

Adjudication

Complaint by Dr Colin Dale

***Why Did You Kill My Dad?*, BBC2, 1 March 2010**

Summary: Ofcom has not upheld this complaint of unfair treatment, made by Dr Dale.

BBC 2 broadcast this programme, a self-authored film by documentary-maker Mr Julian Hendy, whose father had been fatally stabbed by a mentally unstable man in 2007. It included a news conference at which a report of an enquiry (the Holiday enquiry) into the homicide of a young woman by a man being treated for mental health problems was published. The author of the enquiry report was Dr Dale.

Dr Dale complained that he was treated unfairly.

In summary, Ofcom found that:

- ***Viewers would have understood that the enquiry and its findings was presented as a typical example of this type of report and the programme makers took reasonable steps with regard to the material facts relating to both how the findings of this report compared with others of its kind and which, if any, members of Ms Stevenson’s family were contacted during the enquiry.***
- ***It was not incumbent upon the programme makers to have offered Dr Dale personally an opportunity to respond to the criticism that “the enquiry team didn’t even talk to Ms Stevenson’s closest family and he was not portrayed unfairly in the programmed as broadcast.***

Introduction

On 1 March 2010, BBC2 broadcast the documentary programme *Why Did You Kill My Dad?* The programme was a self-authored film by documentary-maker Mr Julian Hendy, whose father had been fatally stabbed by a mentally unstable man in 2007. The programme considered the scale of killings by mentally ill people in Britain and the care and supervision of mentally ill people who had gone on to kill. It looked at this subject by examining a number of cases where a mentally unstable or ill person had killed either someone known to him or her or a stranger (one of these cases was that of Mr Hendy’s father). The programme also considered the results of specific enquiries into the actions of particular NHS Mental Health Trusts in relation to several cases of killings by mentally ill people as well as a more over-arching enquiry which was attempting to draw a

national picture of the issue and thereby find ways to improve the mental health system's approach to the care of mentally ill people who might pose a risk to either themselves or others. Viewers were informed that the general enquiry was called the National Confidential Enquiry and was being conducted by Professor Louis Appleby. It was referred to in the programme as *the Manchester Enquiry* at least once and the programme included several extracts from an interview with Professor Appleby.

One of the cases included in the programme was that of Ms Tina Stevenson, a pregnant woman who was fatally stabbed by Mr Benjamin Holiday in 2005. Mr Holiday was receiving treatment for mental health problems under the Humber Mental Health Trust ("the Trust") at the time of the incident. The programme included footage of the panel involved in the enquiry into this incident ("the Holiday enquiry") presenting its findings. Dr Colin Dale, who is the Chief Executive of a mental health consultancy called Caring Solutions (UK) Ltd. ("Caring Solutions"), was one of the members of this panel. The programme included images of Mr Julian Hendy making a comment about the findings of the enquiry and Dr Dale responding to it.

Prior to this section of the programme, images of Mr Julian Hendy were seen on screen and his voice was heard saying:

"Evidence from the Manchester enquiry shows that at least one in five of all mental health homicides is preventable".

This comment was followed by an extract from the interview with Professor Appleby in which he said:

"Now then the question is does a mental health service in one part of the country learn from an enquiry publication from a different part of the country? And I think the general feeling is that that learning often doesn't happen. And the evidence is that if you look at the enquiry that happens the following year or a few years later in a different part of the country it often comes up with rather similar recommendations to the one that happened a few years ago, and that suggests that people don't easily learn from individual enquiry reports, and sometimes, I have to say, its because the individual reports themselves are not very good."

The last part of this extract was interspersed with images of the members of the enquiry panel in the Tina Stevenson case taking their seats.

Immediately, prior to the section of the programme showing the panel members giving their findings Mr Julian Hendy said:

"So I wanted to see for myself just how good some enquiries are."

Dr Colin Dale complained that he was treated unfairly in the programme as broadcast.

The Complaint

Dr Dale's case

In summary, Dr Dale complained that he was treated unfairly in the programme as broadcast in that:

- a) He was portrayed unfairly in that:
 - i) The juxtaposition of the comments of both Professor Abley and Mr Hendy with the presentation of the findings of the enquiry into Ms Stevenson's case unfairly implied that this was a poor-quality enquiry.
 - ii) The claim that Mr Hendy made in the programme that the enquiry team had not spoken to Ms Stevenson's closest family was incorrect.

By way of background, Dr Dale said that Ms Stevenson had had five children all of whom were in foster care. He added that the enquiry team had spoken to the three youngest children in the presence of a representative from the local social services unit and that the team had not met with either Ms Stevenson's two eldest children or her grandmother because Ms Stevenson had been estranged from each of them.

- b) It was unfair not to give him an opportunity to respond to the points made about this enquiry in the programme.

The BBC's case

The BBC noted its belief that the programme gave a fair and accurate summary of the enquiry conducted on behalf of the Yorkshire and Humber NHS Strategic Health Authority by Caring Solutions, and said that any implied criticisms of the various agencies involved were justified by the evidence, before going on to respond to each head of Dr Dale's complaint.

In summary, the BBC responded to Dr Dale's complaint that he was unfairly treated as follows:

- a) i) The BBC responded to the complaint that Dr Dale was unfairly portrayed in that the juxtaposition of the comments of both Professor Appleby and Mr Hendy with the presentation of the findings of the enquiry into Ms Stevenson's case unfairly implied that it was a poor-quality enquiry.

