order to obtain or broadcast the footage as she could have no expectation of privacy in these circumstances. Ofcom further considered that there was an important public interest element in broadcasting this footage to illustrate the problem posed by drivers such as Mrs G and to highlight the steps being taken by Ms Bracey.

Taking all above into account, Ofcom found that Mrs G's privacy was not infringed in either the making or the broadcast of the programme.

Mrs G's daughter's privacy

Ofcom then moved on to consider Mrs G's complaint that her daughter's privacy was unwarrantably infringed in both the making and the broadcast of the programme. In

considering the particular circumstances of this element of the complaint, Ofcom addressed itself to the following questions:

- i) whether Mrs G's daughter had a legitimate expectation of privacy?;
- ii) if so, was her privacy infringed?; and
- iii) if so, was the infringement warranted?

Children have a greater expectation of privacy than adults. This principle is inherent in section 3(4)(h) of the Communications Act 2003 which provides that Ofcom must have regard in performing its general duties to "*the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection*".

Practice 8.20 states that broadcasters should pay particular attention to the privacy of people under 16. They do not lose their right to privacy because, for example, of the fame or notoriety of their parents or because of events in their schools. Also, Practice 8.21 of the Code states that where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from a parent, guardian or other person of eighteen or over in loco parentis and wherever possible, the individual concerned unless the subject-matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

Looking at the footage of Mrs G's daughter and taking into account Ofcom's duties under the Communications Act 2003 and the Code provisions referred to above, Ofcom was satisfied that Mrs G's daughter, did have a legitimate expectation of privacy when being dropped off at school and in the circumstances of this particular case. This expectation was heightened by the additional vulnerability afforded to her on account of her age (primary school age).

In determining whether an infringement of privacy occurred, Ofcom went on to consider the extent to which Mrs G's daughter was part of the story. Ofcom examined the footage shown in the report and read a transcript of the commentary that accompanied the images. The focus of the story was the steps taken by Ms Bracey in tackling parents who continued to stop their cars illegally outside the school. Mrs G stopped in the yellow zigzagged area outside the school to drop off her daughter and was therefore filmed to illustrate the issue that was being highlighted by Ms Bracey's actions. The actions of Mrs G were clearly relevant to the story; but her daughter had not committed any offence and was not the subject of the story. She was simply going to school and in so doing became caught up in the events included in the item.

In this context Practice 8.21 of the Code was relevant. As explained above this states that children do not lose their right to privacy because of the fame or notoriety of their parents or events at their school. Any infringement of Mrs G's daughter's privacy was also therefore unlikely to be warranted (see further below).

It was also significant that, unlike the footage shown of other cars parking outside the school (where neither driver nor child were shown), Mrs G's daughter was clearly visible and she was the only person who appeared in the particular footage complained about. Ofcom noted that the BBC said that she was shown "in the middle distance", but it was apparent from the footage that her face was clearly visible as she got out of the car. She was therefore also clearly identifiable. Furthermore, it was notable that the focus remained on her all the way to the school gate. This made the footage 'person-specific'. Consequently, she could not be described as appearing to

be incidental to the shot as merely part of the background. This provided further validity to the complaint that her privacy was infringed.

Taking the factors referred to above into account, Ofcom considered that Mrs G's daughter's privacy was infringed in the programme. Further, as she was not central to the story or the associated public interest, it was not justified to include unobscured footage of her that left her readily identifiable in the item. The infringement of privacy in the broadcast of the footage was therefore unwarranted.

Moving on to consider whether or not Mrs G's daughter's privacy was unwarrantably infringed in the making of the programme, Ofcom considered Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Ofcom also had regard to Practice 8.9 of the Code that states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject-matter of the programme.

As noted earlier in relation to Mrs G, Ofcom was satisfied that the programme makers had filmed in an open manner on the public highway outside the school and that the footage had not been taken surreptitiously. The footage of Mrs G dropping her daughter off outside the school where it was not permitted to stop was relevant to the subject of the report and, as Ofcom found in relation to Mrs G's privacy, it was therefore appropriate for the programme makers to be able to gather such material, even though it included her daughter, who was not part of the story. Furthermore, neither Mrs G nor her daughter were obstructed by the camera crew or prevented from going about their business. In all the circumstances, Ofcom therefore found that the privacy of Mrs G's daughter was not unwarrantably infringed in the making of the programme.

