



Broadcast Bulletin Issue number 72 - 30|10|06

Meridian Tonight, Pepsi Max World Challenge, Number Up, Friday Night With Jonathan Ross, Complaint by MacKenzie & Co (Solicitors) on behalf of Dr Gurdeep Singh, Complaint by Mr Kulvinder Singh, Complaint by Mr Sukhwinder Singh, Complaint by Ms P, Complaint by Mr Christopher Holdcroft & Mr Omid Omid Mazaheri.

Standards cases

In Breach

Meridian Tonight
ITV Meridian, 18 and 19 April 2006, 18:00

Introduction

A viewer complained about two reports, broadcast on consecutive days, in ITV Meridian's regional news programme. The reports covered Dubai's increasing popularity as a holiday destination amongst viewers in the south of England.

The first report covered the fact that Virgin Atlantic was launching a new service to Dubai and explored the area's growing popularity with holiday makers. The second report looked at Dubai's popularity amongst second home buyers and property developers.

Both reports were followed by a competition, for which the prize was a holiday in Dubai, with free Virgin Atlantic flights. The complainant considered the reports unacceptably promoted both Dubai as a holiday destination and Virgin Atlantic.

We asked the broadcaster to comment in relation to the following Rules of the Broadcasting Code which require:

10.3 Products and services must not be promoted in programmes.

10.4 No undue prominence may be given in any programme to a product or service.

Note: "Undue prominence" may result from:

- *the presence of, or reference to, a product or service (including company names, brand names, logos) in a programme where there is no editorial justification; or*
- *the manner in which a product or service (including company names, brand names, logos) appears or is referred to in a programme.*

Response

ITV Meridian said that *Meridian Tonight* is a news magazine programme, carrying a solid spine of same-day news stories, but also containing other elements such as news features, lighter stories, competitions, sport and weather.

Transport was a rich subject area for ITV Meridian and it believed that it was unique among the ITV regional news services in having a transport correspondent. In this instance, the transport correspondent had brought the news team what it considered to be an interesting story: Virgin Atlantic, a local company, was about to launch a new service to Dubai. Due to the destination's growing popularity amongst British visitors it was felt that the reports would interest a large numbers of viewers.

While ITV Meridian had accepted a place on a 72-hour press trip (along with other major broadcasters and newspapers) and also accepted the offer of a holiday to Dubai as a competition prize, it retained complete editorial independence over the reports and was free to say whatever it wanted about the destination and the airline.

The broadcaster added that it was not unusual to run competitions over two or three consecutive days, particularly those with a high-value prize or where a large response was anticipated.

ITV Meridian stated that the two items were not promotional for Virgin Atlantic; there was mention of the launch of the new flights and an interview with Sir Richard Branson in the first report - but the bulk of the item looked at what Dubai had to offer holidaymakers. The broadcaster acknowledged that the piece was largely positive - but added that the reporter repeatedly pointed out that 70% of the world's cranes are in Dubai and large parts of it are a construction site. The second item focussed more on what Dubai had to offer second-home owners.

ITV Meridian said that, on reflection, it had probably devoted too much airtime to the Dubai features. This was the product of an enthusiastic reporter and a desire on the part of the producers to introduce something a little different into the programmes.

However, ITV Meridian said it did not accept that it was in breach of the Broadcasting Code because:

- it did not lose editorial control and had complete independence over the content of the reports;
- there was no product or service being promoted in the programme; and
- mentions of Virgin Atlantic fell far short of undue prominence and were, in any event, editorially justified.

Decision

A news story about the increasing popularity of a holiday destination and the fact that a local airline has responded to that growing demand by launching a new service may be legitimate in a regional news programme. However it is particularly important that editorial independence is not only maintained but also seen to be maintained in news programming.

We consider that the context in which the reports featured Dubai (i.e. as a marketable tourist destination) required particular care in order to ensure that viewers were left in no doubt as to the item's editorial independence.

The consecutive reports - which ran for approximately four minutes each - featured Virgin Atlantic, an interview with Richard Branson and a further interview with a Dubai tourism official who both spoke in glowing terms about the resort. Comments made by the studio presenter/reporter included:

"Dubai is just a seven hour flight away with a record 100 flights a week from Gatwick and Heathrow."

"The hotels are grand and modern and there are plenty of them. Fifty miles of beaches are being developed, with theme parks on the way. Not surprising then that British airlines are starting new routes all the time. The latest is Virgin Atlantic with its usual high profile launch."

"Well they say Dubai has everything and by the looks of it, it certainly does..."

"In the shopping malls you're never far away from a familiar brand. This one is home to 300 shops and there are plenty more. In the old part of town, the souks and the famous gold markets offer good bargains."

"It's all just a seven hour flight away and with low crime rates, it's one of the safest places to visit..."

"...If it's the weather, security and a rest you're after, it's worth a visit."

"Dubai offers all year sun with only a few hours rain a month. The flights take just seven hours and there are 84 a week from Heathrow and Gatwick."

Within the first item, the treatment of Virgin Atlantic created the impression that Virgin Atlantic's plans for a new service were being promoted rather than reported on. While it may be legitimate to include Virgin Atlantic in a news story, this was compromised by its inclusion in a piece of this nature, along with the promotional language and tone used to describe the destination the airline had decided to start flying to. The two issues together (Virgin Atlantic and Dubai) gave the impression of a promotional video, despite the comments made relating to the amount of building work in Dubai.

Overall it appeared that the bulletins had included two 4 minute news reports on the basis that the broadcaster had been offered prizes for a competition.

Breach of Rule 10.3

Pepsi Max World Challenge

Channel 4, 23 April 2006, 15:10, 30 April 2006, 15:55 and 14 May 2006, 15:30

Introduction

Three viewers objected to programmes in this series, which was funded by Pepsi (as an advertiser funded programme). The series followed 12 pairs of international amateur footballers as they competed in a series of challenges to find out who displayed the best set of attributes to make a world class player. The challenges included not only football skills based tests but also tests to discover the players' aptitude to become an ambassador for the sport. The series covered each challenge and contained 'behind the scenes' footage of the competitors' experiences as they travelled around the world and prepared for the challenges.

The complainants questioned whether the series complied with Ofcom's Broadcasting Code because of the amount of Pepsi branding featured in the programmes. This included the Pepsi globe logo in the title sequence, on the players' kit and on the footballs used in the challenges. One of the challenges involved the competitors designing a poster advertisement. To help them prepare for the challenge, the competitors visited an advertising agency in London. The agency was credited with producing a recent Pepsi television advertisement and footage showing this advertisement being filmed was included in the programme. One complainant also questioned the degree of influence the Pepsi had

on the editorial content of the programme because he understood that the professional footballers featured – Thierry Henry, Ronaldinho, Roberto Carlos and David Beckham - were all under contract to Pepsi.

We asked Channel 4 for comments under the following rules in the Broadcasting Code:

9.5 A sponsor must not influence the content and/or scheduling of a programme in such a way as to impair the responsibility and editorial independence of the broadcaster.

9.6 There must be no promotion reference to the sponsor, its name, trademark, image, activities services or products and no promotional generic references. The sponsor must also not have any other direct or indirect interest in the editorial content of the sponsored programme. Non-promotional references are permitted only where they are editorially justified and incidental.

Response

Channel 4 said that its compliance and editorial departments discussed in detail all series that involve any degree of external funding.

In relation to the Pepsi branding present within this series, Channel 4 stated that when Ofcom's Broadcasting Code was introduced in July 2005, it changed the regulatory position of sponsored programmes. Previous Codes had prohibited even the briefest references or glimpses of a sponsor's name or product in the programme it was sponsoring, unless the programme was coverage of an event the programme sponsor was also sponsoring. The Ofcom Broadcasting Code dropped these "event rules" and changed the provisions on references to sponsors in sponsored programmes to prohibit "promotional references" but allow non-promotional references only where they were "editorially justified and incidental".

The dropping of the "event rules" introduced an element of uncertainty in this area. Channel 4 had taken the position that although the "event rules" no longer formally existed, the principle they encapsulated was still valid and went most of the way to meeting the requirements of Rule 9.6 in terms of editorial justification when covering events.

In this particular case, Channel 4 argued that the Pepsi Max World Challenge ("the PMWC") was a genuine event: the competition was clearly going to proceed whether or not Channel 4 covered it. It was an international competition that involved contestants from 12 countries worldwide.

When Channel 4 was first approached about the series, broadcasting rights had been agreed in all of the countries participating except the UK. Because it was apparent to Channel 4 that the PMWC event, albeit that it was the first time it had been run, was going to happen regardless of Channel 4's involvement, it was decided after discussion that acquiring broadcasting rights for Channel 4 was a possibility, subject to ensuring that the channel was able to require the organisers to provide material for broadcast in a form which was acceptable to the channel in both editorial and compliance terms.

To ensure this was the case, detailed discussions between the Channel and the production team took place well in advance of the event. Channel 4's main concern was to ensure that the branding involved would be as minimal as absolutely possible consistent with the nature of the event, and that there would be no advertising at all.

Channel 4 was satisfied that the programmes could be made in a format that would meet its editorial and compliance requirements. While the programme title would reflect the name of the event, and the contestants would be wearing sporting apparel and using equipment that included a quite small and relatively discreet globe on their chests, there would be minimal shots of clothing with the Pepsi name on it, no advertising of any sort at the venues, and no branding at all in the background to interviews.

This was in quite vivid contrast to what would have occurred but for Channel 4's involvement, because broadcasters in other countries had raised no such concerns. Indeed, although the venues for the event remained completely unbranded in the coverage shown in all other countries involved (because of Channel 4's requirements) the interviews with the contestants shown in those countries by contrast included very significant branding and, in some cases, consumption of the sponsor's product during interviews. Channel 4 provided Ofcom with a DVD illustrating the distinction between the UK material and that broadcast in the other participating countries.

Channel 4 said that, notwithstanding the steps it had taken to minimise branding during filming, there remained a considerable amount of editing of the footage to be done in accordance with Channel 4's editorial and compliance instructions. This further differentiated the Channel 4 series from the much more heavily branded versions shown in the other countries. Edits were done to the way in which kit and equipment containing the globe were seen in the programme, and the channel tried to scrupulously avoid focusing or holding statically on the globe. Efforts were made to avoid seeing the word "Pepsi", and interviews with the UK contestants were cropped to remove any remaining branding.

Overall, Channel 4 exerted considerable influence over the content of the programme in both editorial and compliance terms. Channel 4 firmly believed that the compliance and editorial parameters that were laid down properly ensured that the level of branding shown in the UK programmes was, in the circumstances of covering such an event, editorially justified. It did not, in Channel 4's view, amount to undue prominence, nor did it constitute a promotional reference to the sponsor, and was therefore not in breach of the Code.

Decision

The rules under the Broadcasting Code which apply to advertiser-funded programmes are the same as for sponsored programmes.

As Channel 4 stated, there is no absolute prohibition on references to the sponsor in the programme they are sponsoring. However, the Code states that any reference (actual or generic) to a sponsor or a sponsor's product or service must be incidental, non-promotional and there must be editorial justification for its inclusion. Guidance issued by Ofcom states that "A reference to the sponsor within a programme must not be a condition of the sponsorship arrangement. Broadcasters should be aware that a reference to a sponsor within a programme may create a higher presumption of editorial influence by the sponsor."

Under the current Code (as with previous Codes), it is possible for an event sponsor to also sponsor the broadcast coverage of the event. However, as with all sponsored programmes, there should be no deliberate reference (verbal or visual) to the sponsor within the programme coverage (this would not preclude incidental shots of the sponsor's on-location branding that occur as a result of filming the event). The sponsor cannot 'place' their branding within programmes they are funding.

We note Channel 4's arguments for treating the PMWC as an event. However, the programmes themselves went beyond simply covering the challenges and consisted of 'behind the scenes' editorial material of the competitors preparing for challenges, visiting different locations around the world, interviews with professional football players with whom the sponsor had advertising contracts and footage of the sponsor's television advertising campaign being filmed. In this sense, we do not consider that these programmes could be classified as simply as coverage of an "event".

Much of the material in the programmes included visual references to Pepsi branding. This included: the Pepsi 'globe' logo on the competitors' kits, which was worn almost exclusively by the competitors – not only when competing in the challenges; Pepsi branding on all the footballs used in the challenges, for practice and when competitors were shown having a 'kickabout' while sightseeing in the countries they were visiting; the Pepsi 'globe' in the opening title sequence and branding that appeared on the set of the Pepsi television commercial. In addition, there were verbal references within the programme to the full title of the competition and to the Pepsi television advertisement. The level of the sponsor's branding present within the series therefore exceeded that which would naturally result from broadcasting coverage of an event. Because the series was funded by Pepsi, the branding present appeared to be deliberately placed and not incidental.

The Code's rules on the content of sponsored programmes are derived from the requirements of European legislation, the Television Without Frontiers Directive. Article 17 1(a) of the Directive states "*the content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes*".

While we recognise the extensive steps taken by the broadcaster at all stages of the production to exercise editorial control and minimise branding, we consider that a series such as this, which is funded by a sponsor with the apparent view to including its branding, is incompatible with the requirements of the Code.

Sponsor references within a sponsored programme are acceptable only where they do not result from the sponsorship arrangement, are not unduly prominent and are not included to raise awareness of the sponsor (they must be incidental, editorially justified and non-promotional). A programme funded by a sponsor about an event it is sponsoring is likely to fall foul of the Code's requirements if it contains material featuring the sponsor's branding beyond that which appears at the event itself. The Code rules in this area are consistent with the rules imposed under previous Codes.

We therefore consider that the degree and apparent deliberate placing of sponsor branded content within the series was in breach of the Code.