The broadcaster first set out the context in which it said the programme examined the nature of individual enquiries and reports. Specifically, it noted that both experts in the mental health system and the families of victims of homicides by the mentally ill have raised concerns that common and recurring problems are frequently identified by such enquiries but that there is a consistent failure to implement meaningful recommendations or learn from previous mistakes. The BBC noted that the programme interviewed Professor Louis Appleby, the National Director for Mental Health in England and Head of the National Confidential Enquiry into Suicide and Homicide by People with Mental Illness ("the Manchester Enquiry"), and said

that he told the programme that the system was seriously flawed. The broadcaster quoted from two extracts of the interview with Professor Appleby which were included in the programme to illustrate this point. It also noted that over the course of publishing five national reports about homicides by people with mental illness since 1996 the Manchester Enquiry had made a series of recommendations for how mental health services might be improved for all patients and had found that at least one in five of all such homicides could be prevented if services were improved.

The BBC said the programme highlighted both the positive and negative aspects of four reports into homicides in the Avon and Wiltshire area and independent enquiries into two other homicides elsewhere but that a review of these independent enquiries showed that all the reports identified the same common problems with the care of mental health patients. Notably problems with: record keeping; listening to families and carers, dealing with drug abuse and managing risk appropriately. The broadcaster noted that it was in light of these observations that the presenter, Mr Hendy, attended the news conference at which the findings of an independent enquiry, the Holiday enquiry, were being published and introduced the footage of this section of the programme by saying: *“So I wanted to see for myself just how good some enquiries are”*.

The BBC made the following observations in relation to the Holiday enquiry:

- the programme found that the Holiday enquiry identified many of the same failings recognised in previous enquiries;
- there were significant contributions to the enquiry from the Director of Patient Care at Yorkshire and Humber NHS Strategic Health Authority (“the SHA”), the Chief Executive of NHS Hull and the Chief Executive of the Humber Mental Health Trust (“the Trust”), as well as Dr Dale;
- these contributors accepted that there were eleven significant failings and missed opportunities in the care and treatment of Mr Holiday including failures with record keeping, risk assessment and talking to the family; but,
- they endorsed the conclusions of the enquiry in the report written by Caring Solutions.

Notably, the conclusions that:

- the actions of Mr Holiday were neither predictable nor preventable;
- no one was to blame;
- no one would be held responsible for the failings identified; and
- lessons had been learned.

The broadcaster said that it believed that this response [to a homicide by a mentally ill person] was a typical example of the repeated failure of mental health trusts to act on previous recommendations which had prompted the concerns of Professor Appleby and others. In light of this it argued that the fundamental point which viewers would have taken from this section of the programme was that independent enquiries and reports do not deliver lasting and meaningful change, not least

because a succession of enquiries declaring that lessons had been learnt had not prevented the later recurrence of the same basic faults they identified.

The BBC also said that it did not believe that viewers would have concluded that the authors of the report were being singled out for particular criticism. In addition, it noted that neither Dr Dale nor Caring Solutions were named and that only a very small number of viewers with specialist knowledge would have been aware that Caring Solutions carries out such enquiries or was responsible for this particular report. The broadcaster argued that therefore the programme was not unfair to Dr Dale or Caring Solutions.

Having made these arguments the BBC went on to say that if Ofcom disagreed with it and considered that some viewers may have been given the impression that the Holiday enquiry was an example of the kind of report which Professor Appleby had described as “*not very good*” it believed that this impression is supported by the facts.

It said that while the programme makers only highlighted the lack of contact with Ms Stevenson’s close family during the enquiry in the programme, they were aware of a number of other failings in the report. It then noted that independent enquiries of this sort should follow the relevant Department of Health official guidance (“the DoH guidance”) and NHS National Patient Safety Agency good practice guidance (“the NPSA guidance”) and that at its initial meeting on 27 June 2008 the Holiday enquiry had explicitly stated that it would follow the latter of these “as far as possible”.

The BBC then argued that the evidence gathered by the programme makers showed that the Holiday enquiry, conducted by Caring Solutions, failed to meet the official guidance and best practice in several key areas.

Timing of the enquiry

The BBC said that the DoH guidance says the start of an investigation “should take place as soon as possible after the adverse event” but that the Holiday enquiry panel held its first meeting over three and a half years after Ms Stevenson’s death and more than two years after both the completion of the internal investigation and the conviction of Mr Hoiliday. It added that in response to a query from the programme makers the SHA had said that it “agree[d] that there was a significant delay in commissioning the enquiry” and “reviewed the process to ensure that these cases are dealt with in a much more timely manner in the future”.

Handling of the victim’s family

The BBC said that the NPSA guidance says the first steps in commissioning such an enquiry should include: “informing the victim, perpetrator, carers and families about the investigative process and how they can be involved [and] arranging for them to meet the SHA and then the investigation team if wanted”. It added that there was separate guidance specifically confirming the importance of informing those most affected which said that in such cases “the needs of those affected should be of primary concern to the trust, the SHA and those undertaking any investigation” [and that] “any contact should be undertaken in a respectful, dignified and compassionate manner, and in a spirit of openness”.

The BBC said that Caring Solutions did not contact Mr Mahde Saleh (Ms Stevenson's partner and the father of her unborn children) or her next kin, namely Mrs Margaret Toms (her grandmother) and her two eldest children at any stage during the process.