Accordingly, Mrs G's complaint of unwarranted infringement of privacy in both the making and broadcast of the programme was not upheld. The complaint of unwarranted infringement of privacy in the making of the programme made by Mrs G on behalf of her daughter was not upheld. However, Mrs G's complaint of unwarranted infringement of privacy in the programme as broadcast made on her daughter's behalf was upheld for the reasons given above.

Mr Chris Garner trading as Vanity London (sole proprietor) *GMTV – LK Today, ITV1, 15 June 2006*

Summary

Ofcom has upheld one part of Mr Garner's complaint of unfair treatment. This edition of *GMTV – LK Today* included an item about modelling agency, Vanity London ("Vanity"). A former Vanity member (model), Ms Fair, took part in the programme and alleged that Vanity's modelling job listings were either all out-of-date or unpaid. In addition, the programme criticised Vanity for not operating as a reputable modelling or booking agency should.

Towards the end of the programme the presenter, Lorraine Kelly, said: "*Funnily enough we asked [Vanity] to come on and guess what, they won't come on, but they did send us a statement*". An extract from the statement was then read out on-air and shown on-screen.

Mr Chris Garner, the owner of Vanity complained that he and his company were treated unfairly in that: Vanity's statement had been unfairly edited; the programme included the false statement that Vanity's job listings were out-of-date, despite Mr Garner providing evidence to the contrary; and, the presenter's comment, when reading out Vanity's statement, implied Vanity had something to hide.

Ofcom found as follows:

- a) In Ofcom's view, it was unfair for the programme to critique Vanity as a modelling agency, but fail to reflect Mr Garner's statement that Vanity was "not a modelling agency". Ofcom found that by not including this significant element of Mr Garner's response, during the actual programme, the programme makers unfairly represented Mr Garner and his company in the programme as broadcast. Accordingly, Ofcom has upheld this part of Mr Garner's complaint.
- b) It was not incumbent on the programme makers to include information provided by Mr Garner about Vanity's job listings in the programme as broadcast. Ofcom found the allegation that Vanity's job listings were out-of-date was countered by a statement by Vanity, and did not result in unfairness to Mr Garner or his company. Ofcom has not upheld this part of Mr Garner's complaint.
- c) In Ofcom's view, the comment made by the presenter before reading out Vanity's statement did amount to an implied comment upon Mr Garner's reasons for coming on. However it was not possible to gather from the comment, what the actual criticism was. Having taking into consideration the fact that the comment did not directly criticise nor significantly detract from Vanity's statement, Ofcom found the comment did not result in unfairness to Mr Garner or his company in the programme as broadcast. Ofcom has not upheld this part of Mr Garner's complaint.

Introduction

This edition of *GMTV – LK Today* included an item about the unprofessional practices of some modelling agencies. The programme interviewed a young hopeful model, Ms Jade Fair, and a representative from Alba Model Information (an independent modelling advice service for the public).

Ms Fair described her experience of Vanity London (“Vanity”). Ms Fair said that after being scouted by Vanity, she was pushed into spending over £400 on professional modelling photos, despite being told her photo shoot would be free. In addition, Ms Fair said Vanity’s job listings were either all out-of-date or unpaid.

The Alba representative said that they had been inundated with calls from people who were unhappy with Vanity.

Towards the end of the programme the presenter, Lorraine Kelly, said *“Funnily enough we asked [Vanity] to come on and guess what, they won’t come on, but they did send us a statement”*. An extract from the statement was read out on-air and shown on-screen.

Mr Chris Garner is the owner of Vanity and complained that he and his company were treated unfairly in the programme as broadcast.

The Complaint

Mr Garner’s case

In summary, Mr Garner complained that he and his company were treated unfairly in the programme as broadcast in that:

- a) The programme makers overlooked and disregarded relevant information provided to them prior to broadcast:
 - i) Mr Garner said that he explained to the programme makers, verbally and in his statement, that Vanity deliberately distanced itself from modelling agencies. Mr Garner said it was unfair for the programme to disregard this information and compare Vanity to a modelling agency; and
 - ii) Mr Garner said that he explained to the programme makers how Vanity was operated and that it was a good company. Mr Garner said it was unfair for the programme makers not to include this information in the programme.
- b) The programme included the false statement that Vanity’s job listings were out-of-date. The programme did not correct or edit this false statement despite Mr Garner providing evidence to the contrary.
- c) Mr Garner said the presenter’s comment, relating to Vanity’s decision not to appear on the programme, was unfair as it implied Vanity had something to hide. Mr Garner said in reality, he had explained to the programme makers that he was shy and he was only given a half-a-day’s notice for the interview.