Breach of Rules 9.5 and 9.6 (the content of sponsored programmes).

http://www.ofcom.org.uk/static/archive/itc/itc_publications/complaints_reports/programme_complaints/show_complaint.asp-prog_complaint_id=492.html

Number Up
Quiz Call, 1 June 2006, 20:50

Introduction

This was a competition in which viewers were asked to "Complete the Phrases". Each phrase began with a number between one and ten. The remaining words were revealed if the phrase was identified correctly on air by a caller, for example:

"Two...sides to every story"

"Six...of one, half a dozen of the other"

When the competition ended, the remaining unidentified answers were revealed. A viewer believed the answer revealed for "Ten", which was "Tentacles", was unfair, as it was a single word, not a phrase.

Response

Channel 4 said that this was the first time this particular competition had been featured and, in light of the complainant's comments, it had revisited the game and tightened the rules so that words would be avoided and only phrases would be used in future. The broadcaster also confirmed that subsequent broadcasts in which the *Number Up* competition was featured would show the numbers numerically, not written as words, to avoid single words being formed by adding characters to the written number. The complainant had been offered five free calls to future competitions.

Decision

We welcome Channel 4's prompt acknowledgment and measures to ensure that such an incident does not occur again. However, we do not consider that this was necessarily a matter of tightening the rules. In this case, the broadcaster asked the viewers to call in and "Complete the Phrase", but the answer "Tentacles" is not a phrase and it would have therefore been almost impossible for callers to guess the correct answer. As a result, some callers were likely to have been unfairly rejected.

Breach of Rule 2.11

Not in Breach

Friday Night With Jonathan Ross
BBC1, 23 June 2006, 22:45

Introduction

In this edition of the series, Jonathan Ross interviewed the Leader of the Opposition David Cameron. Although the interview was mainly about Mr Cameron's political vision, the presenter asked him about the possibility that he had a crush on Margaret Thatcher in his formative teenage years and "may have considered Margaret Thatcher in a carnal manner. . . . as pin up material". Jonathan Ross later interrupted David Cameron's comments about party policy with the question "But did you or did you not have a wank thinking about Thatcher?"

251 viewers complained that Jonathan Ross' line of questioning of David Cameron, including suggestive sexual references to Margaret Thatcher, was vulgar, disrespectful and unfair to both parties.

Viewers also objected to the inclusion of strong language and that the BBC did not edit out these elements of the programme.

Decision

People who participate in a programme (and others directly affected by a programme) do have recourse, if they feel that they have been treated unfairly in the programme or that their privacy has been infringed without justification, to complain to Ofcom.

However, in law Ofcom cannot consider complaints of unfair treatment or unwarranted infringements of privacy made by third parties, unless those third parties are explicitly authorised to do so by a programme participant or someone directly affected by a programme. Therefore only those who have participated in (or are directly affected by) a programme can make claim to having been treated unfairly or had their privacy infringed without justification.

Neither David Cameron nor Baroness Thatcher – nor people acting on their behalf and with their authority – have complained to Ofcom about the interview. We are therefore not able to consider complaints made by members of the public that the interview was unfair to David Cameron or Baroness Thatcher.

We also note that David Cameron in response to the question (on the BBC Radio 5 Live's Breakfast programme on 26 June 2006) "would you go on again?" answered that "...in terms of a programme that gets watched by a lot of people and an opportunity to get your message across, yes I would... Jonathan Ross's show is watched by millions of people, you know of course I don't agree with all the questions he asks but, you know, my point is to go on the programme and put myself across and they can take responsibility for what they do..."

In relation to offence we considered Rule 2.3:

Rule 2.3 states:

In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context... Such material may include, but is not limited to, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation)...

Context includes, (but is not limited to): the editorial content of the programme, programmes or series; the service on which the material is broadcast; the degree of harm or offence likely to be caused by the inclusion of any particular sort of material; the likely expectation of the audience; the extent to which the nature of the content can be brought to the attention of the potential audience.

Television comedy has a tradition of challenging viewers' concepts of what is acceptable. Freedom of expression means that broadcasters have the right to explore ideas providing they comply with the law and with Ofcom's

Broadcasting Code. The legislation requires Ofcom to balance the necessary protection of members of the public from offensive and harmful material with an appropriate level of freedom of expression for broadcasters.

Jonathan Ross has a very well-established presenting style, which is deliberately provocative. The decision by the BBC to schedule this series at this time of night is an indication to viewers that the programme may contain provocative material.

We recognise that the interview with David Cameron may have attracted some people who were not regular viewers of the series and who may have found Jonathan Ross' comments uncomfortable. We also acknowledge that for some viewers the use of this language would be considered to be crude.

However, Jonathan Ross' comments were made in the context of an interview with a senior politician who is extremely experienced in handling the media. The interview was part of a late night chat show hosted by a presenter whose style is deliberately risqué, satirical and provocative – an approach with which the large majority of the audience is very familiar. In the context of a chat show, with the interview itself being shown well after the watershed at 23:30, and in its regular slot, we do not consider that the content of the interview was so extreme that it breached generally accepted standards.

It was also noted that the use of strong swearing in the programme was bleeped.

Not in Breach

Fairness and Privacy Cases

Upheld

**Complaint by MacKenzie & Co (Solicitors) on behalf of Dr Gurdeep Singh
Religious Programme, Akash Radio, 22 July 2005**

Summary: Ofcom has upheld this complaint of unfair treatment. MacKenzie & Co (Solicitors) ("MacKenzie & Co") complained on behalf of Dr Gurdeep Singh that he was treated unfairly in the broadcast of the programme. This edition of Akash Radio's religious programme included an interview with one of Akash Radio's presenters, Mr Kulvinder Singh. Mr Kulvinder Singh referred in his interview to allegations previously made about him by Dr Gurdeep Singh, a presenter on Panjab Radio. Dr Gurdeep Singh had alleged, during his radio programme, that Mr Kulvinder Singh breached a Sikh religious edict by taking a copy of the Holy Granth Sahib (Sikh Holy scripture) from a Gurdwara (Sikh temple) to a wedding hall where alcohol, meat and cigarettes were served. Mr Kulvinder Singh referred to Dr Gurdeep Singh by name, challenged him to prove his allegations and made reference to Dr Gurdeep Singh's alleged involvement with the Rashtriya Sikh Sangat ("the RSS") organisation. Mr Kulvinder Singh also referred to the punishment that should be given to Dr Gurdeep Singh if he failed to prove his allegations about Mr Kulvinder Singh, and the punishment that Mr Kulvinder Singh should receive if Dr Gurdeep Singh did provide proof of his allegations.

Ofcom concluded that:

- The allegations made about Dr Gurdeep Singh were intended to be critical of him. He should, therefore, have been given an appropriate and timely opportunity to respond. Ofcom was not satisfied that such an opportunity was given to him.
- The reference to the punishment that should be meted out to Dr Gurdeep Singh, if he failed to substantiate allegations he had made about Mr Kulvinder Singh in an earlier broadcast, was also clearly intended to be critical of him. He should, again, have been given an appropriate and timely opportunity to respond. Again, Ofcom was not satisfied that he was given such an opportunity.

Introduction

Akash Radio provides music, news and speech programmes in English and Panjabi for the Panjabi speaking community.

This edition of Akash Radio's religious programme included an interview with one of Akash Radio's presenters, Mr Kulvinder Singh. Mr Kulvinder Singh referred in his interview to allegations previously made about him by Dr Gurdeep Singh, a presenter on another radio station, Panjab Radio. Dr Gurdeep Singh had alleged during his radio programme that Mr Kulvinder Singh breached a Sikh religious edict by taking a copy of the Holy Granth Sahib (Sikh Holy scripture) from a Gurdwara (Sikh temple) to a wedding hall where alcohol, meat and cigarettes were served. Mr Kulvinder Singh referred to Dr Gurdeep Singh by name, challenged him to prove his allegations and made reference to Dr Gurdeep Singh's alleged involvement with the Rashtriya Sikh Sangat ("the RSS") organisation. Mr Kulvinder Singh also referred to the punishment that should be given to Dr Gurdeep Singh if he failed to prove his allegations about Mr Kulvinder Singh and the punishment that Mr Kulvinder Singh should receive if Dr Gurdeep Singh did provide proof of his allegations.

MacKenzie & Co complained on behalf of Dr Gurdeep Singh that he was treated unfairly in the broadcast of the programme.

Complaint

Dr Singh's case

In summary, MacKenzie & Co complained that Dr Gurdeep Singh was treated unfairly in the broadcast programme in that:

a) It was wrongly alleged by Mr Kulvinder Singh that Dr Gurdeep Singh was a member of the RSS. Dr Singh claimed that the RSS was an organisation that, although it claimed to promote Sikh/Hindu relations, aimed to attack and swallow the Sikh religion as part of Hinduism and was therefore seen in the Sikh community as an anti-Sikh organisation. Dr Gurdeep Singh had, six or seven years ago while working as a journalist, had an opportunity to interview the RSS chief, Chiranjiv, at his home. However, Mr Kulvinder Singh wrongly alleged that regular meetings of the RSS were held at Dr Gurdeep Singh's home. He also alleged that Dr Gurdeep Singh was funded by the RSS. Dr Gurdeep Singh was not contacted by letter or in any other way by Akash Radio, in order to invite him to respond to these allegations nor was there any reference in the programme to him having been invited to respond.

b) Mr Kulvinder Singh stated unfairly that Dr Gurdeep Singh was "such a man whose face should be painted black and, with a garland of flowers around his neck, should be paraded in Southall".

Akash Radio's case

In response to the complaint of unfair treatment, Akash Radio said in summary:

a) Prior to this programme, Dr Gurdeep Singh had made allegations on a programme he presented on Panjab Radio against Akash Radio, its managing director, Mr Sukhwinder Singh, and Mr Kulvinder Singh. (These allegations are the subject of separate complaints to Ofcom). Mr Sukhwinder Singh and others had witnessed an RSS meeting that took place at Dr Gurdeep Singh's house. When Mr Sukhwinder Singh attended Dr Gurdeep Singh's house, Chiranjiv, the RSS chief, and others were in a meeting. Dr Gurdeep Singh asked Mr Kulvinder Singh and other visitors to become RSS members. When asked if he himself was a member, Dr Gurdeep Singh said that he was and that that was why the meeting was being held at his house. However, it was not said on the programme that regular meetings of the RSS were held at Mr Gurdeep Singh's home. The suggestion that Dr Gurdeep Singh was funded by the RSS was the personal view of Mr Kulvinder Singh. Akash Radio contacted Dr Gurdeep Singh by telephone and letter on a number of occasions and invited him to air his views on Akash Radio. All efforts to get the allegations clarified on air failed. Both Dr Gurdeep Singh and Mr Kulvinder Singh were given equal opportunities to present their own sides of the story.

b) As regards the suggestion that Dr Gurdeep Singh should have his face blackened, be garlanded with shoes and paraded in Southall, it was a custom in Indian culture that if a renowned person said or did something dishonourable his face was blackened, he was garlanded with shoes, mounted on a donkey and paraded in the area. Mr Kulvinder Singh referred to this traditional method of punishment while expressing his views and said that if Dr Gurdeep Singh could not prove the allegations he had made against Mr Kulvinder Singh, the Sikh nation should punish him in this traditional way. Mr Kulvinder Singh did not say that he wanted to give Dr Gurdeep Singh this punishment himself, but put himself and Dr Gurdeep Singh in the hands of the Sikh nation, so that whoever was guilty should take the punishment.

Decision

Ofcom's statutory duties include 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 unfair treatment and unwarranted infringements of privacy in programmes included in such services.

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

This case was referred to Ofcom's Executive Fairness Group for consideration. Ofcom's decision is set out below, by reference to each of the heads of Dr Gurdeep Singh's complaint. Ofcom reached its decision having considered an English language translation of the relevant part of the programme.

As a preliminary point, Ofcom noted that there were varied accounts of events between the complainant and broadcaster. Ofcom is not a fact-finding tribunal and it is not within its remit to determine the nature or accuracy of particular accounts of events. Rather, Ofcom is responsible for determining whether a particular broadcast has resulted in unfairness to an individual or organisation. Further, while broadcasters and contributors are not prevented from making potentially damaging comments in broadcast programmes, where this happens, the person about whom such comments are made must be given a clear and proper opportunity to respond.

The ex-BSC Code ("the Fairness Code") was the applicable Code when this programme was broadcast. The Fairness Code states, in Paragraph 7, that broadcasters should take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organisations and that broadcasters should take all reasonable care to satisfy themselves that all material facts have been considered before transmission and so far as possible are fairly presented. Paragraph 11 of the Fairness Code also states that where a programme alleges wrongdoing or incompetence, or contains a damaging critique of an individual or organisation, those criticised should normally be given an appropriate and timely opportunity to respond to or comment on the arguments and evidence contained within that programme.

a) Dr Gurdeep Singh complained that it was alleged on the programme that he was a member of the RSS, that regular meetings of the RSS were held at his home and that he was funded by the RSS. As explained above, Dr Singh claimed that RSS was an organisation that, although it claimed to promote Sikh/Hindu relations, aimed to attack and swallow the Sikh religion as part of Hinduism and was therefore seen in the Sikh community as an anti-Sikh organisation. Ofcom noted that the programme referred to Dr Gurdeep Singh being "paid for" involvement with the RSS, rather than being "funded" by the organisation. Ofcom was not in a position to determine whether the reference to membership of the RSS, holding meetings of the RSS at his home and being paid for involvement with the RSS in fact constituted a damaging critique of Dr Gurdeep Singh. However, it was clear that the allegations, made in response to matters raised by Dr Gurdeep Singh in an earlier broadcast on Panjab Radio, were intended to be critical of him. In these circumstances and in accordance with the Fairness Code, Dr Gurdeep Singh should have been given an appropriate and timely opportunity to respond. Akash Radio provided no documentary evidence that any such opportunity was given to Dr Gurdeep Singh and nor was there any reference in the programme to such an opportunity having been offered. Ofcom was therefore not satisfied that he was given a proper opportunity to respond. This was unfair to Dr Gurdeep Singh.