It then noted that the NPSA guidance says that a meeting should be held with the victim and [or] their family to explain the investigation process and how they will be able to participate in it" and that prior to publication of the report adequate time should be given to "ensure the report is shared with interested parties [which] would usually include the perpetrator, the victim and their respective families".

The broadcaster said that it appeared no meeting was held with Ms Stevenson's family or her partner to explain the investigative process and that [in his complaint] Dr Dale had indicated that the enquiry team had met with her three youngest children "and discussed with them the findings of [its] enquiry. It argued that in saying this Dr Dale had acknowledged that the team only contacted these members of Ms Stevenson's family after the report had been completed and that this appeared to contradict his statement (given at the news conference for the publication of the report but not included in the programme) that "there has been contact with the family and they have been kept involved with all the events that we've been involved in".

In addition, the BBC said that in contrast to the guidance recommendations on report writing the Holiday enquiry report contained no description of how any members of Ms Stevenson's family were engaged in the process or support given to them following her death.

Consultation with staff involved in Mr Holiday's care

The BBC said that the NPSA guidance says that "a root cause analysis" (which is necessary in such an enquiry so "organisations can learn and put remedial action in place") should include interviews to find out what happened and how and why it happened. It then noted that despite Mr Holiday's history of mental ill health the Holiday enquiry held formal interviews with only five people, only three of whom had actually been involved in his case and dealt with him personally.

Errors of fact

The BBC said that the final report contains some factual errors and noted three:

- Mr Holiday's educational record is incorrect (Paragraph 8.4).
- The date given for Mr Holiday's transfer to a psychiatric unit is incorrect (Paragraph 8.9). The date was 11 September 2001, not 11 August.
- Paragraph 15.1.8 refers to a Department of Health document issued in 2007 called 'Best Practice in Managing Risk'. The document quoted is in fact from a report by the Royal College of Psychiatrists in June 2008.

- a) ii) The BBC responded to the complaint that Dr Dale was unfairly portrayed in that the claim that Mr Hendy made in the programme that the enquiry team had not spoken to Ms Stevenson's closest family was incorrect.

It reiterated that Dr Dale had confirmed in his complaint that the enquiry only spoke to Ms Stevenson's three youngest children and observed that this was not noted in the report. The broadcaster also said that the enquiry did not contact any other member of Ms Stevenson's family and that it was on this basis that the programme had included the following claim: "*But the enquiry team didn't even talk to Tina Stevenson's closest family*".

The broadcaster said that it believed that viewers would have understood the phrase "*closest family*" to refer to those with whom Ms Stevenson had the longest and most personal relationships. It added that in this case that would include her partner and the father of her unborn twins (Mr Saleh), the grandmother who had brought her up from her birth (Mrs Toms) and her two eldest children.

In addition, The BBC noted that this line of script was delivered over a still photo of Mr Saleh which it argued would have led viewers to conclude that he was among those who might be considered as closest family. The broadcaster then described the close links between Ms Stevenson and both Mr Saleh and Mrs Toms.

It noted that the Police interviewed Mr Saleh during the investigation into Ms Stevenson's death and described their relationship in positive terms. The BBC also noted that Mrs Toms was asked to formally identify Ms Stevenson's body and argued that it was incorrect to say (as Dr Dale had in his complaint) that they were estranged at the time of her death because in 2004 (following a period of estrangement) Ms Stevenson got back in contact with her grandmother and her two eldest children (who were being brought up by Mrs Toms). The BBC provided a copy of a letter from Mrs Toms in which she confirmed that the enquiry team had not contacted her and that she had only learned about the publication of the report when her granddaughter saw a news report about the enquiry on television.

The BBC also noted that the Police had allowed the enquiry team full access to all of its files which included details of the contact police officers had had with Mr Saleh and Mrs Toms. It added that at Mr Holiday's trial the judge had read out victim impact statements from Mr Saleh, Mrs Toms and Mrs Stevenson's two eldest children.

The broadcaster concluded by arguing that in light of these details it considered that the programme was accurate in saying that "*the enquiry team didn't even talk to Tina Stevenson's closest family*" and that therefore it was not unfair to Dr Dale or Caring Solutions.

- b) The BBC responded to the complaint that it was unfair not to give Dr Dale an opportunity to respond to the points made about the enquiry in the programme.

It argued that the key issue examined in the programme was the failure of the system to successfully implement the findings of successive independent enquiries, rather than the way in which such enquiries are conducted. The BBC said that the programme showed that the response to the findings of the Holiday enquiry was another example of this flaw in the system. It argued that therefore it was reasonable for the programme to indicate that, despite the intentions of those

involved, there appeared to be a strong likelihood that the same problems would keep occurring and further tragedies would result.

The BBC also said that the programme included only one specific criticism of the conduct of the enquiry (the lack of contact with Ms Stevenson's family) and that as it had already explained the programme maker had evidence to support this claim.

It added that it did not consider that it was necessary to offer Dr Dale an opportunity to respond to this claim because in its view the majority of viewers would have been unaware of who he was or his authorship of the enquiry report and would not have assumed that this criticism was aimed at Dr Dale or Caring Solutions. (In this context the broadcaster noted both Dr Dale's contribution to the programme and the fact that neither he nor his company was named). The BBC said that the only people who might have identified Dr Dale and associated him with the report were those who already knew him and knew that his company was involved in independent investigations into the care of the mentally ill.

While the BBC argued that the inclusion of this claim about the report in the programme did not raise a specific right of reply on Dr Dale's part, it noted that the programme makers did seek to confirm which members of Ms Stevenson's family were contacted during the enquiry by contacting NHS Hull (which contacted the SHA, which in turn contacted Dr Dale about this matter) to no avail.