GMTV's case

In summary, GMTV responded to the complaint as follows:

a) GMTV denied that the programme makers overlooked or disregarded information provided by Mr Garner prior to the broadcast of the programme. In response to Mr Garner's specific complaints GMTV said:

i) The programme had featured an allegation from Ms Fair that Vanity held itself out as an agency for models to obtain work. GMTV noted that Vanity described itself on its website as "*one of the most reputable and successful modelling sites within the UK*". GMTV said that prospective models approached by Vanity with no knowledge of the modelling industry, would expect the company to provide similar services to those provided by "standard" modelling agencies.

Notwithstanding this, GMTV said that the programme discussed how Vanity's procedures differed from that of standard modelling agencies, and contained a statement from Mr Garner about his position. GMTV said that Mr Garner had advance notice of the allegations and it had been entirely open for the complainant to appear on the programme to explain his position in further detail.

ii) GMTV said the programme fairly and accurately reflected Mr Garner's response to the programme allegations. In particular, GMTV noted that the edited statement from Vanity included Mr Garner's assertion that his company was a "good company". GMTV stated again that Mr Garner had advance notice of the allegations and it had been entirely open for the complainant to appear on the programme to explain his position in further detail.

b) The programme had featured an allegation from Ms Fair that Vanity's website contained jobs that were either out-of-date or unpaid. In response to the allegation, Mr Garner provided a spreadsheet purportedly showing the jobs that were available on Vanity's website at the time of GMTV's discussions with the complainant. GMTV said the spreadsheet did not correct the programme's allegation nor prove that Ms Fair's allegations were inaccurate. GMTV maintained that the programme in this respect had been fair.

c) GMTV said the presenter's comment that "*funnily enough we asked [Vanity] to come on and guess what, they won't come on*" had been ad-libbed and was simply conversational. GMTV said it considered that the allegations made by Ms Fair and Alba Model Information were fair and that the programme fairly and accurately presented Vanity's response to those allegations in the programme as broadcast.

Decision

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

included in such services. Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness, if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

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 had regard for a recording of the programme, a transcript of the programme and the written submissions of Mr Garner and GMTV.

- a) Mr Garner complained that the programme makers overlooked and disregarded relevant information provided by him prior to broadcast. Mr Garner said the programme as broadcast failed to explain that Vanity was not a modelling agency and that Vanity was a “good company”.

Programme makers and broadcasters have a responsibility to ensure that during the editing of a factual programme, material facts are not disregarded or omitted in a way that will result in unfairness to either a business or an individual. Further 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.

Ofcom’s consideration of each of Mr Garner’s complaints under head (a), have been set out below:

- i) Ofcom noted that the programme as broadcast referred to Vanity as a model/booking agency, and criticised Vanity for not operating as a reputable modelling agency should. The programme indicated that a reputable agency would not require potential models to spend large amounts of money on professional photos, and would act as a booking agent for their models.

These allegations were made during the programme as follows:

Presenter: *“...Did you get any work?”*

Ms Fair: *“It was explained they gave me a username and a password. I had to log on daily to check the jobs and everyday the jobs were out-of-date, or they were unpaid...”*

Presenter: ***“Surely that’s their job, if they are a booking agency? Call me old fashioned. Is that not what they are supposed to be doing?”***

Alba Rep: (sarcastic tone) ***“We are a model agency but find your own job”***.

Presenter: You may as well do it on your own and then at least you would have control and get decent pictures. So that sounds crazy. You have not had any work from them, not a thing?

(Emphases added)

Ofcom noted that the programme makers emailed Mr Garner on 12 June 2006 to inform him of the allegations to be made in the programme and asked him for a response. This email included the following allegation:

“Jade says that she hasn’t had any offers of work except on the day of her Yorkshire TV interview when she received a couple of emails. She says she had no phone messages except at the outset to arrange the photo shoot.”