Ofcom found that Dr Gurdeep Singh was treated unfairly in the programme in this respect.

b) Dr Gurdeep Singh complained that it was suggested in the programme that he was a man whose face should be painted black and, with a garland of shoes around his neck, should be paraded in Southall. Ofcom noted that both parties appeared to accept that the punishment referred to was a traditional one. Although it was not referred to in the programme as a traditional punishment, Ofcom took the view that the majority of listeners would have understood that to be the case. Broadcasters have to take care when remarks made by guests are capable of adversely affecting the reputation of an individual. In this case, the reference to the punishment that should be meted out to Dr Gurdeep Singh if he failed to substantiate allegations he had made on Panjab Radio about Mr Kulvinder Singh was clearly intended to be critical of him. As under a) above, Dr Gurdeep Singh should therefore have been offered an appropriate and timely opportunity to respond. Akash Radio failed to provide documentary evidence of such an opportunity being given to Dr Gurdeep Singh and there was no reference in the programme to such an opportunity having been offered. Ofcom was therefore not satisfied that he was given a proper opportunity to respond. This was unfair to Dr Gurdeep Singh.

Ofcom found that Dr Gurdeep Singh was treated unfairly in the programme in this respect.

Accordingly, Ofcom found that Dr Gurdeep Singh was treated unfairly in the programme and his complaint was upheld.

Ofcom has directed Akash Radio to broadcast a summary of this adjudication.

Complaint by Mr Kulvinder Singh
Panjab Radio News, Panjab Radio, 4 July 2005
Panjabian di Gal Baat, Panjab Radio, 4 July 2005 and
Chardikala, Panjab Radio, 12 July 2005

Summary: Ofcom has upheld, with a limited exception, this complaint of unfair treatment.

Mr Kulvinder Singh complained that both he, and Akash Radio where he is a presenter, were unfairly treated in the programmes as broadcast. The items were a News bulletin and two subsequent programmes on Panjab Radio. Mr Kulvinder Singh complained that the programmes portrayed him unfairly; included comments that he should not be called "Giani" or priest; accused him of making money through the conduct of religious services; and, accused him of supporting an anti-Sikh organisation. Mr Kulvinder Singh further complained that the programmes unfairly accused Akash Radio, of advertising programmes concerned with magic and encouraged listeners not to listen to, or otherwise support, Akash Radio.

Ofcom concluded that:

- Mr Kulvinder Singh and Akash Radio were unfairly treated in the News and Panjabian di Gal Baat programmes in that the programmes contained a damaging critique of each and did not provide an appropriate and timely opportunity for them to respond to the allegations made.
- Mr Kulvinder Singh was treated unfairly in the Chardikala programme in that although he was not named allegations were made which would result in a reasonable listener's conclusion that Mr Kulvinder Singh was being referred to, and the broadcaster took no steps to safeguard his reputation.
- No evidence was found to support Mr Kulvinder Singh's complaint that he was accused of supporting an organisation, anti-Sikh or otherwise, and this limited complaint was not upheld.

Introduction

Panjab Radio provides music, news and speech programmes in English and Panjabi for the Panjabi speaking community.

On 4 July 2005 the station's mid-day news carried a report concerning the alleged breaching of a Sikh religious edict at a wedding ceremony. The news report, read by presenter Dr Gurdeep Singh, stated that two copies of the Holy Granth Sahib (Sikh Holy Scriptures) had been brought to the wedding venue, Baylis House, a hall where alcohol, meat and cigarettes were served, even though this action was prohibited by a Sikh religious edict. The report stated that one of the copies of the Holy Scriptures had been taken there from the Miri Piri Gurdwara (Sikh temple) by the Giani (priest) Mr Kulvinder Singh. The item included an interview with Mr Sardar Jaswant Singh Thekedar, president of the Miri Piri

Gurdwara condemning this action. The item concluded with Dr Gurdeep Singh referring to Mr Kulvinder Singh as a presenter on a local radio station "which openly broadcasts adverts and programmes about magical remedies, amulets etc".

The news report was followed by the *Panjabian di Gal Baat* programme presented by Mr Manjit Singh which returned to the issue of the wedding ceremony raised in the news and included criticism of both Mr Kulvinder Singh and Akash Radio. The programme included contributions from Mr Surjit Singh Ghuman, managing director of Panjab Radio, Mr Jaswant Singh Thedekar, President of the Miri Piri Gurdwara and callers.

On 12 July 2006 on the *Chardikala* programme, presenter Dr Gurdeep Singh criticised an un-named individual, and those running an un-named radio station, of drinking and stealing, and stated that he had the video evidence of an un-named individual at wedding ceremonies.

Mr Kulvinder Singh, a presenter on Akash Radio, complained that he was discussed on both the mid-day news, *Panjabian di Gal Baat* and *Chardikala* and that both he and Akash Radio were treated unfairly.

The Complaint

Mr Kulvinder Singh's case

In summary, Mr Kulvinder Singh complained that both he and Akash Radio were treated unfairly in that:

- a. On 4 July 2005 his name appeared in a mid-day news item that was false, one-sided and was used to damage his image in public. He was accused of misusing religion and his radio station was mentioned in undertones resulting in unfairness both to himself and Akash Radio.
- b. On 4 July 2005 he was again targeted by the programme *Panjabian Di Gal Baat* which immediately followed the news. It was said that he should not be called Giani (priest) and that addressing him as Giani was the biggest sin. He was also accused of making money by performing religious services and called a thug, resulting in unfairness to him.
- c. The presenter of *Panjabian Di Gal Baat* deliberately, and unfairly, prompted a caller to name Akash Radio and called for people not to listen to the religious programmes delivered by him, nor financially to support Akash Radio resulting in unfairness to Akash Radio.
- d. On 12 July 2005, in the programme *Chardikala*, hosted by Dr Gurdeep Singh, he was accused of drinking alcohol in a deliberate attempt to tarnish his image as a religious person. He was also accused of supporting an anti-Sikh organisation and of being a government agent. It was claimed that video recordings showed his conduct resulting in unfairness to him.

Panjab Radio's case

In summary, Panjab Radio responded to Mr Kulvinder Singh's fairness complaint as follows: a ll Panjab Radio programmes are aired according to Ofcom's rules and regulations; the broadcasters are fully trained and have worked in the broadcasting industry for many years .

Panjab Radio also provided transcripts of the items together with English language translations.

Mr Kulvinder Singh's comments on Panjab Radio's response

In summary Mr Kulvinder Singh, who provided his own English language translations of the relevant extracts of the programmes, commented that:

- a) On 4 July 2005, during the mid-day news, the newsreader Dr Gurdeep Singh identified him by name and by the fact that he presented on a local radio station. The report stated (in an interview with Gurdwara President Mr Sardar Jaswant Singh Thekedar):

"he takes scriptures from his own home and pockets whatever donations and offerings are made...it is a great sin even to call these people Giani ('the learned')...they...should be heavily punished".

These damaging and derogatory remarks were made without Mr Kulvinder Singh being contacted before or after the news was aired and he has not been allowed to clarify the issue subsequently. A *Panthic Weekly* newspaper was referred to as the source of the story but such a newspaper has never been published.

The newsreader discussed prohibitions on where the Holy Scriptures could be taken and mentioned sarcastically that while the complainant claimed that the radio station he worked for worked in accordance with the Sikh code of conduct, it in fact advertised programmes on black magic.

- b) In the *Panjabian di Gal Baat* programme, which followed the news, Mr Thekedar, whose version of events was used in the news, was again taken on air and used very demeaning language against him without being checked. He identified Mr Kulvinder Singh by name and said: "Such people are not Gianis (priests). These people mislead people in the name of religion and are thugs under garb. And I appeal to the entire community that such Gianls should not be entertained".

- c) In the same *Panjabian di Gal Baat* programme, and after prompting, Mr Thekedar also named Akash Radio.

d) In the *Chardikala* programme Dr Gurdeep Singh the presenter unfairly targeted Akash Radio when he stated:

"I know these people. They are alcoholics and meat-eaters...plying taxis...thieves stealing from donation boxes...(with no) sponsorship...how do they run the radio station, it's by stealing from donation boxes of the Guru".

The presenter unfairly targeted the complainant when he stated:

"he was called into the Gurdwara by the management and he started frothing and he begged pardon from them and returned. Read his medical report, and he is suffering from asthma and heart problem. Doctors have now advised him against drinking and he has been cautioned he would die if he drank".

The presenter further unfairly targeted the complainant when he claimed to have twenty video tapes of him at 'such marriage ceremonies' (i.e. where religious edicts were breached) but had not provided these.

Panjab Radio's second statement in response

In summary Panjab Radio responded that:

- a. On 4 July 2005 Mr Kulvinder Singh's name appeared in a news item taken from a news website *Panthic Weekly* and Mr Kulvinder Singh agreed, in his comments, that the item was attributed to this newspaper. The item was fair and not used to damage Mr Kulvinder Singh's reputation.
- b. The *Panjabian di Gal Baat* programme did not target Mr Kulvinder Singh. The views expressed were those of a caller not Panjab Radio.
- c. The *Panjabian di Gal Baat* programme did not target Akash Radio. The presenter did not deliberately prompt the caller to name Akash Radio. When he asked "On which radio do they (preach)?" he could not know the answer would be "Akash Radio".
- d. In the whole *Chardikala* programme neither Mr Kulvinder Singh, nor Akash Radio, were mentioned. Unfortunately Mr Kulvinder Singh has interpreted himself, and Akash Radio, as being targeted by the programme.

Mr Kulvinder Singh's second comments on Panjab Radio's response

In summary Mr Kulvinder Singh commented that:

- a) He should have been contacted and invited to respond to the allegations taken from the website which was earlier claimed to be a newspaper.
- b) Mr Thekedar, whose version of events was quoted in the news broadcast, was given a second opportunity to damage the complainant in the *Panjabian di Gal Baat* programme and was not checked from making serious allegations and the other side of the story was not given. Callers must be checked or corrected where necessary.
- c) The tone of the presenter was very obviously prompting the caller to identify the radio station. The radio station had been previously identified in the news broadcast (and in its website source) so it was obvious that the presenter would know the caller would identify Akash Radio.
- d) The *Chardikala* programme on 12 July 2005 made deliberate comments to belittle him in front of the Panjabi community including allegations about drink driving, bad health and medical advice against drinking. These were not general comments but a very obvious distorted reference to himself and Akash Radio.

Panjab Radio's third statement in response

In summary Panjab Radio responded that:

- a) Panjab Radio denied that Mr Kulvinder Singh was treated unjustly or unfairly. The news item was broadcast on the basis of the *Panthic Weekly* on-line newspaper. Mr Kulvinder Singh had never contacted Panjab Radio to clarify the matter. Mr Thekedar spoke as part of the press conference at Baylis House.
- b) Panjab Radio was aware of Ofcom's Code regarding the issue of checking or correction of callers, as should Akash Radio be.
- c) Ofcom will decide on the tone of the presenter.
- d) Panjab Radio had no reason to target Akash Radio. No other radio stations have made complaints against Panjab Radio.

Decision

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

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

This case was referred to Ofcom's Executive Fairness Group for consideration. In view of the fact that these complaints related to Panjabi language programmes, and the complainant disputed parts of the English language translation provided by the broadcaster, Ofcom commissioned its own English language translation of the disputed sections. Ofcom relied on the relevant sections of the agreed translations in its Decision.

As a preliminary point, Ofcom noted that there are varied accounts of events between the complainant and broadcaster. Ofcom is not a fact-finding tribunal and it is therefore not within Ofcom's remit to determine the nature or accuracy of particular accounts of events. Rather, Ofcom is responsible for determining whether a particular broadcast has resulted in unfairness to an individual or organisation. Further, while broadcasters and contributors are not prevented from making potentially damaging comments in broadcast programmes, where this happens, the person about whom such comments are made must be given a clear and proper opportunity to respond.

The ex- BSC Fairness Code ("the Fairness Code") was the applicable Code when these programmes were broadcast. The Fairness Code states, in Paragraph 7, that broadcasters should take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organisations and that broadcasters should take all reasonable care to satisfy themselves that all material facts have been considered before transmission and so far as possible are fairly presented. Paragraph 11 of the Fairness Code also states that where a programme alleges wrongdoing or incompetence, or contains a damaging critique of an individual or organisation, those criticised should normally be given an appropriate and timely opportunity to respond to or comment on the arguments and evidence contained within that programme.

In the circumstances of this case Ofcom found the following:

a) Ofcom first considered Mr Kulvinder Singh's complaint that on 4 July 2005 he, and his radio station, were referred to in a mid-day news item that was false, one-sided and resulted in unfairness to him and to Akash Radio.