Lastly, the BBC said that, in its view, if this one element of criticism had been put to Dr Dale, it is clear from his comments to Ofcom that, his response would have been inaccurate and misleading and the programme would have been obliged to explain to the audience that Dr Dale's belief that Ms Stevenson was estranged from her grandmother and two eldest children was mistaken.

Dr Dale's comments on the BBC's statement

Dr Dale's responded to the BBC's statement by means of a covering letter with short rebuttals to the over-arching arguments the BBC had made in regard to each of the three heads of complaint and an annotated copy of the BBC's statement with comments setting out his position on various aspects of that statement.

He first expressed his view that the BBC did not have access to sufficient information about the Holiday case - many of the documents regarding which were confidential - to claim, as it had in its statement, that any implied criticisms of the various agencies involved in the Holiday enquiry (including Caring Solutions) were justified by evidence. He then commented on the BBC's response to each head of the complaint.

Those that specifically relate to the entertained heads of complaint are summarised below.

Unfair portrayal - Juxtaposition comments by Prof. Appleby/Mr Hendy with presentation of enquiry findings

- a) i) Dr Dale said that the BBC was not qualified to assert that the enquiry report was of poor quality. He also said that it had not conducted a comparison with other reports

and the reasons the broadcaster had supplied for its view of the enquiry “were not substantial”.

Dr Dale said that in contrast to the BBC’s position that independent enquiries do not deliver lasting and meaningful change the recommendations of the Holiday enquiry were implemented and the Trust’s status was upgraded to ‘Excellent’ after inspection by its regulatory body, the Care Quality Commission (“the CQC”) which commented on its improved investigation and handling of incidents.

Dr Dale said that, as the BBC noted in its statement, the very small number of viewers with specialist knowledge [whom the BBC noted in its statement] would have been aware that Caring Solutions carried out such enquiries or that it was responsible for this particular enquiry are the people likely to consider tenders for such work from Caring Solutions.

Dr Dale said that Mr Hendy wasn’t qualified to judge the quality of the Holiday enquiry and posed the following questions: Had Mr Hendy analysed the sixty or so reports published each year to the extent that he was able to say that this one was poor in comparison and had Prof. Appleby described this particular report as “not very good”?

Dr Dale said that the timing of the enquiry was not under Caring Solutions control and implying that it was was misleading.

In response to the BBC’s claim that Caring Solutions failed to observe the relevant guidelines regarding contact with Ms Stevenson’s family Dr Dale described Caring Solutions’ position at the time of the enquiry in the following way:

- it had confidential information from social services about Ms Stevenson’s family which it was not appropriate to publish due to the distress it would have caused to them;
- it did not know the whereabouts of Mr Saleh;
- it was informed that the police did not know Mr Saleh’s location either;
- Ms Stevenson had not been married to Mr Saleh;
- the police had [initially] arrested Mr Saleh on suspicion of Ms Stevenson’s murder;
- Ms Stevenson had not wished to be involved with her grandmother, Mrs Toms, and her two eldest daughters in the period before her death.

Dr Dale responded to the BBC’s comment that the Holiday enquiry interviewed only five people about Mr Holiday (only three of whom had had direct contact with him). Dr Dale said that there was no need to re-interview staff who knew Mr Holiday because the enquiry team had statements from them and the internal investigation report and had spoken to staff who nursed him on three different units. He added that the team’s purpose was not to re-run the internal investigation but to comment upon it and that the three people it spoke to had been key to Mr Holiday’s care and assessment.

In response to the BBC’s comment that Mr Holiday’s educational record (within the report) was incorrect Dr Dale noted that this information came from records taken

while Mr Holiday was in a secure hospital and that he and his mother had seen the draft report and not asked for it to be corrected.

Unfair portrayal – Criticism that enquiry team had not spoken to Ms Stevenson’s closet family incorrect

- a) ii) Dr Dale said that the BBC’s acknowledged in its statement that the enquiry team did speak to Ms Stevenson’s three youngest children with whom she was still in contact [at the time of her death] and that the programme makers knew this prior to the broadcast. He reiterated that the confidential information available to the enquiry made it clear that Ms Stevenson was estranged from her grandmother and two eldest children and that the whereabouts of her partner with whom she had not resided were unknown. Dr Dale also said that the three children the enquiry spoke to were clearly Ms Stevenson’s “closest family”.

In response to the BBC’s statement that there was no reference to the enquiry’s meeting with Ms Stevenson’s three youngest children within the report, Dr Dale said that the meeting took place after the final report had been signed off by the SHA and therefore could not be referenced within it.

Dr Dale contested the BBC’s claim that on the basis that the audience would have understood “*closest family*” to mean those with whom Ms Stevenson had had the longest and most personal relationships this would include Mr Saleh, Mrs Toms and her two eldest children. He added that Ms Stevenson had run away from home and when in residential care had refused to go home during holidays and weekends for reasons he could not divulge.

Dr Dale noted that the description of Mr Saleh given during Mr Holiday’s trial came from a social worker who had been involved with Ms Stevenson and felt that she “must make a positive comment about this troubled person”.

In response to the BBC’s comment that victim impact statements were made by Mr Saleh, Mrs Toms and Ms Stevenson’s two eldest daughters, Dr Dale noted that her three youngest children did not make such statements.