Mr Garner responded to the programme maker’s email on 12 June 2006. In response to the above allegation Mr Garner explained that the Vanity London website posted work opportunities for its members continuously and that there is an abundance of work for its members to pursue. In addition to this specific response, Mr Garner stated that:

“Alba give advice on what modelling agencies should and shouldn’t do, however it is important to understand WE ARE NOT A MODELLING AGENCY. Modelling is only 10% of what we do...we do not take commission out of work that our members receive...We try and differentiate ourselves from modelling agencies. We aren’t one and don’t want to be associated with them.”

Ofcom considered that Mr Garner’s statement that Vanity was “not a modelling agency” was a particularly pertinent response to the allegation that Vanity was not acting as a reputable modelling or booking agency should.

Programme makers can quite legitimately select or edit material provided by way of a written statement for inclusion in a programme. This is an editorial decision for the programme maker. When considering complaints about the alleged unfair editing of an individual or organisation’s statement, it is not Ofcom’s role to determine specifically which parts of the unedited statement should have been included in the programme as broadcast. Rather, Ofcom will assess whether or not, the edited statement represented the views of the person or organisation in a fair manner, after taking consideration of the issues raised within the programme.

After viewing a recording of the programme, Ofcom noted that Mr Garner’s response, that there was an abundance of work available for Ms Fair to pursue, had been included. In addition the programme included the statement that Vanity “provides a quality service to people who can’t get into an agency”. Ofcom also noted that the programme advised viewers that Mr Garner’s full statement could be viewed online.

However, despite providing the above information, the programme did not include Mr Garner’s statement that Vanity was “not a modelling agency”, nor did it include Mr Garner’s reasons for distancing his company from modelling agencies. This investigative item was about modelling agencies. Given the importance that would be attached to whether or not Vanity was a modelling agency, it was unfair, in Ofcom’s view, for the programme makers to critique Vanity as a modelling agency, but fail to represent the company’s position on this specific point. Ofcom found that by not including this significant element of Mr Garner’s response, during the actual programme,

the programme makers unfairly represented Mr Garner and his company in the programme as broadcast. Ofcom has accordingly upheld this part of Mr Garner's complaint.

- ii) Mr Garner said that he explained to the programme makers how Vanity was operated and that it was a good company. Mr Garner said it was unfair for the programme makers not to include this information in the programme.

Ofcom had regard for Mr Garner's letter of response to the programme makers dated 12 June 2006. The letter was over two pages long and responded to each of the programme allegations. In various ways, Mr Garner's response outlined why he believed the programme allegations were either incorrect or unwarranted. Mr Garner also explained how his company operated and why he believed it was a reputable, honest company.

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.

Ofcom noted that the programme as broadcast showed the following extract from Mr Garner's statement:

"We are an honest and up front company that provides a quality service to people who can't get into an agency."

In Ofcom's opinion this extract from Mr Garner's statement appropriately summarised the complainant's belief that his company was a "good company". While Ofcom acknowledged that Mr Garner's statement had not been presented in full, it found that the editing in this respect had been carried out in a fair manner, and did not detract from the main part of Mr Garner's argument. In the circumstances, Ofcom found no unfairness in relation to this part of Mr Garner's complaint.

- b) Mr Garner complained that the programme included the false statement that Vanity's job listings were out-of-date. The programme did not correct or edit this false statement despite Mr Garner providing evidence to the contrary (i.e. a list of jobs available on the Vanity website, current at the time of Mr Garner's statement of response).

In the programme as broadcast Ms Fair made the following statement about Vanity's job listings:

Presenter: *"...Did you get any work?"*

Ms Fair: *"It was explained, they gave me a username and a password. I had to log on daily to check the jobs and **every day the jobs were out of date. Or they were unpaid...**"*
[Emphasis added]

Ofcom noted that Ms Fair's above comments were not pursued directly by the presenter, but had been a lead-in to the main allegation that Vanity had not offered Ms Fair any work. When the programme makers contacted Mr Garner before the broadcast of the programme, they asked him to respond to Ms Fair's allegation that she had not been offered any work. Mr Garner, in his

letter of response dated 12 June 2006, stated that Ms Fair had been offered work continuously. Mr Garner also provided the programme makers with a spreadsheet of current job listings, as evidence of the type of jobs available to Vanity members. Ofcom noted that Mr Garner's response did not provide evidence that Ms Fair had been offered paid work but rather was a statement by Mr Garner that Ms Fair was not telling the truth and an example of the type of work that could be accessed by Vanity members *at the present time*.