Ofcom considered the full broadcast news piece which reported that two copies of the Holy Granth Sahib had been brought to the Baylis House wedding ceremony. In particular Ofcom noted the section concerning Mr Kulvinder Singh:

Dr Gurdeep Singh (reading news): According to the newspaper [*Panthic weekly*], during that time another Holy Granth Sahib was brought from Miri Piri Gurdwara, 253-263 The Broadway Southall, by Giani Kulvinder Singh, who is also said to be a presenter at a local Radio Station. When Gurdwara Miri Piri was contacted, Sardar Jaswant Singh Thekedar, the president of Gurdwara Miri Piri, condemned this in very strong language saying:

Mr Thekedar : I was very surprised to read in a newspaper today that Our Holy Granth Sahib had been sent to some hall in Slough from Gurdwara Miri Piri Sahib. I whole heartedly condemn this. During the last eleven years, Holy Granth Sahib has never been sent from the Gurdwara Miri Piri to any hall. No one has requested such a booking nor have we accepted any such booking. As far as Giani Kulvinder Singh is concerned, he has never been our priest. They should take the Holy Granth Sahib from some other place. They have used the name of our Gurdwara and this is a misuse of the name of the Gurdwara. This would have been an attempt to save themselves. They take the Holy Granth Sahib from their home and pocket all the money and the offerings from the congregation, and they have made this their business. We are not at all connected with this activity. To call such people priests is a very serious sin. It is their money making business. They do not have any respect for the Holy Granth Sahib. Such persons should be duly punished.

Dr. Gurdeep Singh : It is worth mentioning that as per the traditions set out by Sri Akal Takhat, The Holy Granth can only be taken to a hall in those towns where there is no Gurdwara (Sikh Temple) and no alcohol nor tobacco is consumed in that hall. It has been learnt that Giani Kulvinder Singh works as a presenter at such a Radio Station where he himself claims to follow the traditions set out by Akal Takhat Sahib whereas that very Radio Station openly broadcasts adverts and programmes about magical remedies, amulets etc. It is worth mentioning here that taking the Holy Granth Sahib to any hall is prohibited by the orders of Akal Takhat Sahib.

As discussed above it is not within Ofcom's remit to determine the accuracy of any particular issues or allegations broadcast, however Ofcom sought to determine whether the news coverage was fair in its treatment of Mr Kulvinder Singh and Akash Radio.

Ofcom first considered whether the news coverage contained a damaging critique of Mr Kulvinder Singh. Ofcom concluded that the section of Mr Thekedar's interview as broadcast contained such a critique. Mr Kulvinder Singh's name was mentioned and the juxtaposition of comments implied that he was one of those referred to as "pocket[ing] all the money and the offerings from the congregation"; that he should not be called a priest; and, that he had no "respect for the Holy Granth Sahib" and should be "duly punished". Ofcom also concluded that the remarks of the presenter, Dr Gurdeep Singh, also contained a damaging critique of Mr Kulvinder Singh, referring to his action in taking the Holy Granth Sahib to the wedding hall as "prohibited by the orders of Akal Takhat Sahib" (a Sikh religious edict) and again juxtaposing this comment with a reference to his name.

Ofcom further concluded that the description of the radio station Mr Kulvinder Singh works for as one that "openly broadcasts adverts and programmes about magical remedies, amulets etc" was clearly contrasted with the practices set out under the Sikh religious edict, and therefore resulted in a damaging critique of the radio station. Although Akash Radio was not named Ofcom noted that the broadcaster did not deny that this was the radio station referred to, and considered that the station was identified through the reference to Mr Kulvinder Singh as one of its presenters.

Ofcom considered that, in accordance with the Fairness Code, since the news item contained a damaging critique of both Mr Kulvinder Singh and Akash Radio, as discussed above, both should have been given an appropriate and timely opportunity to respond to, or comment on, the arguments and evidence contained within the programme. Ofcom noted Panjab Radio's response that the comments from Mr Thekedar were recorded at a press conference. However Ofcom considered that this did not remove the obligation to offer Mr Kulvinder Singh an opportunity to respond, indeed particular vigilance on the part of a broadcaster is required when including an interview which makes damaging allegations.

Neither Mr Kulvinder Singh, nor Akash Radio, was provided with any opportunity, timely or otherwise, to respond to the allegations and comments contained in the programme.

Ofcom concluded that this resulted in unfairness to Mr Kulvinder Singh and Akash Radio.

b) Ofcom then considered Mr Kulvinder Singh's second complaint that on 4 July 2005 he was unfairly targeted by the programme *Panjabian Di Gal Baat*.

Ofcom considered the full programme complained of, and in particular the following section:

Mr Jaswant Singh Thekedar (Guest Speaker): Giani Kulvinder Singh has never worked with us as a priest nor was he ever the Head Priest. The question of entrusting him with the duty of taking the Holy Granth does not arise.

Mr Manjit Singh (Presenter): Yes

Mr Thekedar : It is a sin to call such persons Giani. Such people deceive others in the name of religion. They are not Gianis they are rogues like Sajjan-the-fraudster, and I would appeal to the whole congregation that they should have nothing to do with such persons. Those who cannot show any respect for the Holy Granth and indulge in sacrilegious activities cannot be priests and it would be a sin to call such persons priests.

Presenter : Yes and...how can we stop this?

Mr Thekedar : We appeal to the UK population that a meeting is held, that people who use the Holy book at home for business purposes, that these Sikhs please give these Holy books back to the Gurdwaras, stop this type of business. What else can we say or do?

Presenter : We have seen in many places that a lot of these kind of people have made separate groups. They have speakers and loud speakers and they take the Holy books into homes in order to make money.

As discussed above it is not within Ofcom's remit to determine the accuracy of any particular issues broadcast, however Ofcom sought to determine whether the programme was fair in its treatment of Mr Kulvinder Singh.

Ofcom first considered whether the *Panjabian di Gal Baat* programme contained a damaging critique of Mr Kulvinder Singh. Ofcom considered that Mr Thekedar's reference to "such people" who should not be called "Giani" (priest) and who are "rogues" followed immediately from a reference to Mr Kulvinder Singh and it was therefore sufficiently clear to the listener that Mr Kulvinder Singh was one of those being referred to. Ofcom further considered that the presenter's comments which followed from this: "they take the Holy books into homes in order to make money" could also be taken to refer to Mr Kulvinder Singh for the same reason. The remarks were clearly intended as a damaging critique of Mr Kulvinder Singh and, in accordance with the Fairness Code, Ofcom considered that he should have been given an appropriate and timely opportunity to respond to them. The fact that some of the comments were made by a third party, rather than the presenter, did not, as discussed above, remove the obligation to offer Mr Kulvinder Singh an opportunity to respond.

Mr Kulvinder Singh was not provided with any opportunity, timely or otherwise, to respond to the allegations and comments contained in the programme.

Ofcom concluded that this resulted in unfairness to him.

c) Ofcom next considered Mr Kulvinder Singh's third complaint that the presenter of *Panjabian Di Gal Baat* deliberately, and unfairly, prompted a caller to name Akash Radio and called for people not to listen to the religious programmes delivered by him, nor financially to support Akash Radio.

Ofcom considered the full programme complained of, and in particular the following section:

Mr Jaswant Singh Thekedar (Guest Speaker): Please just appeal to the whole congregation on my behalf to stop the business of such people, and co-operate with the religious organisations and Gurdwaras and boycott such persons. They present their stories on the Radio in a different way and they deceive people.

Mr Manjit Singh (Presenter): Which Radio Station do they use?

Mr Thekedar : I have heard them on Akash Radio many times. They have made it a means of making money. They deceive people and take their money by appealing to them. Such money making malpractices should be stopped and I would appeal to people to be vigilant and avoid such persons who are deceiving our religious institutions.

Ofcom considered that the programme's presenter did not appear deliberately to prompt the guest speaker to name the radio station under discussion. However the presenter did invite the speaker to name the radio station and then allowed him to continue with a damaging critique of Akash Radio. While it is the case that serious allegations may be made in a broadcast, it is also the case that where such allegations result in a damaging critique an appropriate and timely opportunity to respond must be given. No such opportunity to respond was given to Akash Radio and Ofcom concluded that this resulted in unfairness to it.

d) Ofcom considered Mr Kulvinder Singh's final complaint that on 12 July 2005, in the programme *Chardikala*, he was accused of behaviour which would tarnish his image as a religious person, of supporting an anti-Sikh organisation and of being a government agent.

Ofcom noted that Mr Kulvinder Singh raised issues concerning the treatment of Akash Radio in his subsequent comments on the broadcaster's responses but that his complaint concerned his own treatment.

Ofcom considered the full programme complained of, and in particular the following three extracts:

Presenter (Dr Gurdeep Singh): I know these people. They drink alcohol and eat meat. They have been involved in Drink and Drive they have been taxi drivers and they have been stealing money from the money boxes containing offerings of the congregation. They have not worked all their lives. They have been stealing money boxes for their own and their family's expenses. No one would offer sponsorship or advertisement to them. How do they run the Radio Station? They have lived off the money boxes and they have been stealing Guru's money boxes until now. I do not want to explain this anymore, nor do I want to say any more on this subject. I want to make one request, you are a baptised Sikh, you have asked me a question and it is my duty to answer that question. I do not want to talk to such people or answer questions from these goons who have stolen guru's money boxes and who drink alcohol and eat meat.

Presenter (Dr Gurdeep Singh): The whole of the Sikh community knows that their man was present there and was distributing leaflets.

Caller : Yes. Dr. He was taken inside the Gurdwara by the management, his mouth was foaming, he was let off after apologising repeatedly. You read his medical reports - he suffers from asthma and heart disease. The doctor has prohibited him from drinking alcohol. He stopped drinking only when he was warned that if he did not stop drinking he would die. I am prepared to say this in the presence of the Holy Granth Sahib. The whole of Southall knows that they have been stealing Guru's money boxes. He is a money box thief who has done no other job than steal the money boxes. He can accuse me of anything he likes - the person who accuses me of being an RSS man.

Presenter : (Dr Gurdeep Singh) He did not go there once only. I have twenty video cassettes - twenty video films - I shall count those up to twenty video films of the weddings which he has attended. We have twenty video films with us now which I can show you. You can unknowingly make a mistake once or twice. Then Churchill has stated that he cannot forgive two persons - a teacher and a preacher. If they make a mistake, they do not deserve to be forgiven. I say if I make a mistake, do not forgive me for that mistake. If I make a mistake, I would never ask to be excused because I know that a teacher and a preacher do not deserve to be excused ever. That is why I say very openly that if I make a mistake, the Sikh community should not forgive me. I say that very clearly.

Ofcom noted that at no point was the individual or radio station under discussion named, and that Panjab Radio chose not to clarify the identity of the individual or radio station in their responses to the complaint. Ofcom also noted that this programme was broadcast one week after the news broadcast and *Panjabian di Gal Baat* programme discussed above. Ofcom considered that the timing of the programmes, and references to weddings and inappropriate behaviour, were sufficiently close to the earlier broadcasts to result in a reasonable listener's conclusion that Mr Kulvinder Singh was being referred to. As discussed above, the Fairness Code states that broadcasters should take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organisations and broadcasters should take all reasonable care to satisfy themselves that all material facts have been considered before transmission and so far as possible are fairly presented. In this context, and given the nature of the allegations made in the programmes one week earlier, it would have been prudent for the broadcaster to have ensured that the listener was not left in any doubt as to who was being referred to.

In light of the above considerations, Ofcom therefore found that the references to alcohol in both the general comments of the first extract, and the particular comments of the second extract, resulted in unfairness to Mr Kulvinder Singh since the broadcaster took no steps to safeguard his reputation.

With regard to Mr Kulvinder Singh's complaint that he was accused in the programme of supporting an anti-Sikh organisation and of being a government agent, it appeared to Ofcom on the evidence before it, and the programme extracts identified by the complainant, that no references were made to Mr Kulvinder Singh being a member of an organisation, anti Sikh or otherwise, or to being a government agent. This limited complaint was not therefore upheld.

Accordingly Mr Kulvinder Singh's complaint of unfair treatment was, with one limited exception, upheld.

Ofcom has directed Panjab Radio to broadcast a summary of this adjudication.

Complaint by Mr Sukhwinder Singh
Gurbani Vichaar, Panjab Radio, 4 July 2005
Chardikala, Panjab Radio, 12 July 2005

Summary: Ofcom has upheld this complaint of unfair treatment.

Mr Sukhwinder Singh complained that both he and Akash Radio, of which he is managing director, were unfairly treated in the programmes as broadcast. Mr Sukhwinder Singh complained that the *Gurbani Vichaar* programme portrayed both him and Akash Radio unfairly and did not allow him to present his side of the story in a radio phone-in discussion. He complained that the *Chardikala* programme accused him of consuming alcohol, stealing money and of throwing parties for an anti-Sikh organisation. He further complained that the *Chardikala* programme referred to Akash radio as an "unholy place".

Ofcom concluded that:

- Mr Sukhwinder Singh was unfairly treated in the *Gurbani Vichaar* programme in that the programme contained a damaging critique of Akash Radio but did not provide an opportunity for Mr Sukhwinder Singh, as managing director, to respond on its behalf.
- Both the *Gurbani Vichaar* and *Chardikala* programmes contained pejorative references to un-named individuals, and an un-named radio station that a reasonable listener could have concluded were Mr Sukhwinder Singh and Akash Radio.
- Panjab Radio failed to take the special care required when broadcasting allegations that were capable of adversely affecting the reputation of the complainant.

Introduction

Panjab Radio provides music, news and speech programmes in English and Panjabi for the Panjabi speaking community.

On 4 July 2005 the station's mid-day news carried a report concerning the alleged breaching of a Sikh religious edict at a wedding ceremony by Mr Kulvinder Singh, a priest who is also a presenter on Akash Radio. The programme described Mr Kulvinder Singh's radio station as one which "openly broadcasts adverts and programmes about magical remedies, amulets etc". The *Panjabian di Gal Baat* programme which immediately followed the news further discussed the wedding ceremony and Mr Kulvinder Singh's conduct at it.

Later that day the *Gurbani Vichar* programme also discussed the same issues and featured Mr Sukhwinder Singh, managing director of Akash Radio, as a caller to its phone-in discussion.

On 12 July 2006 the *Chardikala* programme, presented by Dr Gurdeep Singh, criticised those running an un-named radio station of drinking and stealing and referred to an un-named "unholy place" where he would never go.