Dr Dale said that in contrast to the BBC’s claim the enquiry team did not seek to establish whether or not Ms Stevenson had been estranged from part of her family, it had sought to do so through discussions with the Department for Social Services.

Dr Dale repeated his position that Ms Stevenson’s three youngest children were her closest family at the time of her death.

No opportunity to respond

- b) Dr Dale said that he considered the BBC had dismissed his complaint that it unfair that the programme makers did not offer him an opportunity to respond.

Dr Dale also asked why, if, as the BBC said, the heart of the programme was the failure of the system to successfully implement enquiry findings rather than the way such enquiries were conducted, it had focused on this particular report.

Dr Dale contested the BBC's position that the programme had shown that the response to the findings of the Holiday enquiry was another example of the flawed system and that therefore there appeared to be a strong likelihood that the same problems would keep occurring, again noting that after the report was published the CQC had audited the Trust and upgraded its status.

Dr Dale responded to the BBC's comment that while it believed there was nothing in the programme that required the programme makers to have given Dr Dale or Caring Solutions an opportunity to respond they had gone to considerable lengths to establish which members of Ms Stevenson's family Dr Dale had contacted.

He confirmed that the response given to the programme makers by NHS Yorkshire and Humberside which said that it was not appropriate to disclose information about Ms Stevenson's family which is confidential to the family members involved reflected Caring Solutions position.

The BBC's response to Dr Dale's comments

The BBC first noted that the programme makers reviewed several hundred independent enquiry reports and studied the national guidelines and best practice for the conduct and writing of such reports. It added that while doing so it identified a repeated failure in these reports to: apportion responsibility for errors or to make meaningful recommendations for change. As a result they concluded that many reports were poorly researched, frequently accepted the views of those responsible for the patient care at face value and often ignored the views of victims' families.

The broadcaster said that the programme featured a number of enquiry reports to illustrate the problem, including the Holiday enquiry report, but did not focus upon this particular report. It reiterated that neither Dr Dale nor Caring Solutions were mentioned in the programme and that although Dr Dale was shown as one member of the panel at a news conference, nothing in the programme identified him as the writer of the report. It also reiterated that the programme mentioned only one of the many shortcomings of the report, namely the decision not to contact Ms Stevenson's closest family, which it said was a clear breach of the official guidelines. It then pointed again to the ways in which it considered Dr Dale had not met the guidelines with respect to meeting Ms Stevenson's younger children.

The BBC's response to comments by Dr Dale that specifically relate to the entertained heads of complaint are summarised below.

Unfair portrayal - Juxtaposition comments by Prof. Appleby/Mr Hendy with presentation of enquiry findings

- a) i) The broadcaster said that it did not know what information was contained in the confidential documents about the Holiday case to which Dr Dale had referred but argued that Dr Dale had taken the views given to him about Ms Stevenson at face value and made no attempt to independently establish the truth of what he was told. It also noted that the information given to the programme makers by Ms Stevenson's partner, her grandmother and two eldest daughters ("her London-based family") and Humberside Police contradicted that provided by Dr Dale.

The BBC also argued that whatever views Ms Stevenson may have expressed to her social worker (regarding her relationship with her family) before her death had no bearing on Dr Dale's obligation to consider her family's views in carrying out the investigation.

The broadcaster said that Dr Dale's apparent suggestion that the CQC had upgraded the status of The Trust for quality of service to "Excellent" as a result of his report was incorrect and as evidence the BBC noted that:

- the most recent CQC report pre-dated the publication of the Holiday report;
- it did not show an improvement in the Trust's status but rather remained on the same level (Excellent) it had been given in the previous year; and
- it was the Trust itself and not the CQC which commented on the improved investigation and handling of incidents.

In response to Dr Dale's concern that he was identifiable to people likely to consider tenders for from Caring Solutions, the BBC reiterated its view that the programme was making a general criticism of enquiry reports rather than a specific one of the Holiday enquiry and report and again noted that neither Dr Dale nor Caring Solutions were identified as authors of the report or having responsibility for its conduct.

In response to Dr Dale's assertion that Mr Hendy wasn't qualified to judge the quality of the Holiday enquiry, the BBC noted the very considerable amount of research he had done prior to the programme and his years of experience as an investigative journalist. It also noted that his conclusions were echoed by leading figures in mental health care (and provided comments to this affect from five such figures).

The BBC said that it drew attention to the timing of the enquiry to illustrate one of the many areas where it failed to meet the guidelines and thereby support its contention that this was an example of one of the kind of enquiries which Prof Appleby had described as "*not very good*". It added that Dr Dale had mistaken the general criticism of these enquiries as a particular criticism of him and his company.

With regard to the issue of whether Dr Dale observed the relevant guidelines regarding contact with Ms Stevenson's family (notably that the needs of those affected should be of primary concern to the trust, the SHA and those undertaking any investigation) the BBC said:

- despite knowing of the intimate relationship Mr Saleh had had with Ms Stevenson Dr Dale failed to contact him because he did not know his whereabouts;
- the programme-makers managed to locate him without difficulty;
- Caring Solutions' enquiry did not start until more than two years after Mr Saleh's innocence in the matter of Ms Stevenson's murder had been established and therefore his arrest at the time was not relevant to whether he should have been contacted during the enquiry; and,

- regardless of the quality of the relationship between the victim and her family, the guidelines gave Dr Dale no warrant for the exclusion of her partner, grandmother and older children from the enquiry proceedings.