In the programme as broadcast, the following extract from Mr Garner's statement was shown:

"I find it absurd that Jade can say she has had no offers of work when there is an abundance of work for her to pursue. She has hardly applied to any jobs and never returned our phoned calls when we tried to contact her."

In Ofcom's view, the edited extract shown in the programme provided a fair reflection of Mr Garner's response. The fact that the programme did not list the type of jobs available to Vanity members was not essential to Mr Garner's main argument that Ms Fair could have pursued an abundance of work had she wished. Ofcom has not upheld Mr Garner's complaint of unfairness in this respect.

- c) Mr Garner said the presenter's comment, relating to Vanity's decision not to appear on the programme, was unfair as it implied Vanity had something to hide. Mr Garner said he had explained to the programme makers that he was shy and he was only given a half-a-day's notice for the interview.

Where a person approached to contribute to a programme chooses to make no comment or refuses to appear in a broadcast, the broadcast should make clear that the individual concerned has chosen not to appear and should give their explanation if it would be unfair not to do so.

Ofcom was required to determine whether the presenter's comment that: *"Funnily enough we asked [Vanity] to come on and guess what, they won't come on but they did send us a statement"* resulted in unfairness to Mr Garner and whether it was incumbent on the programme makers, in the interest of fairness, to state Mr Garner's reasons for not wishing to appear on the programme.

Ofcom noted that the programme makers emailed Mr Garner with a list of allegations on 12 June 2006, at approximately 15:00. The email asked for a written response to the allegations and advised Mr Garner that, if he wished, he could take part in an interview the following day at 10:00. Mr Garner responded to the programme makers' email on 12 June 2006 at approximately 18:00 (approximately three hours after it was sent), with his written statement. Mr Garner's statement did not refer to the interview, however, Mr Garner stated in his complaint to Ofcom that he had told the producer he was shy and didn't like being "under the camera".

In Ofcom's opinion, given that Mr Garner had been able to prepare a comprehensive statement of response in a relatively short amount of time (i.e. three hours), the time allowed for Mr Garner to prepare for a recorded interview, concerning the same allegations, was fair.

Ofcom was not persuaded that a viewer's interpretation of Vanity's decision not to appear on the programme, would have been materially affected by knowledge that the company's spokesperson was shy or did not like being on camera. In the circumstances, Ofcom found that the programme makers' decision, not to include Mr Garner's reasons for declining to appear on the programme, was fair as the reasons provided by Mr Garner would not have materially affected the viewers' impression of him or his company.

Ofcom next considered the comment made by the presenter when introducing Vanity's statement. 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.

After viewing the programme, Ofcom noted that the comment was ad-libbed and casual in its nature. When taking into consideration the context of the comment, Ofcom considered that it was possible that it was an implied comment upon Mr Garner's reasons for not appearing on the programme. However, Ofcom noted that it was not possible to gather from the comment, what the actual criticism was. Ofcom noted that the comment did not directly criticise nor significantly detract from the statement provided by Vanity, and in the circumstances Ofcom did not believe the comment, itself, resulted in unfairness to Mr Garner or his company. In Ofcom's view, the comment would have had little impact on the viewers' interpretation of Vanity or its response to the allegations. In the circumstances, Ofcom has not upheld this part of Mr Garner's complaint.

Ofcom has upheld one part of Mr Garner's complaint of unfair treatment.