Mr Sukhwinder Singh, managing director of Akash Radio, complained that both he and Akash Radio were treated unfairly in the *Gurbani Vichar* and *Chardikala* programmes. Mr Kulvinder Singh has brought a separate complaint concerning his own treatment.

The Complaint

Mr Sukhwinder Singh's case

In summary, Mr Sukhwinder Singh complained that both he and Akash Radio were treated unfairly in that:

- a) The host of *Gurbani Vichaar*, featured him as a phone-in caller and repeated false information concerning Akash Radio (given in the mid-day news and *Panjabian di Gal Baat* programmes earlier that day), namely that Akash Radio plays adverts for black magic and future predictions and that Akash Radio sends presenters to perform marriage ceremonies. The host claimed that this false information was 'the truth' which Mr Sukhwinder Singh could not digest, he was not allowed to present his side of the matter and his call was abruptly disconnected. The host subsequently referred to Mr Sukhwinder Singh as an 'idiotic person'. This resulted in unfairness to him.

b) On 12 July 2005, in the programme *Chardikala*, hosted by Dr Gurdeep Singh, he was accused of throwing parties for an organisation labelled as anti-Sikh by the Sikh community. He was also accused of consuming alcohol, in an attempt intentionally to damage his image in the Sikh community; of being a thief; of stealing money from the donation box from a Sikh religious place; and derogatory words were used to refer to him resulting in unfairness to him.

c) The host of *Chardikala* called Akash Radio an unholy place where he said he would never go resulting in unfairness to Akash Radio.

Panjab Radio's case

In summary, Panjab Radio responded to Mr Sukhwinder Singh's fairness complaint as follows: a) Panjab Radio programmes are aired according to Ofcom's rules and regulations; the broadcasters are fully trained and have worked in the broadcasting industry for many years.

Panjab Radio also provided transcripts of the items together with English language translations.

Mr Sukhwinder Singh's comments on Panjab Radio's response

In summary Mr Sukhwinder Singh, who provided his own English language translations of the relevant extracts of the programme, commented that:

a) It may be noted as background to this complaint that the mid-day news on 4 July 2005 had stated that Giani (priest) Kulvinder Singh had been discovered working for that local radio station, ie Akash Radio, which openly advertises and airs programmes on black magic and magical remedies. In fact Akash Radio diligently follows the Sikh code of conduct, has never advertised or broadcast a programme on black magic or magical remedies and this badly damaged its image in the Sikh community. One Akash Radio presenter used to give horoscopes for the Hindu community and that has been twisted to equate it with black magic and magical remedies.

Further, immediately following the mid-day news on 4 July 2006, during the *Panjabian Di Gal Baat* programme, a caller, Mr Jaswant Singh Thekedar, was invited, by the presenter and Panjab Radio's managing director, to identify the "local radio station" (Akash Radio) which had been mentioned but not named in the news bulletin. The caller was prompted to continue, making damaging statements about Akash Radio misleading people and appealing for money.

In the evening programme, *Gurbani Vichaar*, the presenter, Dr Gurdeep Singh and his guests again damaged Akash Radio with their discussion. The host of *Gurbani Vichaar*, Dr Gurdeep Singh, also gave false information that Akash Radio sends presenters "to halls with Holy Guru Granth Sahib" [the Sikh Holy Scripture which is kept in the Gurdwara (temple)]. When the complainant rang in to clarify Akash Radio's position, and asked the presenter about him taking the Guru Granth Sahib into a hall in India, he was cut off. The allegations were repeated, it was said that the complainant could not digest the truth and the complainant was referred to as an 'idiot' who attempted to blame others.

b) On 12 July 2005, in the programme *Chardikala*, the host Dr Gurdeep Singh made derogatory remarks about the complainant. The complainant was accused of throwing parties at the radio station (Akash Radio) for the general secretary of the Rashtriya Sikh Sangat ("the RSS"), an organisation labelled as anti-Sikh by the Sikh community.

The host of *Chardikala* further accused the complainant of consuming alcohol, drinking and driving, and running the radio station by stealing money from donation boxes without adverts and sponsorship. The implication was that Akash Radio is getting financial support from the anti-Sikh RSS.

c) The host of *Chardikala* called Akash Radio an unholy place where he said he would never go. In fact he had asked many times to be taken on by Akash Radio as he was not comfortable working at Panjab Radio. The three men had been conniving against Akash Radio: Mr Ghuman (Managing Director of Panjab Radio) was upset because it had emerged as Panjab Radio's main competitor; Dr Gurdeep Singh (presenter) was vengeful because he wasn't taken on board Akash Radio; and, Mr Thekedar (featured in the original news item) was venomous because he was expelled from Akash Radio.

Panjab Radio's second statement in response

In summary Panjab Radio responded that:

a) Regarding the background programmes mentioned in the complainant's comments, the *Panjabian Di Gal Baat* programme did not identify, or prompt a caller to identify, Akash Radio by name. Any comments made by the caller were his own. There was no evidence to suggest that Panjab Radio's managing director incited the caller to make the alleged comments.

Regarding the *Gurbani Vichaar* programme complained of, Mr Sukhwinder Singh was taken off air because the topic under discussion was not relevant to his question. The comments made by the presenter resulted from the way Mr Sukhwinder Singh put his question. Mr Sukhwinder Singh appeared to interpret everything said as levelled against him. Furthermore when Akash Radio first began broadcasting they advertised a person as able to perform black magic or magical remedies. More recently astrological remedies have been advertised on the Sunday programme but, after the presenter was caught red-handed, this had now stopped.

b) On 12 July 2005, in the programme *Chardikala*, Mr Sukhwinder Singh appeared to interpret the comments allegedly made as levelled against him when he was not mentioned.

All the comments made by the presenter, Dr. Gurdeep Singh, were correct and personally witnessed by him.

c) There was no evidence that Mr. Ghuman, Dr Gurdeep Singh and Mr. Thekedar had conspired against Mr Sukhwinder Singh and the motives given were frivolous.

Mr Sukhwinder Singh's second comments on Panjab Radio's response

In summary Mr. Sukhwinder Singh commented that:

a) The topic under discussion was the Baylis House issue from the morning programme and there was no reason to take Mr Sukhwinder Singh off air and make derogatory comments about him. The presenter's comments referred to him as an idiot "asking silly questions" and thereby "proving one's idiocy". He was also referring to the complainant when he talked of "someone finding himself trapped... thinks he could blame others".

The issue of magic and magical remedies was dealt with in the complainant's second submission. Mr Sukhwinder Singh added that Akash Radio gave equal opportunities to all communities and all presenters to talk about their beliefs. The presenter mentioned presented a programme for the Hindu community and had to discontinue following her husband's death.

b) Panjab Radio had not answered the complaint that on 12 July 2005, in the programme *Chardikala*, Dr Gurdeep Singh accused him of throwing parties for the general secretary of RSS, an organisation labelled as anti-Sikh by the Sikh community.

Akash Radio was not named in the *Chardikala* programme but the presenter was obviously referring to Akash Radio, and by association to the complainant who is its managing director, when he stated "I know these people. They are alcoholics and meat-eaters...plying taxis...thieves stealing from donation boxes...(with no) sponsorship...how do they run the radio station?" No other radio station owners have managed minicabs or been involved with Gurdwara management.

c) Dr Gurdeep Singh stated in the *Chardikala* programme "I am not ready to go to that unholy place and neither is it acceptable that such a person should come to our studio" which was obviously a reference to the invitation for him to come to Akash Radio, or give the complainant time on Panjab Radio in order to present the true picture to the public. He had no dispute with any radio station except Akash Radio.

Panjab Radio's third statement in response

In summary Panjab Radio responded that:

a) When the complainant rang Panjab Radio he talked about an event in India in 2002 simply to divert the public's attention away from the subject in hand.

In the past Akash Radio aired black magic commercials after 22:00. The horoscope presenter mentioned gave astrological predictions, her personal number, and charged for such services.

b) It was Akash Radio that alleged that Dr Gurdeep Singh invited the head of the RSS to his home and asked the complainant and another to become members.

The comments referred to were general and not directed at anyone. However Mr Sukhwinder Singh had interpreted them as applying to him.

c) There was no evidence of Panjab Radio, Dr Gurdeep Singh and Mr Thekedar conspiring to damage the complainant and Akash Radio.

Decision

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

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

This case was referred to Ofcom's Executive Fairness Group for consideration. In view of the fact that these complaints related to Panjabi language programmes, and the complainant disputed parts of the English language translation provided by the broadcaster, Ofcom commissioned its own English language translation of the disputed sections. Ofcom relied on the relevant sections of the agreed translations in its Decision.

As a preliminary point, Ofcom noted that there are varied accounts of events between the complainant and broadcaster. Ofcom is not a fact-finding tribunal and it is therefore not within Ofcom's remit to determine the nature or

accuracy of particular accounts of events. Rather, Ofcom is responsible for determining whether a particular broadcast has resulted in unfairness to an individual or organisation. Further, while broadcasters and contributors are not prevented from making potentially damaging comments in broadcast programmes, where this happens, the person about whom such comments are made must be given a clear and proper opportunity to respond.

The ex- BSC Fairness Code ("the Fairness Code") was the applicable Code when these programmes were broadcast. The Fairness Code states, in Paragraph 7, that broadcasters should take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organisations and that broadcasters should take all reasonable care to satisfy themselves that all material facts have been considered before transmission and so far as possible are fairly presented. Paragraph 11 of the Fairness Code states that where a programme alleges wrongdoing or incompetence, or contains a damaging critique of an individual or organisation, those criticised should normally be given an appropriate and timely opportunity to respond to or comment on the arguments and evidence contained within that programme.

In the circumstances of this case Ofcom found the following:

a) Ofcom first considered Mr Sukhwinder Singh's complaint that the host of *Gurbani Vichaar*, treated him unfairly: as a phone-in caller; and, by referring to false information concerning Akash Radio where he is managing director.

By way of background Ofcom first considered the earlier mid-day news item, which was the subject of discussion in the *Panjabian Di Gal Baat* programme, and which stated that Mr Kulvinder Singh (a presenter on Akash Radio) had breached a Sikh religious edict by taking a copy of the Holy Granth Sahib [Sikh Holy Scripture] from a Gurdwara [Sikh temple] to a wedding hall. In particular Ofcom noted the presenter, Dr Gurdeep Singh's final comments, which stated:

Dr. Gurdeep Singh : It is worth mentioning that as per the traditions set out by Sri Akal Takhat, The Holy Granth can only be taken to a hall in those towns where there is no Gurdwara (Sikh Temple) and no alcohol nor tobacco is consumed in that hall. It has been learnt that Giani Kulvinder Singh works as a presenter at such a Radio Station where he himself claims to follow the traditions set out by Akal Takhat Sahib whereas that very Radio Station openly broadcasts adverts and programmes about magical remedies, amulets etc. It is worth mentioning here that taking the Holy Granth Sahib to any hall is prohibited by the orders of Akal Takhat Sahib."

Ofcom then considered the *Gurbani Vichaar* programme complained of in full, paying special regard to the following section and in particular the final paragraph:

Caller (Mr Sukhwinder Singh): You have played a news bulletin, and I have received a recording from yourselves for the morning and afternoon where Akash Radio is mentioned again and again. It was saying that Akash Radio's presenters took the Sikh holy book with the priest Mr Kulwinder Singh.

Presenter (Dr Gurdeep Singh): Please note that no Radio Station has been named in my programme or in the news and this is not the topic of our debate. If you want to say anything about Baylis House, you may say so.

Caller : I do want to talk about that.

Presenter : Please just talk about that. Just stick to the subject.

Caller : Yes I do want to talk about that.

Presenter : Our news mentions no ones name, and mentions no radios name and please don't mention any other radios name.

Caller : Brother this radios name was given on your radio.

Presenter : It wasn't given on my news, whatever programme it was given on can you talk to them please.

Caller : Ok then.

Presenter : There were no radio names mentioned in my news.

Caller : I want to talk about Baylis House.

Presenter : Yes yes speak.

Caller : This decision which has come from the Sikh High commission, and those Singh's that guarded this well were very very good. But, I want to make another point, those people who are saying no to this decision are just looking out for themselves. The function that you done in Goraya (a town in Panjab , India), didn't you have the Holy book there? Wasn't there alcohol and meat being served?

Presenter : No definitely not, there was no meat or alcohol. Maybe you don't know but the hall and the holy ceremony were both done separately not under one roof. The Gurdwara ceremony was done in the

Gurdwara, which still exists if you want to go and see it. If anyone from Goraya is listening please tell us that the religion function that we held was done in the Gurdwara. You have false and wrong information.

Caller : tries interrupting.

Presenter : If you have the correct and right information you can contact our reception. We will not tolerate any false accusations made nor will we listen to it.

Caller : tries interrupting again.

Presenter : I will not talk about false statements nor will I let anyone talk about wrong doings. Let me also tell all the people listening that there was around 10,000 people present. The place where the cultural programme was held was completely held in its venue, and the recital of the Holy book, which was read under God's roof, which already exists. There was no alcohol or meat present in God's house. The cultural program also did not even have meat or alcohol present. I'll be more than happy to answer anyone's questions if anyone can prove that there was wrong doing at this event. But someone out of jealousy - on the one hand people talk about Akal Takhat [a Sikh religious edict], and on the other hand they advertise magic and amulets and send their presenters with Holy Granth Sahib to Gurdwara Halls [ie to perform marriage ceremonies] and then we do not accept that situation. We should learn to accept the truth. Thanks you very much" [call ends].

Ofcom also considered the following section further into the programme:

Dr Gurdeep Singh : These are stupid questions that it was celebrated in Goraya. It was a proof of stupidity and to say that the Holy Granth was there.