The BBC argued that in order to conduct an independent enquiry it was necessary for Dr Dale to have questioned people involved in Mr Holiday's care directly rather than have relied on their previous statements. It added that in its view the interviews that Dr Dale did conduct with nursing staff involved in Mr Holiday's care were inadequate in that, as the report indicates: they only dealt with staffing issues and not Mr Holiday's care or treatment; Dr Dale took the information given to him by the nursing staff at face value; and, Dr Dale only spoke to three people involved in Mr Holiday's care, whereas other independent enquiries routinely interview between 20 and 50 people involved in a perpetrator's care.

The BBC noted that Dr Dale did not contest the fact that Mr Holiday's educational record (within the report) was incorrect and argued that the reason he gave (that the information came from the records of one of Mr Holiday's social workers) highlighted the danger of failing to carry out independent checks. The BBC said that it was not surprising that, as Dr Dale had indicated, neither Mr Holiday nor his mother corrected the error because, as she had told the programme makers, Mrs Holiday was only talked through, rather than given a copy of, the report before its publication. The BBC added that even if she and her son had seen the draft report responsibility for any errors within it rested with its author.

Unfair portrayal – Criticism that enquiry team had not spoken to Ms Stevenson's closet family incorrect

- a) ii) The BBC said that the fact that Dr Dale had relied on what it believed to be erroneous information indicating that Ms Stevenson was estranged from part of her family illustrated that he did not see any requirement to conduct his own independent investigation into the circumstances of the tragedy. The broadcaster also repeated its view that the guidelines required Dr Dale to give Ms Stevenson's family an opportunity to participate in/have regular involvement with the enquiry (regardless of the quality of their relationship with her) and questioned if a single meeting with Ms Stevenson's three youngest children fulfilled this requirement.

The BBC argued that the fact that Ms Stevenson's three youngest children were met with after the draft report had been signed off showed that Dr Dale did not meet the requirements regarding the involvement of the victim's family throughout the process.

The BBC reiterated its view that Dr Dale's position regarding the degree of closeness between Ms Stevenson and her partner, grandmother and two eldest children was based on second-hand information and that regardless he had had an obligation to inform them of his investigation.

The BBC said that Dr Dale's comment that the description of Mr Saleh given during Mr Holiday's trial came from a social worker who had been involved with Ms Stevenson and felt that she "must make a positive comment about this troubled person", appeared to indicate that he believed the social worker in question had knowingly given a false statement to the police during a murder investigation. It then

noted that Dr Dale provided no evidence to support this claim and that the summary of evidence used in the trial of Mr Holiday (and previously provided to Ofcom by the BBC) included several descriptions of the close relationship between Mr Saleh and Ms Stevenson.

The BBC said that the fact that, as Dr Dale had noted, Ms Stevenson's three youngest children did not make statements during Mr Holiday's trial was irrelevant and the point it was making was that the fact that Ms Stevenson's partner, grandmother and two eldest children made such statements illustrated that they were her "closest family".

No opportunity to respond

- b) In response to Dr Dale's position that the programme had focused on the Holiday report, the BBC repeated its view that the Holiday enquiry report was presented as an example of the kind of enquiries which have consistently failed to present meaningful recommendations to prevent future tragedies or name those responsible for what went wrong. It added that the Holiday report was used because it was published during the production of the programme, it was only one of several which the programme examined and that the programme makers had no preconceived ideas about it prior to its publication as illustrated by the fact that they only received a copy of it thirty minutes before its publication.

Decision

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

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

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

In Ofcom's view the complaint at heads a) i) and ii) (that Dr Dale was unfairly portrayed due to the juxtaposition of certain comments and due to the criticism in the programme that the enquiry team had not spoken to Ms Stevenson's closest family) and head b) (that Dr Dale was unfairly not given an opportunity to respond to the points made about this enquiry in the programme) were linked in that they concerned the quality of the enquiry Dr Dale and his company, Caring Solutions, had produced. It therefore considered these heads of complaint together.

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

Practice 7.9 and Practice 7.11 of the Code. The first of these provides that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation. The second provides that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom noted that its role was to establish whether in relation to comments made in the programme about the enquiry (including the claim that the enquiry team had not contacted Ms Stevenson's closest family) the programme makers took reasonable care in relation to material facts, and whether the statements made constituted serious allegations of wrongdoing and if so whether it was incumbent upon the broadcaster to offer Dr Dale an opportunity to respond in order to avoid unfairness.

Ofcom considered the relevant section of the programme, in which the presenter, Mr Hendy, was shown attending a news conference during which the report of the independent enquiry into Ms Stevenson's murder by Mr Holiday (the Holiday enquiry) was published. It noted that prior to this section of the programme the presenter, Mr Hendy, said that "*evidence from the Manchester enquiry¹ shows that at least one in five of all mental health homicides is preventable*". Ofcom also noted that Professor Appleby was then shown talking about whether mental health services in one part of the country learn from independent enquiry reports into such cases published in other parts of the country. He said:

"Now the question is does a mental health service in one part of the country learn from an enquiry publication from a different part of the country. I think the general feeling is that that learning often doesn't happen, and the evidence is that if you look at the enquiry that happens in the following year, or a few years later in a different part of the country, it often comes up with rather similar recommendations to the one that happened a few years ago and that suggests that people don't easily learn from, from individual enquiry reports. And sometimes I have to say its because the individual reports themselves are not very good."

Immediately after this the presenter said:

"So I wanted to see for myself just how good some enquiries are".