Other Programmes Not in Breach/Out of Remit

18 February 2007 – 4 March 2007

Programme	Trans Date	Channel	Category	No of Complaints
10 Years Younger	22/02/2007	Channel 4	General Acceptance Standards	1
12 Books That Changed the World	28/01/2007	ITV1	Sex/Nudity	1
A Place in the Sun: Home or Away	24/01/2007	Discovery RT	General Acceptance Standards	1
A Very English Village	14/01/2007	BBC2	Animal Welfare	1
Adult Swim (trailer)	02/01/2007	Bravo 2	Sex/Nudity	1
American Idol	28/01/2007	ITV2	General Acceptance Standards	2
Animaniacs	06/01/2007	Boomerang	Scheduling	1
BBC Breakfast News	26/01/2007	BBC1	General Acceptance Standards	1
BBC News	24/01/2007	BBC1	General Acceptance Standards	2
Bamboozled	19/01/2007	Channel 4	General Acceptance Standards	1
Battle Royale	20/01/2007	Channel 4	Violence	1
Big Brother's Big Mouth	14/01/2007	E4	General Acceptance Standards	1
Breakfast	12/01/2007	Radio City 96.7	General Acceptance Standards	1
CBeebies	27/11/2006	CBeebies/NTL	Sex/Nudity	1
Celebrity Big Brother's Big Mouth	14/01/2007	Channel 4	General Acceptance Standards	4
Celebrity Big Brother's Big Mouth	24/01/2007	E4	Religious Issues	1
Celebrity Big Brother's Big Mouth	21/01/2007	E4	General Acceptance Standards	1
Channel 4 News	23/11/2006	Channel 4	Due Impartiality/Bias	1
Chris Moyles Show	17/01/2007	BBC Radio 1	General Acceptance Standards	1
Club Cupid (trailer)	25/11/2006	STV	Sex/Nudity	2
Cocktail	11/02/2007	Five	Other	1
Consent	22/01/2007	Channel 4	General Acceptance Standards	5
Coronation Street	24/01/2007	ITV1	Commercial References	2
Coronation Street	22/01/2007	ITV1	Commercial References	1
Dawn of the Dead (trail)	26/01/2007	Channel 4	Violence	1

Desperate Housewives	03/01/2007	Channel 4	Advertising	1
Eastenders	28/09/2006	BBC1	Violence	1
Emmerdale	23/01/2007	ITV1	Offensive Language	1
Emmerdale	23/01/2007	ITV1	Due Impartiality/Bias	1
Fat Men Can't Hunt	22/01/2007	BBC3	General Acceptance Standards	1
Fedde Le Grand	22/01/2007	Fizz	Sex/Nudity	1
Futurama	20/02/2007	Sky One	General Acceptance Standards	1
GMTV	22/01/2007	ITV1	General Acceptance Standards	1
Good Morning Psychic	02/10/2006	Zone Horror	Exorcism/Occult/Paranormal	1
Guns are Cool	18/01/2007	Channel 4	Inaccuracy/Misleading	2
Guns are Cool	18/01/2007	Channel 4	General Acceptance Standards	1
Harry Hill's TV Burp	27/01/2007	ITV1	Offensive Language	1
Harry Hill's TV Burp	20/01/2007	ITV1	General Acceptance Standards	1
Hollyoaks	10/09/2006	Channel 4	Scheduling	1
Hollyoaks	07/09/2006	Channel 4	Violence	1
Hollyoaks	08/09/2006	Channel 4	General Acceptance Standards	4
ITV News	15/01/2007	ITV1	Crime (incite/encourage)	1
ITV News	18/01/2007	ITV1	Dangerous Behaviour	1
Jagger and Woody	08/01/2007	Northants 96.6FM	Crime (incite/encourage)	1
Jamie Oliver	10/11/2006	Channel 4	Animal Welfare	1
Johnny English	14/01/2007	ITV2	Sex/Nudity	1
Jon Gaunt	22/02/2007	Talksport	General Acceptance Standards	1
Jonathan Ross	09/12/2006	BBC Radio 2	General Acceptance Standards	1
Jyotish Darshan	21/08/2006	Venus TV	Exorcism/Occult/Paranormal	1
Little Britain	20/01/2007	BBC3	General Acceptance Standards	2
Little Britain Abroad	30/12/2006	BBC1	Religious Offence	1
Live UEFA Cup Football	22/02/2007	Five	General Acceptance Standards	1
Loose Ends	21/10/2006	BBC Radio 4	General Acceptance Standards	1
Loose Women	17/01/2007	ITV1	General Acceptance Standards	1
Loose Women	26/01/2007	ITV1	Sex/Nudity	1
Lost	19/11/2006	Sky One	Advertising	1
Make Your Play	19/11/2006	ITV1	Competitions	4
Martin & Sue	22/01/2007	Essex FM	General Acceptance Standards	3
Martin & Sue	25/01/2007	Essex FM	General Acceptance Standards	1
Match of the Day	28/01/2007	BBC One	General Acceptance Standards	1
Men and Motors	30/09/2006	Men and Motors	Sex/Nudity	2