Ofcom considered that it was perfectly appropriate for Panjab Radio to manage its output in such a way that the presenter determined when any individual call to the phone-in programme should be terminated. However Ofcom noted Mr Sukhwinder Singh, managing director of Akash Radio, complained that he was attempting to discuss the coverage concerning Akash Radio in the earlier news and discussion programmes discussed above. Ofcom further noted Mr Sukhwinder Singh's complaint that, in the final paragraph of the above extract, the presenter repeated the allegations made in the earlier programmes and that although the "people" under discussion were not named Panjab Radio accepted in their response to the complaint that it was Akash Radio that was referred to.

It is not within Ofcom's remit to determine the accuracy of any particular allegation, however on the basis of all the material before it, Ofcom concluded that the broadcast comments, which contrasted adherence to the Sikh religious edict with advertising magic and sending presenters to halls with the Sikh Holy scripture, was clearly intended as a damaging critique. In Ofcom's view, and in accordance with the Fairness Code, Akash Radio should therefore have been provided with an opportunity to respond to criticisms made of it. While it was perfectly appropriate for the *Gurbani Vichaar* programme to discontinue Mr Sukhwinder Singh's call, it was incumbent on Panjab Radio to provide him with an appropriate and timely alternative opportunity to respond to criticisms made of Akash Radio. Such an opportunity was not provided to Mr Sukhwinder Singh, as managing director of Akash Radio, and this resulted in unfairness to him.

On the further issue of references to Mr Sukhwinder Singh's "stupidity", Ofcom noted that Mr Sukhwinder Singh was not named in this context but considered that the reference clearly referred to his questions, as a caller, concerning celebrations at Goraya. Ofcom noted Panjab Radio's response that Mr Sukhwinder Singh appeared (incorrectly) to interpret everything said as levelled against him but considered, given the context of the earlier allegations concerning Akash Radio, it would have been prudent for the broadcaster to have ensured that the listener was not left in any doubt as to who was being referred to. In Ofcom's view the broadcaster did not take reasonable care to remove this doubt, which was potentially damaging to Mr Sukhwinder Singh's reputation, and Ofcom therefore considered that this reference resulted in unfairness to him.

b) Ofcom next considered Mr Sukhwinder Singh's complaint that on 12 July 2005, in the programme *Chardikala*, hosted by Dr Gurdeep Singh, accusations were unfairly made about his behaviour, and alleged association with an organisation labelled as anti-Sikh by the Sikh community, resulting in unfairness to him.

Ofcom considered the full programme and in particular the following comments made by the programme's presenter, Dr Gurdeep Singh:

"I know these people. They drink alcohol and eat meat. They have been involved in Drink and Drive - they have been taxi drivers and they have been stealing money from the money boxes containing offerings of the congregation. They have not worked all their lives. They have been stealing money boxes for their own and their family's expenses. No one would offer sponsorship or advertisement to them. How do they run the Radio Station? They have lived off the money boxes and they have been stealing Guru's money boxes until now. I do not want to explain this anymore, nor do I want to say any more on this subject. I want to make one request, you are a baptised Sikh, you have asked me a question and it is my duty to answer that question. I do not want to talk to such people or answer the questions from these goons who have stolen guru's money boxes and who drink alcohol and eat meat".

And his further comments:

"The General Secretary of the RSS...went to their Station and held parties I can give you proof."

Ofcom noted that at no point were the individuals or radio station under discussion named and that Panjab Radio chose not to clarify the identity of the individual or radio station in their responses to the complaint. Ofcom also noted that this programme was broadcast one week following the broadcast in which Akash Radio was discussed, by name and by reference to its presenter Kulvinder Singh, in Panjab Radio's mid-day news, and *Panjabian di Gal Baat* and *Gurbani Vichaar* programmes. Ofcom considered that the timing of the programmes, and references to inappropriate behaviour by those involved in running a radio station, were sufficiently close to the earlier broadcasts to result in a reasonable listener's conclusion that Akash Radio and the people running it, including the complainant Mr Sukhwinder Singh, were being referred to.

As discussed above the Fairness Code states that broadcasters should take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organisations and broadcasters should take all reasonable care to satisfy themselves that all material facts have been considered before transmission and so far as possible are fairly presented. In Ofcom's view the references to alcohol, meat, stealing and parties (whether connected to an anti-Sikh organisation or otherwise) were clearly pejorative and in this context, and given the nature of the allegations made in the programmes one week earlier, it would have been prudent for the broadcaster to have ensured that the listener was not left in any doubt as to who was being referred to.

In light of the above considerations, Ofcom found that the broadcaster failed to take the special care required by the Code when broadcasting these allegations. This was unfair to Mr Sukhwinder Singh.

"I am not prepared to go to such an unholy place. I would not agree to have such a person in our studio."

Ofcom noted that at no point was the "unholy place" referred to by Dr Gurdeep Singh named. Ofcom also noted that Panjab Radio did not subsequently identify the place referred to in their responses to the complaint. For the reasons discussed above at head b) Ofcom considered that that from the context of the programme a reasonable listener would think that Akash Radio was being referred to, that the reference to an "unholy place" clearly represented a damaging critique of Akash Radio and in such circumstances it would have been prudent for the broadcaster to have ensured that the listener was not left in any doubt as to which place was being referred to.

In light of the above considerations, Ofcom found that the broadcaster failed to take the special care required by the Code when broadcasting these allegations. This was unfair to Mr Sukhwinder Singh.

Accordingly Mr Sukhwinder Singh's complaint of unfair treatment was upheld.

Ofcom has directed Panjab Radio to broadcast a summary of this adjudication.

Complaint by Ms P

Nurseries Undercover: the Real Story, BBC 1, 12 August 2004

Summary: Ofcom has partly upheld this complaint of unwarranted infringement of privacy. Ms P complained that her privacy and that of her children was unwarrantably infringed in the making of the programme and that the privacy of her children was unwarrantably infringed in the programme as broadcast. The programme investigated the care of children in day nurseries and the effectiveness of Ofsted inspections of nurseries. One of a number of nurseries visited by an undercover reporter was Bank House Day Nursery ("Bank House"), a nursery in Radcliffe, North Manchester. The reporter obtained a placement at Bank House and carried out secret filming there. The programme included secretly filmed footage of both carers and the children in their care. Ms P's children attended Bank House and were shown briefly several times in the programme.

Ofcom concluded that the secret filming at the nursery was, in principle, justified by an overriding public interest in the care provided by nurseries to young children generally and in the care provided at Bank House specifically. It found as follows:

- It is possible when broadcasters make investigative programmes of this kind that sometimes potentially highly personal or private footage is inadvertently obtained. Even under such circumstances (and where there is a public interest) the welfare of children is paramount. Where the security, privacy and protection of young children are concerned, programme-makers should strive to avoid obtaining such footage. However, in this case Ms P was unable to confirm that her own children had been filmed in their underwear.
- At issue was the level of care being given to young children. Parents were likely to wish to know about the programme in advance and to be aware that it might include footage of their children. This meant that the infringement of Ms P's privacy - by obtaining her personal details - was warranted.
- An unequivocal assurance was given by the programme makers that no footage would be included in the programme that identified either of Ms P's children. The BBC subsequently acknowledged that the assurance had not been implemented effectively enough. In these circumstances, the inclusion of footage of very young children in the programme was an infringement of their privacy, which was not justified by an overriding public interest.

Introduction

The programme, *The Real Story*, investigated the care of children in day nurseries and the effectiveness of Ofsted inspections of nurseries. One of a number of nurseries visited by an undercover reporter was Bank House Day Nursery ("Bank House"), a nursery in Radcliffe, North Manchester. The reporter obtained a placement at Bank House and

carried out secret filming there. The programme included secretly filmed footage of both carers and the children in their care. Ms P's children attended Bank House and were shown briefly several times in the programme.

Ms P complained that her privacy and that of her children was unwarrantably infringed in the making of the programme and that the privacy of her children was unwarrantably infringed in the programme as broadcast.

Complaint

Ms P's case

In summary, Ms P complained that her privacy and that of her children was unwarrantably infringed in the making of the programme in that:

a) The mother of another child at the nursery had informed her that footage was taken of the other child in his underwear. As all children at the nursery undress to their underwear to have an afternoon nap, Ms P was concerned that the BBC had such footage of her children.

b) The BBC accessed her confidential details.

In summary, Ms P complained that the privacy of her children was unwarrantably infringed in the broadcast in that:

c) Her children were shown several times on the programme and identified by several people, despite her telling the BBC that under no circumstances were her children to be shown and despite her receiving an "*unequivocal assurance*" from the programme makers that the programme would not include any footage that identified either of her children.

The BBC's case

In response to the complaint of unwarranted infringement of privacy in the making of the programme, the BBC said :

a) There was justification for filming at Bank House. Nurseries are regulated by Ofsted. All parents who use nurseries need to have confidence that the regulatory framework guarantees minimum standards of care for their children. If a nursery falls below the minimum standard and the regulator either does not know, or is otherwise incapable of ensuring that those minimum standards are being maintained, it is in the public interest for this to be exposed. The programme makers had received complaints from some parents of children at the nursery. After discussion with senior editorial executives, arrangements were made for an undercover reporter to take a secret camera into the nursery. The filming confirmed instances where staffing ratios fell below guideline levels, which were unlikely to have been discovered by Ofsted at the time, since Ofsted gave a month's notice of inspections. In general terms, any infringement of privacy that occurred in the making of the programme was warranted by the importance of the subject and by the necessity of obtaining clear evidence that Ofsted guidelines were being breached. Footage was obtained by placing a hidden camera in a bag or by filming through a lens attached to the reporter's clothing. The lenses captured whatever happened in front of them and there was no attempt to record specific images of partially clothed children.

b) The production team sought personal details in order to make contact with parents and make sure they were fully aware of what had happened and were able to make their own decisions. The relevant names and addresses were not passed on.

In response to the complaint of unwarranted infringement of privacy in the broadcast, the BBC said :

c) They regretted that, in the case of Ms P's children, there was a brief moment when a failure in the masking allowed some detail to be seen at the edges of the "blobbing". This happened when the children were in the background. The BBC accepted that this made it possible for people who knew the children to identify them, but did not believe that glimpses of fleeting partial images placed the children at risk by revealing their identities to viewers who did not already know them. The BBC's Programme Complaints Unit upheld this complaint and published its finding.

Ms P's comments

In response, Ms P said regarding her complaint of infringement of privacy in the broadcast:

c) She and her partner were not taken seriously by the BBC. Having refused permission for their children to be featured and having been assured that they would not be shown, the children did appear in the programme. Although an apology was received from the Director General, when requested by the family, none had been made by the programme makers. The published finding by the BBC's Programme Complaints Unit was inadequate.

The BBC's comments

The BBC said in response:

c) The *Real Story* series producer wrote to Ms P in response to her comments on their statement. He apologised for the failure of the blobbing to obscure Ms P's children completely and said that measures would be taken to ensure that such an error did not happen again. He also said that all the footage was being stored in a secure place pending the conclusion of all legal and regulatory complaints arising from the programme. The programme would not be shown again and all the material would be destroyed once proceedings were concluded.

Decision

Ofcom's statutory duties include 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 unfair treatment and unwarranted infringements of privacy in programmes included in such services.

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

This case was referred to Ofcom's Fairness Committee for consideration. The Committee's decision is set out below, by reference to each of the heads of Ms P's complaint. As a preliminary point, the Committee noted that documentary making is important in investigating matters of public concern, such as the care provided to children in nurseries. This is an appropriate subject for broadcasters to address in programmes (subject to the conditions of the Ofcom Broadcasting Code). It is, however, essential that programmes are accurate in all material respects so that unwarranted infringements of privacy are avoided. This is necessary for both participants and viewers. Where children are involved, the welfare of those children must be the paramount concern of the broadcaster.

The Committee considered that the secret filming at the nursery did amount to the infringement of the privacy of children concerned, as it was reasonable for parents to expect that the care of their children would be carried out in private. However, the Committee noted that the programme makers had information from two sources that they said were credible (details of which, in accordance with usual journalistic standards, were not provided to Ofcom) about inadequate staffing levels at Bank House. The Committee accepted that this provided sufficient justification for the BBC to send an undercover reporter to film secretly at the nursery. The Committee considered that there were some legitimate concerns raised about the nursery by what the reporter saw. It took the view that the secret filming at the nursery was, in principle, justified by a legitimate public interest in exposing weaknesses in the regulatory framework for nursery care by seeking to investigate specific instances of lapses of minimum standards at Bank House and that the public interest in the care provided to young children outweighed the nursery's right to privacy.

a) Ms P complained that footage of her children might have been filmed while they were asleep in their underwear. The Committee appreciates that in the making, by broadcasters, of investigative programmes of this nature it is possible that superfluous and sometimes potentially highly personal or private footage is obtained inadvertently. Even under such circumstances (and where there is a public interest) Ofcom considers that the welfare of children is paramount and that, where the security, privacy and protection of young children is concerned, programme-makers should strive to avoid obtaining such footage. However, in this case the Committee noted that Ms P's concerns were because she had received information from another parent. She was therefore unable to confirm that her own children had been filmed in their underwear.

The Fairness Committee therefore found no infringement of the privacy of Ms P's children in the making of the programme.

b) The complainant felt that the programme makers unwarrantably infringed her privacy by gaining access to her confidential details. The Committee considered that Ms P's privacy was infringed by the obtaining of her personal details from the nursery, because this information was provided to the nursery for its use in relation to its care of her children. The Committee carefully considered the reasons given for this by the BBC in their submissions, namely that they wished to ensure parents were fully aware of what had happened and could make their own decisions. Given that the programme set out to investigate the level of care being given to young children the Committee accepted that it was reasonable for the programme makers to have considered that parents were likely to wish to know about the programme prior to broadcast and to be aware that it might include footage of their children at the nursery. Having decided that there was a public interest in the issue being investigated (see above) which outweighed the infringement of privacy that had occurred, the Committee considered that it was not inappropriate for the programme makers to obtain such details.