The programme then showed the news conference at which the Holiday enquiry report was published. A panel of six people were seen presenting the report. Four of these people (one of whom was Dr Dale) were shown speaking about the findings of the enquiry. None of the people on the panel was named.

The programme established the background to the Holiday enquiry, i.e. Mr Hendy explained that Ms Stevenson was fatally stabbed by Mr Holiday who had been receiving treatment from the Humber Mental Health Teaching Trust at the time, and noted that "*four years later Humber Mental health Trust issued their enquiry report*".

¹ The programme had previously explained that the Manchester Enquiry was a national Government enquiry into Suicide and Homicide by people with mental health problems which was headed by Professor Appleby, then the National Director for Mental Health in England.

Mr Hendy said that *“there were lots of expressions of sympathy... ..but the enquiry team didn’t even talk to Tina Stevenson’s closest family”*.

Dr Dale was shown speaking about the treatment of Mr Holiday. He said:

We felt that he needed to be treated more assertively, more robustly than was the case. And I think we listed in the region of ten or eleven factors which we felt contributed to that root cause of under treatment in relation to Benjamin [Mr Holiday] and they all played their part if you like in the events which finally unfolded.

Mr Hendy then addressed the following comment to Dr Dale:

“So we’ve got failures with notes, failures with risk assessments, failures in talking to the family and failure to appreciate his violence”; and

Dr Dale responded:

“Those were all comments that we said at the time. I think there tends to be a combination or a culmination of sort of events, and tends to be more systematic failure rather than actual individual failures. And the things you cited were all what we called contributory factors. We said that there was a mixture of failures that contributed to that under treatment of Benjamin”.

After this Mr Hendy said:

“Yet curiously it found the homicide was neither preventable nor predictable”.

He also made two further comments:

“And certainly nobody was to blame, or was going to be held responsible for the systemic failings”; and,

“And they were all satisfied that lessons had been learned and there was little likelihood this could ever happen again”.

All three of these comments were interspersed with comments made by three other panel members to illustrate the points Mr Hendy made.

Ofcom recognised that the BBC argued that the programme was concerned with the quality of independent enquiries into homicides committed by people with a history of mental ill health in general rather than the Holiday enquiry report specifically.

Ofcom also recognised that in addition to the Holiday case the programme looked at several other cases where a mentally ill person had committed a homicide and that in each case it noted that there had been problems with the care of that person and that the families of the victims were either not contacted at all by the relevant mental health authority or were very dissatisfied with the level of contact and information which they received.

In addition, Ofcom observed that the programme included a number of mental health experts speaking about the care of the mentally ill and that two of them raised concerns

about a reluctance among mental health professionals to accept that violence is associated with serious mental illness. It also observed that Professor Appleby spoke about lessons “*everybody should be aware of*” and noted that there were common themes across the enquiry reports published in this country which often reflected “*fairly basic aspects of clinical care ...adequate care planning in the community ... the assessment in [the] management of risk and ... passing on information between agencies*”.

Finally, Ofcom observed that the programme included Mr Hendy’s comparison of his father’s case with others in Avon and Wiltshire and that he noted that all of the four other enquiries conducted in this area had found similar problems to those which were found in the care of the man who killed his father. Namely: “*problems with record keeping; problems with listening to families and carers; problems with dealing with drug abuse; problems with getting all the agencies to work together effectively; and, a failure to assess and manage the risk*”.

In light of the above observations, Ofcom considered that the programme set out the view that NHS Trust’s were failing to learn from previous experiences despite the carrying out independent enquires; that this failure was evident from the fact that these enquiries continued to find the same types of failures in the care of mentally ill people who had committed homicide; and, that sometimes the reports themselves were not very good.

Given this context, it was Ofcom’s opinion that viewers would have understood the programme to have indicated that the Holiday enquiry report was a typical example of one of these independent enquiry reports in that:

- its findings showed that many of the common errors previously noted in such reports had occurred in the care of Mr Holiday prior to his murdering Ms Stevenson (“*failures with notes, failures with risk assessments, failures in talking to the family and failure to appreciate his violence*”); and yet,
- the enquiry had unaccountably found:
 - Ms Stevenson’s homicide to be neither predictable nor preventable;
 - that no-one was to blame for the failures in the care of Mr Holiday that had lead to this incident; and,
 - that lessons had been learnt.

Ofcom noted that the programme’s implication that the Holiday enquiry report was a typical example of this type of report was based on both an examination of a wide range of other such reports and the testimony of mental health experts. It also noted that one of these experts was Professor Appleby who, at the time, was the head of an ongoing national enquiry which reviewed cases of homicide and suicide by people with mental health problems and recommended changes to improve the care of the mentally ill based on its findings.

In light of the research carried out by the programme makers and the fact that, as the programme made clear, the programme makers had sought the views of several people with relevant expertise, Ofcom concluded that no unfairness resulted to Dr Dale from the programme’s representation of the Holiday enquiry report as a typical example of this type of report.

While Ofcom considered that the programme presented the Holiday enquiry report as a typical example of this kind of report, it noted that, in addition to identifying the findings of the Holiday enquiry report that were similar to those of many other such reports, Mr Hendy also said that *“the enquiry team didn’t even talk to Tina Stevenson’s closest family”*.

