

Additional Material for chapter 3: Broadcast regulation

Section numbers from the book are used when relevant. Its content provides fuller explanations and context.

3.4.13.1 Informed consent

Case study: In 2007 Ofcom ruled that the makers of a programme *The Toughest Seaside Resorts in Britain*, featuring Saltcoats, Ayrshire, shown on Sky One, treated North Ayrshire Council and councillor Peter McNamara unfairly. It said the makers did not provide adequate information about the programme's likely nature when dealing with the council and Mr McNamara, who was interviewed. In an initial letter the programme's assistant producer told the council the intention was 'to celebrate "the best of British",' without disclosing the programme's title. Ofcom said local residents featured – one was shown wielding a knife and displaying fight scars - would inevitably have left viewers with an extremely negative impression of the resort. The programme also suggested that the resort's beach and seawater was polluted, although it had won an environmental award. Ofcom said the programme was likely to have misled the audience into forming an unduly negative impression of Saltcoats (*Ofcom Broadcast Bulletin*, No. 82, April 10, 2007).

3.4.16 Secret filming and recording—deception and privacy

Case study: In 2017 Ofcom cleared the BBC's *Watchdog* programme of a complaint by the RAC Group Ltd that an undercover investigation into its sales of car batteries to motorists was unfair and breached its privacy. The RAC has more than eight million members signed up to its services for motorists. The programme reported that three members said that the RAC patrol officer who attended when their car broke down told them it needed a new, replacement battery. These members said that, having bought a new one from the officer, they later discovered that the original battery, if fully recharged, should be restored to acceptable health. The BBC said that the *Watchdog* investigation was prompted by 'persuasive evidence' received from two RAC employees that patrol staff were giving poor or inaccurate advice about batteries. To investigate, *Watchdog* took 10 vehicles to 10 locations. Each vehicle's battery was then deliberately run down but – the programme reported – each battery had already been proved by industry standard tests to be 'good', needing only to be 'jump started and given a good run to charge them back up'. The programme included covertly filmed footage of the RAC patrols called out. In eight cases the patrol had said, after testing the battery, that it needed replacing, and quoted prices ranging - according to model - from £89.99 - £122. In a statement read out in the programme, the RAC stood by its patrols' tests and said it was 'not in the business of offering members batteries they don't need'. Ofcom said that practice 8.13 of the Broadcasting Code was complied with, because *Watchdog* – when it took the decision to covertly film RAC patrol employees - had *prima facie* evidence of a story in the public interest and reasonable grounds to suspect that covert filming would gain further material evidence, and because the covert filming was necessary to the programme's credibility and authenticity, in that it enabled the programme makers to show the first-hand

evidence of the RAC's diagnosis of batteries at the roadside. Ofcom said it would have been unlikely that the programme makers could have captured the advice of the RAC patrols speaking openly to motorists if filming had been overt. Also, *Watchdog* had complied with practice 8.9 because the (covert) means of obtaining this evidence had been proportionate in the circumstances. Ofcom ruled too that what was broadcast had complied with practice 7.9 of the Code because *Watchdog* had taken 'reasonable care' to present material facts in a way that was not unfair to the RAC. Part of the RAC's complaint was that the timeframe given it by *Watchdog* to respond to the serious allegations was unreasonable and 'deliberately designed to minimise' the RAC's ability to properly investigate the claims made. But Ofcom said that the BBC had sent the RAC a detailed letter about the allegations, giving it four-and-a-half working days to respond, and this was 'sufficient time'. Subsequently the BBC sent the RAC details of further case studies, giving it one-and-a-half working days to respond which was, Ofcom said, a limited amount of time. But – Ofcom said - these allegations were substantially similar to those already sent, which had been answered at length by the RAC before the programme was aired, so there was no unfairness in this regard. Ofcom also said that the RAC's statement provided to be broadcast in the programme had not made the point that its patrols' advice to replace a battery was based both on its 'current health' and on whether the patrols' tests indicated it was likely to fail soon. The RAC had stated this position in pre-transmission correspondence but - given that this point was not made its statement provided for the specific purpose of inclusion in the programme - *Watchdog* had fairly reflected in it the RAC's position on diagnosis of battery health. As regards the RAC's complaint that its privacy was breached by the undercover filming, Ofcom said that nothing private or sensitive about the RAC had been disclosed, pointing out that the RAC employees filmed were in its public-facing division – not involved in any back office or confidential function; that the filming had been in publicly accessible locations, and that anyone passing could have heard what these employees said to the undercover, *Watchdog* researchers who these RAC employees had thought were members of the public. As Ofcom did not consider the RAC as an organisation had a legitimate expectation of privacy in these circumstances, there did not need to be consideration of whether any infringement of it was warranted under the code's practice 8.14. The RAC employees featured did not complain to Ofcom. Their faces were obscured in what was broadcast but their voices were not disguised (*Ofcom Broadcast Bulletin*, No. 332, 3 July 2017).

See too **4.5 Doorstepping** in the Additional Material for ch. 4 on www.mcnaes.com for a case study which refers to the BBC's undercover filming in a car dealer's premises, and a case study in 2.4.4 in *McNae's* about *The Sun's* undercover investigation of cosmetic surgery clinics.

3.4.11 Due impartiality and due accuracy

Case study: In 2014 Ofcom ruled that Bangla TV, a channel for UK communities of Bangladeshi heritage, broke the Code's impartiality requirement in a news item, broadcast on 26 and 27 October 2013, about Lutfur Rahman, who was then executive mayor of Tower Hamlets, London. A news reporter, introduced by a newsreader as 'our chief reporter', said in the item: "I will serve the people" was his promise to the people. The people have recognised that he

has kept his promise. ... He has reached to the pinnacle of his success through his unparalleled contribution and determination.' Ofcom, adjudicating on a complaint that the item—which included an interview with Rahman—was an 'advertorial' for him, said that it breached rule 5.1, noting that the item did not include any viewpoint alternative to the positive content about him (*Ofcom Broadcast Bulletin*, No. 249, 3 March 2014). In 2015 an Electoral Commissioner, ruling in the High Court that Rahman was guilty of illegal electoral practices, removed him from the office of mayor (*Erlam and others v Rahman and another* [2015] EWHC 1215 (QB)).