The Fairness Committee found no unwarranted infringement of Ms P's privacy in this respect.

c) Ms P complained that, despite her request and an assurance given to her by the programme makers, the programme contained footage of her children in which their identity was not effectively obscured. The Committee noted that the programme included brief clips of Ms P's children in which their identity was not fully obscured. These images were fleeting and it was unlikely that the children would be identified by viewers other than those close to them, either within their families or amongst the family's immediate friends and neighbours. However it was clear from correspondence made available to Ofcom that Ms P had informed the programme makers that she had specific concerns that her children could be at risk if they were identifiable in the programme by a particular person. In response, Ms P had received an unequivocal written assurance from the *Real Story* series producer that no footage would be included in the programme that made either of the children identifiable. He also informed Ms P that her children were not central to any of the points the BBC wished to make in the programme.

Ms P complained to the BBC about the failure to adhere to the assurance before bringing her complaint to Ofcom. The BBC upheld her complaint, acknowledging that the assurance was not implemented effectively enough and that the children's faces were fleetingly visible. Ms P proceeded with her complaint to Ofcom as she felt that the BBC's finding was inadequate, that the BBC did not do enough to protect her children and did not apologise to her quickly enough.

Having viewed the footage and taking account of the factors set out above, the Fairness Committee found that the children's privacy had been infringed and this was not justified in the public interest, since the BBC had admitted that her children's involvement in the programme was not central to any points the BBC wish to make. Although the shots of the children were fleeting, in view of their ages, the very specific concern that Ms P. had raised with the BBC, the nature of the unequivocal assurance she had received, on which she should have been able to rely fully, and the insufficient obscuring of the children's faces in the programme, the Committee considered this to have been a particularly serious breach of the Fairness Code.

The Fairness Committee found an unwarranted infringement of the children's privacy in the programme as broadcast. Accordingly, Ofcom found that there was no infringement of Ms P's privacy or that of her children in the making of the programme, but that the privacy of her children was unwarrantably infringed in the programme as broadcast. This part of the complaint was upheld.

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

Not Upheld

Complaint by Mr Christopher Holdcroft Central News, ITV, 20 and 21 March 2006

Summary: Ofcom has not upheld this complaint of unfair treatment by Mr Christopher Holdcroft.

On 20, 21 and 22 March 2006, Central News broadcast a short three-part report about the growing industry of internet dating. The programme broadcast on 20 March 2006 featured entrepreneur Mr Darren Richards, who is the co-founder of Britain's biggest online dating service, DirectDating. The second programme, broadcast on 21 March 2006, included an interview with an internet dating service user Mr Chris Holdcroft.

Mr Holdcroft complained that it was unfair for DirectDating to have received a significant amount of publicity during the programme of 20 March 2006, while his request to feature his dating website had been ignored by the programme makers. Mr Holdcroft complained that the programme of 20 March 2006 contained no reference to his website, despite him providing details about his website during his interview.

Ofcom found as follows:

- Ofcom found that the editing of the programme of 21 March 2006 - including the decision not to include Mr Holdcroft's reference to his website - did not significantly alter the programme as broadcast in a way that would have made Mr Holdcroft's consent to participate invalid. Ofcom concluded that in the absence a guarantee relating to the inclusion of Mr Holdcroft's website in the programme as broadcast, the programme maker's decision to remove the reference during editing did not result in unfairness to Mr Holdcroft.
- In addition, Ofcom found the programme makers' decision to feature Mr Richards and his company in the programme of 20 March 2006 did not result in unfairness to Mr Holdcroft. Specifically Ofcom found: the content of the 21 March 2006 programme did not impact on Mr Holdcroft in an unfair way; Mr Holdcroft's consent to participate in the programme of 21 March 2006 was not affected by the content of the programme featuring Mr Richards; and Mr Holdcroft's participation in the programme of 21 March 2006 did not entitle him to any editorial control over the programme of 20 March 2006.

Ofcom concluded that the programmes of 20 March 2006 and 21 March 2006 did not result in unfairness to Mr Holdcroft.

Introduction

On 20, 21 and 22 March 2006, Central News broadcast a short three-part report about the growing industry of internet dating.

The programme broadcast on 20 March 2006 featured entrepreneur Mr Darren Richards, who is the co-founder of Britain's biggest online dating service, DirectDating. The programme provided statistics about the business and an interview with Mr Richards at DirectDating's Head Office was broadcast.

The second programme, broadcast on 21 March 2006, included an interview with an internet dating service user Mr Chris Holdcroft (referred to in the programme as "Chris"). The programme said that Chris had met many women online but was still "looking for love". Chris explained that he believed internet dating services were more interested in financial gain than uniting people in love.

On 22 March 2006, the final programme in the series interviewed a couple named "Karen" and "Craig" who had married after meeting each other online.

Mr Christopher Holdcroft (referred to in the programme of 21 March 2006 as "Chris") complained of unfair treatment in the programme as broadcast.

The Complaint

Mr Holdcroft's case

Mr Holdcroft complained that DirectDating had received a significant amount of publicity during the 20 March 2006 programme. Mr Holdcroft said this was unfair because his dating website did not receive any publicity during the 21 March 2006 programme. Mr Holdcroft said that his request to have his website featured in the 21 March 2006 programme was ignored by the programme makers.

ITV's case

In summary ITV responded to the complaint as follows:

ITV said the original idea for a report on internet dating started as an opportunity to tell the success story of Darren Richards: one of the most successful entrepreneurs from the Midlands. This idea grew into a three piece feature on various aspects of internet dating. The first report in the series was to feature the entrepreneurial success of Darren Richards and the second and third reports were to focus on users' experiences. The programme makers wanted to feature a couple who had found love and balance this with someone who had suffered a negative experience.

Purely coincidentally, one of the programme makers received a phone call from Mr Holdcroft who asked her if ITV was interested in telling his story. Mr Holdcroft spoke to the programme maker for over 30 minutes and the focus of his story was how he felt distressed and 'ripped off' financially and emotionally by the internet dating sites. The programme maker recalled that Mr Holdcroft mentioned he was starting up his own internet dating site. ITV said Mr Holdcroft did not request that this fact be mentioned in the piece, nor did the programme maker promise that it would be.

The programme maker asked Mr Holdcroft to email her his story, which Mr Holdcroft did on 14 February 2006. Ofcom had been provided with a copy of this email by Mr Holdcroft. ITV said Mr Holdcroft's email reflected the basis of the conversation between Mr Holdcroft and the programme maker. The broadcaster said that the focus of the email was Mr Holdcroft's negative internet dating experience, while the fact that he set up his own site was merely a peripheral three line afterthought.

ITV said that Mr Holdcroft knew DirectDating was to be featured, and also that the focus of his contribution in the series was his negative dating experience. ITV said it was editorially justified to feature Mr Richards' success story and that it would have been impossible to tell the story of Mr Richards without mentioning DirectDating's name.

In summary ITV said that the news item was edited fairly and in accordance with Mr Holdcroft's clear understanding as to the nature and purpose of his contribution. The programme makers did not promise Mr Holdcroft's that his website address would be broadcast and the decision not to include Mr Holdcroft's reference to his website was justified as it was not editorially relevant in an item on the downside of internet dating.

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 considering Mr Holdcroft's complaint, Ofcom had regard for both parties written submissions, relevant correspondence between the parties and a recording of the programme.

Mr Holdcroft complained that DirectDating received a significant amount of publicity during the 20 March 2006 programme. Mr Holdcroft said this was unfair because his dating website did not receive any publicity during the 21 March 2006 programme. Mr Holdcroft said that his request to have his website featured in the 21 March 2006 programme was ignored by the programme makers.

In his complaint to Ofcom Mr Holdcroft did not claim that the programme makers had broken a guarantee to include a reference to his website in the programme as broadcast. Mr Holdcroft simply stated that his request to have such a reference included in the programme had been "ignored". Mr Holdcroft's letter of complaint to Central News, which he copied to Ofcom, stated that "*part of the interview with me briefly focused upon a free internet dating facility I had recently set-up and which I am trying to promote. [The programme maker] was well aware of this and I was asked for details of this by [the reporter] as part of my interview... When my interview was broadcast, there was no mention whatsoever of my free internet dating facility*".

In their reply ITV stated that Mr Holdcroft had mentioned "*that he was starting up his own internet dating site but he did not request that this fact be mentioned in the piece and neither did the [programme maker] promise that it would be*".

After reviewing the material submitted by both parties, Ofcom likewise found no evidence of a guarantee about the inclusion of Mr Holdcroft's reference to his website.

In the absence of any evidence of such a guarantee Ofcom addressed itself two questions: did the decision not to include a reference to Mr Holdcroft's website (i.e. the editing by the programme makers) result in unfairness to Mr Holdcroft?; and, did the programme of 20 March 2006 featuring DirectDating result in unfairness to Mr Holdcroft in the programme as broadcast?.

The decision not to include a reference to the website

When assessing whether the editing of a programme is fair, it is important to note that a programme will not result in unfairness to a contributor simply because all of the views expressed by a contributor are not presented. In relation to Mr Holdcroft's complaint, Ofcom sought to determine whether the editing of Mr Holdcroft's interview, materially changed the nature of his contribution in a way that was unfair to him. In order to do this, Ofcom first assessed what Mr Holdcroft had understood his contribution would be. Then having established the nature of the programme that Mr Holdcroft had agreed to participate in, whether the programme as broadcast was significantly different in a way that may have reasonably affected Mr Holdcroft's original consent to participate.

Ofcom was provided with written correspondence between the parties both during the making of the programme and after the programme was broadcast. Ofcom noted that records of all the programme maker's dealings with Mr Holdcroft were not available for consideration (phone conversations between the parties were not recorded, and recordings of the untransmitted material including unedited recordings of Mr Holdcroft's interview had been recycled following broadcast of the programme). However in Ofcom's opinion, the material available provided sufficient information for it to be able to assess Mr Holdcroft's understanding about the programme's likely nature and content.

In Mr Holdcroft's email to the programme makers of 14 February 2006 - that started "*Here are the details you have requested*" - the complainant provided details about his general experience of online dating and the story of how he met his ex-fiancé over the internet. The three and a half page email was dedicated almost entirely to these two topics. At the very end of the email, Mr Holdcroft explained that in response to his disappointing encounters with commercial internet dating websites, he had decided to set up his own free dating website:

"I guess that is why I set-up my own completely free dating website. I cannot prevent someone from falling into the same traps that other internet dating websites have, but at least my customers will not be ripped-off financially."

In Ofcom's view, the email indicated that Mr Holdcroft was fully aware that the programme makers' interest in him as a contributor was to retell his story of meeting his ex-fiancé and his general difficulties of finding love via the internet. While Ofcom acknowledged that Mr Holdcroft mentioned the existence of his website in this email, Ofcom noted that details of the website were not provided and its mention appeared to be to emphasise his frustrations with internet dating (i.e. he was so frustrated that he decided to create his own website).

Mr Holdcroft's later correspondence with the programme makers also indicated that he understood how his story would be placed within the context of the three-part internet dating report. In his letter to ITV's Central News Editor dated 24 March 2006 Mr Holdcroft wrote:

"I should add that my part in this news programme was to show the 'downside' to internet dating."

Based on Mr Holdcroft's correspondence above, Ofcom was satisfied that when Mr Holdcroft agreed to participate in the programme, he understood that the main focus of his contribution would be his personal experiences of on-line dating, and these experiences would be used to illustrate the negative side to internet dating.

In Ofcom's view, for the reasons above, when the programme makers edited Mr Holdcroft's contribution, it was not unfair for the main focus of the report to be his story of meeting his ex-fiancé and his difficulties finding love on the internet. After viewing the programme as broadcast, it is Ofcom's opinion that it appropriately matched what Mr Holdcroft had been told about the programme's likely nature and content. In the circumstances, Ofcom found that the editing of the programme (including the decision not to include Mr Holdcroft's reference to his website) did not significantly alter the programme as broadcast in a way that would have made Mr Holdcroft's consent to participate invalid. Ofcom concluded that in the absence of a guarantee relating to the inclusion of Mr Holdcroft's website in the programme as broadcast, the programme maker's decision to remove the reference during editing did not result in unfairness to Mr Holdcroft.

DirectDating

Mr Holdcroft complained that DirectDating received a significant amount of publicity during the 20 March 2006 programme. Mr Holdcroft said this was unfair because his dating website did not receive any publicity during the 21 March 2006 programme.

In his complaint, Mr Holdcroft appears to reason that because the programme makers allowed another participant to refer to their dating website, it was incumbent on the programme makers to mention Mr Holdcroft's dating website and/or that he was entitled to have a reference to his dating website included as part of his contribution.

Ofcom noted that Mr Holdcroft's contribution to the report was significantly different from that of Mr Richards. Mr Richards' contribution concentrated on the success of his internet dating business, whereas Mr Holdcroft's contribution was about his experience of internet dating. Notwithstanding this difference, Ofcom was required to determine whether the broadcast of the programme on 20 March 2006 resulted in unfairness to Mr Holdcroft.

In reaching a decision, Ofcom noted that Mr Holdcroft did not participate in the programme of 20 March 2006 and was not referred to in any way, other than in the trailer for the following night's programme. Therefore the programme's content did not impact upon him and did not cause any direct unfairness to him.