Ofcom observed that this comment related specifically to the Holiday enquiry. It also observed that, as the BBC noted in its submissions, national guidelines indicated that the families of victims should be kept informed and enabled to contribute at all stages during enquiries of this nature. Ofcom recognised that this information about the national guidelines was not included in the programme. However, it considered that the fact that Mr Hendy had said that *“the enquiry team **didn’t even** talk to Tina Stevenson’s closest family”* [Ofcom’s emphasis] clearly implied that this was a criticism of the way in which the enquiry was conducted.

In light of these observations Ofcom considered that viewers would have understood this comment to have been an allegation of incompetence on the part of the Holiday enquiry in particular rather than one of several ways in which this enquiry and its findings were typical of its kind. Ofcom therefore went on to assess whether it was incumbent upon the programme makers to have offered Dr Dale an opportunity to respond to this specific allegation.

Ofcom noted that Dr Dale and his company Caring Solutions appeared to have gathered much of the material which appeared in the report. It also noted that Caring Solutions conducted a number of interviews with people involved in Mr Holiday’s care and was responsible for writing the report document. However, Ofcom also noted that, as the BBC observed in its response, the Director of Patient Care at the local Strategic Health Authority (“the SHA”) and the Chief Executive of the local Mental Health Trust (“the Trust”) also contributed to the enquiry. In addition, Ofcom noted that it was the SHA which commissioned the enquiry and which, as Dr Dale observed, was responsible for approving the final draft of the enquiry report. Lastly, it noted that Dr Dale appeared at the press conference with a panel of five other people and that while he was shown speaking about its findings so too were three other people on this panel.

Moreover, given that, like the other people on this panel, Dr Dale was not named in the programme, Ofcom believes that no one who did not already know Dr Dale well and know that his business had been asked to conduct the Holiday enquiry would have linked this specific criticism to Dr Dale personally.

In light of the above, Ofcom concluded that if it was incumbent upon the broadcaster to have offered an opportunity to respond to the criticism that the enquiry team *“didn’t even talk to Tina Stevenson’s closest family”* there were a number of individuals or representatives of organisations who could have provided such a response including people working for the SHA or the Trust.

In this context, Ofcom noted that after filming the press conference at which the Holiday report was published the programme makers emailed the local NHS Trust (which had invited the programme makers to attend the press conference, the same Trust which was responsible for the care of Mr Holiday and which had contributed to the enquiry) to raise several points about the enquiry. One of these points concerned contact with Ms Stevenson’s family. Specifically, the programme maker wrote “Mr [sic] Dale stated that

there had been contact with the Stevenson family and that they had been kept involved. We are aware that Miss Stevenson's family circumstances were diverse and wondered who in the family it might be that Mr Dale has been speaking to about the enquiry".

Ofcom also noted that a second email, sent to the Trust three days later on 10 May 2009, explained that "in a national newspaper on Friday the boyfriend of Tina Stevenson (and the father of her unborn twins) said that he was completely unprepared for the publication of the independent enquiry last week. Indeed the newspaper states that he knew nothing about it". The programme maker then asked if this was the case and noted her surprise if this was so.

Ofcom observed that the Trust contacted the SHA in order to seek answers to the points raised by the programme maker and that in turn the SHA contacted Dr Dale.

It also observed that in response to the first point regarding which members of Ms Stevenson's family were contacted during the enquiry the SHA, via the Trust, informed the programme makers that:

"It is not appropriate to disclose this information, which is confidential to the family members involved"

Ofcom then noted that in response to the follow-up point about Mr Saleh, the SHA (again via the Trust) said:

"We recognise the importance of keeping those affected by the enquiry informed. We make every effort to contact such individuals where contact details are available.

Ofcom therefore concluded that the programme makers offered the Trust an opportunity to clarify what if any contact the enquiry team had with Ms Stevenson's family and/or her partner and that, after consulting with both the SHA and Dr Dale, the response that the Trust provided to the programme makers gave no material clarification regarding these matters.

In addition, Ofcom observed that the programme makers took several other steps to establish the facts in relation to this matter. Notably, they studied the enquiry report for references to any contacts with Ms Stevenson's family or partner during the enquiry and found none and, they contacted Mrs Margaret Toms (Ms Stevenson's grandmother and the person who had looked after her when she was a child). Ofcom noted that Mrs Tom's wrote a letter to the programme makers (a copy of which was provided by the BBC) in which she said that she and Ms Stevenson's two eldest children (who lived with her) only became aware of the enquiry report when its publication was featured on a television news programme.

Given the following factors:

- that the enquiry report made no mention of any contact with Ms Stevenson's family;
- that Mrs Toms provided testimony stating that neither she nor Ms Stevenson's two eldest children were contacted; and,

- that when given an opportunity the SHA responsible for the enquiry (which had in its turn contacted Dr Dale) neither provided any information to the programme makers regarding which members of Ms Stevenson's family, if any, were contacted or nor questioned the veracity of the newspaper report which claimed that Mr Saleh had not been contacted during the enquiry,

Ofcom concluded that the programme makers took reasonable steps to establish to what extent, if any members of Ms Stevenson's family were contacted during the enquiry.

In light of its conclusions that viewers would have understood that the Holiday report was presented as a typical example of this type of report and that the programme makers took reasonable steps with regard to the material facts relating to both how the findings of this report compared with others of its kind and which, if any, members of Ms Stevenson's family were contacted during the enquiry, Ofcom found that it was not incumbent upon the programme makers to have offered Dr Dale personally an opportunity to respond and that he was not portrayed unfairly in the programmed as broadcast.

Accordingly Ofcom has not upheld Dr Dale's complaint of unfair treatment.