Mick Lunney	04/11/2006	BBC Radio Sheffield	General Acceptance Standards	1
My Big Gay Prom	27/02/2007	Channel 4	General Acceptance Standards	1
NCIS	20/01/2007	Five	General Acceptance Standards	1
Neil Rudd - Magic Jukebox	10/12/2006	Magic 1152	General Acceptance Standards	1
Never Mind the Buzzcocks	19/02/2007	BBC2	General Acceptance Standards	1
New You've Been Framed! Sports Special	20/01/2007	ITV1	Dangerous Behaviour	1
Newsnight	16/01/2007	BBC2	General Acceptance Standards	2
Nick Ferrari	24/01/2007	LBC 97.3FM	Offensive Language	1
Ondska	14/11/2006	TV3	Inaccuracy/Misleading	1
Paul Ross	15/01/2007	LBC	General Acceptance Standards	1
Project Catwalk	15/01/2007	Sky One	General Acceptance Standards	2
Project Catwalk	22/01/2007	Sky One	General Acceptance Standards	1
Project Catwalk	21/01/2007	Sky Three	General Acceptance Standards	1
Property Developing Abroad	06/06/2006	Five	Crime (incite/encourage)	1
Property Developing Abroad	07/06/2006	Five	Crime (incite/encourage)	2
Psychic TV	12/02/2007	Psychic TV	General Acceptance Standards	1
Real Radio	16/10/2006	Real Radio	Information/Warnings	1
Relocation, Relocation	28/02/2007	Channel 4	Inaccuracy/Misleading	1
Revenge TV	02/01/2007	ITV1	Animal Welfare	1
Richard & Judy's Christmas Book Special	09/12/2006	Channel 4	Religious Offence	1
Saturday Breakfast	02/12/2006	105.4 Leicester Sound	General Acceptance Standards	1
Scotsport	28/12/2006	STV	General Acceptance Standards	3
Scott Mills	24/01/2007	BBC Radio 1	Offensive Language	1
Skins	25/01/2007	E4	General Acceptance Standards	5
Skins	25/01/2007	E4	Dangerous Behaviour	1
Soapstar Superstar	06/01/2007	ITV1	General Acceptance Standards	1
Strictly Confidential	30/11/2006	ITV1	Sex/Nudity	1
Strictly Confidential	23/11/2006	ITV1	Sex/Nudity	2
Strutter	11/01/2007	MTV	General Acceptance Standards	1
TalkSport	14/01/2007	Talksport	General Acceptance Standards	1

That Mitchell and Webb Look	10/10/2006	BBC3	Religious Offence	1
The Brit Awards Live	14/02/2007	ITV1	General Acceptance Standards	1
The Friday Night Project	04/01/2007	Channel 4	Offensive Language	1
The Global Peace and Unity Event	26/11/2006	The Islam Channel	General Acceptance Standards	1
The Jeremy Kyle Show	30/01/2007	ITV1	General Acceptance Standards	1
The New Paul O'Grady Show	01/12/2006	Channel 4	General Acceptance Standards	1
The Story of Tracy Beaker	19/01/2007	CBBC	Offensive Language	1
The Truth about Food	18/01/2007	BBC2	General Acceptance Standards	4
The Wright Stuff	26/01/2007	Five	General Acceptance Standards	1
The X Factor		ITV1	Commercial References	1
The Duncan Barks Show	08/01/2007	Spirit FM	Due Impartiality/Bias	1
This Morning	29/01/2007	ITV1	General Acceptance Standards	1
Time Trumpet	17/08/2006	BBC2	General Acceptance Standards	1
Top Gear	28/01/2007	BBC2	Offensive Language	1
Top Gear	28/01/2007	BBC2	General Acceptance Standards	2
Trail	06/11/2006	STV	Offensive Language	1
Waking the Dead	21/01/2007	BBC1	Religious Offence	4
Waking the Dead	14/01/2007	BBC1	Dangerous Behaviour	1
Waking the Dead	07/01/2007	BBC1	General Acceptance Standards	3
Waking the Dead	14/01/2007	BBC1	Violence	2
Waking the Dead	28/01/2007	BBC1	Violence	1
Waking the Dead	07/01/2007	BBC1	Religious Offence	1
Whatever	01/09/2006	Channel 4	Crime (incite/encourage)	4
Whatever	07/01/2007	Channel 4	Crime (incite/encourage)	1