In addition Ofcom found no evidence that Mr Holdcroft's participation in the programme of 21 March 2006 had been secured by a guarantee that the treatment of his contribution would be the same as, or similar to the treatment given to Mr Richards' contribution. (As noted above, Ofcom found that Mr Holdcroft had been adequately informed that his contribution to the programme of 21 March 2006 would be to recount his personal experiences of on-line dating, and these experiences would be used to illustrate the negative side to internet dating.) In Ofcom's opinion, the programme of 20 March 2006, did not alter the consent given by Mr Holdcroft for his participation in the programme of 21 March 2006.

In all the circumstances, Ofcom concluded that the programme of 20 March 2006 did not result in unfairness to Mr Holdcroft. Specifically Ofcom found: the content of the 20 March 2006 programme did not impact on Mr Holdcroft in an unfair way; Mr Holdcroft's consent to participate in the programme of 21 March 2006 was not affected by the content of the programme featuring Mr Richards; and Mr Holdcroft's participation in the programme of 21 March 2006 did not entitle him to any editorial control over the programme of 20 March 2006. Therefore Ofcom concluded the programme makers' decision to feature Mr Richards and his company in the programme of 20 March 2006 did not result in unfairness to Mr Holdcroft.

Ofcom concluded that the programmes of 20 March 2006 and 21 March 2006 did not result in unfairness to Mr Holdcroft.

Accordingly Ofcom has not upheld Mr Holdcroft's complaint of unfair treatment.

Mr Omid Omid Mazaheri
Horrors of the Dentist, SkyOne, 5 September 2005

Summary: Ofcom has not upheld this complaint of unfair treatment from Mr Omid Omid Mazaheri.

Mr Mazaheri was one of six dentists featured in the programme "Horrors of the Dentist". The programme reported that Mr Mazaheri was not a qualified dentist and had "scam [med] the NHS".

According to the programme Mr Mazaheri was arrested while working at a practice, owned by a qualified dentist named Dr Kidane. In the programme an NHS investigator stated "Mazaheri was treating patients assuming the identity of Dr Kidane".

The programme also included an interview with one of Mr Mazaheri's patients, Mr Rob Leigh. Mr Leigh said that during a dental procedure, performed by Mr Mazaheri, a broken bit of syringe fell down the back of his throat.

Mr Mazaheri complained of unfair treatment in the programme as broadcast.

Ofcom found as follows:

- a) The programme stated that Mr Mazaheri was "unlawfully practising dentistry", "unqualified", and had "no dental qualifications whatsoever". Ofcom found that this was fair as Mr Mazaheri was not qualified to work in England because he was not registered with the appropriate professional bodies.
- b) It was fair for the programme to state that Mr Mazaheri had "scam [med] the NHS". Court records showed that the complainant pleaded guilty to, and was convicted of, obtaining money transfer by deception from the NHS.
- c) It was fair for the programme to include the statement by an NHS investigator that Mr Mazaheri "had been treating patients, assuming the identity of Dr Kidane". Evidence presented at Mr Mazaheri's court case indicated that he had presented himself as Dr Kidane to patients and to a regulatory inspector.
- d) The inclusion of Mr Leigh's statement regarding his experience as a former patient of Mr Mazaheri was fair. Ofcom found the programme stated the facts of Mr Mazaheri's court case and presented these fairly.
- e) The portrayal of Mr Mazaheri was fair and based on facts established as a result of judicial proceedings and investigations carried out by the NHS Dental Fraud Team and the General Dental Council.

Introduction

This documentary examined what it described as "a gallery of horror dentists". Mr Omid Omid Mazaheri (referred to in the programme as "Mr Mazaheri") was one of six dentists featured in the programme. The programme reported that Mr Mazaheri was not a qualified dentist and had "scam [med] the NHS".

The programme included an interview with one of Mr Mazaheri's patients, Mr Rob Leigh. Mr Leigh said that during a dental procedure, performed by Mr Mazaheri, a needle (from a syringe) broke off and fell down the back of his throat.

According to the programme Mr Mazaheri was arrested while working at a practice, owned by a qualified dentist named Dr Kidane. In the programme an NHS investigator stated "Mazaheri was treating patients assuming the identity of Dr Kidane".

Mr Mazaheri complained of unfair treatment in the programme as broadcast.

The Complaint

Mr Mazaheri's case

In summary, Mr Mazaheri complained of unfair treatment in the programme as broadcast in that:

- a. he was in fact a qualified dentist;
- b. he had never tried to defraud the NHS;
- c. he had not stolen anyone's identity;
- d. he had not been negligent in any treatment and he had never put any type of instrument down anyone's throat; and,
- e. he had been wrongly portrayed as a horrible person and the programme was based on lies and half truths.

Sky's case

Sky responded to the complaint and provided the following documents in support of their statement:

- Court transcript of complainant's sentencing proceedings, 3 March 2005 ;
- Prosecution's opening for sentencing proceedings, 3 March 2005 ;
- General Dental Council report on Mrs Azari disciplinary hearing, 16 January 2006 (Mrs Azari was a qualified dentist who employed Mr Mazaheri at her dental practice).

In summary Sky responded as follows:

a) The programme had been fair to Mr Mazaheri when describing him as "unlawfully practicing dentistry", "unqualified" and as having "no dental qualifications whatsoever". Mr Mazaheri had been unable to produce adequate evidence of dental qualifications during an investigation of him by the NHS Dental Fraud Team. Though the complainant had been able to produce some evidence of Iranian qualifications during his court case (February 2005), serious doubts had been raised by the Prosecution as to the origin of those documents. In any event, Mr Mazaheri had not been registered with the appropriate professional bodies in England and therefore was not permitted to practise dentistry in England . Sky noted that the Judge presiding on Mr Mazaheri court case stated that patients of the complainant "*would have been alarmed to know that the person he was entrusting his dental health to was not registered, was not insured and therefore, perhaps not fully competent*".

b) Mr Mazaheri did defraud the NHS. On 3 February 2005 , the complainant pleaded guilty to five sample accounts of obtaining money transfer by deception from the NHS and was sentenced to two years in prison.

c) At Mr Mazaheri's sentencing proceedings, the Prosecution told of how Mr Mazaheri had held himself out to be Dr Kidane (a qualified dentist) to numerous patients and to an inspector for the Medicine and Healthcare Products Regulatory Authority. Sky noted the Judgement stated that, in relation to Mr Mazaheri's activities with Dr Kidane "*to all appearances this was your practice...you misrepresented yourself to your patients*". It was therefore fair for the programme to include the NHS inspector's statement that Mr Mazaheri was "treating patients assuming the identity of Dr Kidane".

d) The programme did not allege that Mr Mazaheri had been negligent or had put an instrument down someone's throat. Rather the programme featured an interview with one of Mr Mazaheri's patients who described his experience of being treated by the complainant. Whilst the programme did not directly allege negligence, if Ofcom took the view that the inclusion of Mr Mazaheri in the programme as broadcast could reasonably lead viewers to conclude that he was negligent, then this implied allegation of negligence was fair. This was because Mr Mazaheri acted negligently by: obtaining money by deception; practising dentistry unlawfully and without appropriate qualifications or insurance; and, misrepresenting himself to be a qualified dentist.

e) The complainant was described as a "horror dentist" not a "horrible person". This description was an accurate reflection of the findings of the court, the experiences suffered by the patients and the comments of the trial judge. The programme was not based on "lies and half truths", but featured interviews with a former patient of the complainant and an NHS investigator, both of who gave evidence during the complainant's trial.

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.

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.

a) Mr Mazaheri said he was a qualified dentist and complained that it was unfair for the programme to state that he was not. Ofcom noted that the programme as broadcast stated Mr Mazaheri was "unlawfully practising dentistry", "unqualified", and as having "no dental qualifications whatsoever". In reaching a decision as to whether it was fair for the programme to make such claims, Ofcom considered the court transcripts of Mr Mazaheri's sentencing proceedings; the prosecution's opening for sentencing proceedings; and the General Dental Council report on Mrs Azari's disciplinary hearing.

Ofcom also had regard for the fact that in order to practise dentistry in England a person must be registered with the appropriate professional bodies, such as the General Dental Council and/ or the General Medical Council. Without such registrations, regardless of a person's educational qualifications, it would be impossible to work as a qualified dentist in England .

The General Dental Council Committee found that Mr Mazaheri was not registered with the General Dental Council or the General Medical Council and so was not permitted by law to practise dentistry in England . It is therefore fact that Mr Mazaheri was not qualified to work as a dentist in England and by doing so his actions were unlawful.

In relation to his educational qualifications Mr Mazaheri did not supply Ofcom with evidence of any formal qualifications. However from the information provided by Sky, Ofcom noted that, during his court case, Mr Mazaheri presented dental qualifications from Iran . These documents were brought into question by the prosecution and, in Ofcom's opinion, they did not appear to wholly convince the Judge presiding over the case. The Judge stated: "*I do not know if you are qualified in Iran , you may be*".

Finally Ofcom noted that comments made about Mr Mazaheri in the programme as broadcast related solely to his activities while in England .

Taking the above information into consideration, Ofcom found it was not unfair for the programme to state that Mr Mazaheri was "unlawfully practising dentistry", "unqualified", or as having "no dental qualifications whatsoever". Ofcom considered that it was likely viewers would have understood from these comments that Mr Mazaheri was unqualified to perform the activities referred to in the programme, i.e. practise as a dentist in England . Ofcom found that this was fair as Mr Mazaheri was not qualified to work in England because he was not registered with the appropriate professional bodies. As a result Ofcom found no unfairness in this respect.

b) Mr Mazaheri stated that he has never tried to defraud the NHS and as a result the programme as broadcast was unfair. In reaching a decision, Ofcom noted that the complainant pleaded guilty to, and was convicted of, obtaining money transfer by deception from the NHS. In light of this evidence, Ofcom concluded that the programme's presentation of these matters was fair and reasonable. Ofcom therefore found no unfairness to Mr Mazaheri in this respect.

c) Mr Mazaheri complained that he did not steal anyone's identity. After viewing the programme, Ofcom noted that it was not claimed that Mr Mazaheri had stolen Dr Kidane's identity. Rather the programme included a statement by an NHS investigator that Mr Mazaheri had been "treating patients, assuming the identity of Dr Kidane". In reaching a decision about whether or not this statement was fair, Ofcom referred to the transcripts of Mr Mazaheri's sentencing proceedings and the prosecution's opening for the sentencing proceedings. The prosecution stated that:

"Kidane had sufficient credentials to allow the [East Dulwich] surgery to be set up, so that [Mazaheri] could practise either by impersonating him, or using him as a front from the practice in general"

and

"A number of patients were treated by [Mazaheri] at East Dulwich . [Mazaheri] impersonated Kidane, a dentist, in order to trick patients into consenting to treatment, and then paying for that treatment privately".

In relation to Mr Mazaheri's activities at the East Dulwich surgery, the Judge stated:

"Again at this surgery, you misrepresented yourself to your patients"

On the information available, Ofcom found that it was fair for the programme to include the statement by the NHS investigator that Mr Mazaheri had treated patients, assuming the identity of Dr Kidane. Accordingly Ofcom has found no unfairness in this respect.

d) Mr Mazaheri complained that the programme portrayed him as a negligent person, which was unfair. In particular Mr Mazaheri stated that he had never put any type of instrument down anyone's throat.

Ofcom first considered Mr Leigh's statement as it was included in the programme as broadcast:

"During the final cleaning out operation he explained that he had some very very clean water, that was put into a syringe and he had to clean everything out to wash it all out. That's when the needle broke and it went down the back of my throat causing me to sort of virtually stop breathing and him to panic".

Ofcom noted that this incident was presented as evidence by the prosecution at Mr Mazaheri's court case:

"The standard of [Mazaheri's] treatment was also demonstrated by patients' experiences at Norbury. Leigh saw [Mazaheri] at Norbury...During a root canal treatment an object was dropped into his throat and recovered with difficulty. It was apparently a broken bit of syringe."

In Ofcom's opinion, it was likely that as a result of Mr Leigh's statement viewers would have questioned Mr Mazaheri's ability to practise dentistry. As noted above, the General Dental Council found that Mr Mazaheri had not registered and was not qualified to practise as a dentist in England. Given this, Ofcom concluded that the inclusion of the statement by Mr Leigh did not result in unfairness to Mr Mazaheri as, at the time, he was in fact unqualified to perform Mr Leigh's dental procedure.


In relation to the complaint that the programme alleged Mr Mazaheri had been negligent, Ofcom did not believe the information contained in the programme about Mr Mazaheri, went beyond what was established by the courts or the General Dental Council. Ofcom considers that normally convicted criminals have no legitimate expectation of an opportunity to respond to claims that have already been presented to the court and proven to the satisfaction of the jury. Ofcom found that the findings of the court and the General Dental Council had been presented fairly. Accordingly it found that it was fair for the programme to include Mr Leigh's interview in the programme as broadcast.

e) Mr Mazaheri complained that he had been portrayed as a horrible person and that the programme was based on lies and half truths. In its consideration of this complaint, Ofcom had regard for the content of the programme, and the programme's information sources. Ofcom noted that the programme did not describe Mr Mazaheri as a "horrible person", but rather explained that Mr Mazaheri: obtained money by deception; practised dentistry unlawfully; and misrepresented himself as a qualified dentist. As noted above (decision at head a, b, c) Ofcom considered that the programme's portrayal of Mr Mazaheri in this way was fair. Further, Ofcom found no basis for the complainant's claim that the programme was based on lies and half truths. Ofcom noted the information contained in the programme was based on facts established as a result of judicial proceedings and investigations carried out by the NHS Dental Fraud Team and the General Dental Council. In the circumstances, Ofcom found no case of unfairness in relation to this head of complaint.

Accordingly, Ofcom has not upheld Mr Mazaheri's complaint of unfair treatment.

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