

# Ofcom Content Sanctions Committee

<b>Consideration of sanction against</b>	Channel Four Television Corporation in respect of its service Channel 4. <sup>1</sup>
<b>For</b>	Breaches of the Ofcom Broadcasting Code: <ul style="list-style-type: none"><li>• Rule 2.3 – Broadcasters must when applying generally accepted standards ensure that material which may cause offence is justified by the context; and</li><li>• Rule 1.3 – Children must also be protected by appropriate scheduling from unsuitable material.</li></ul>
<b>On</b>	15, 17, 18, 19 January 2007
<b>Decision</b>	To direct Channel Four (and S4C) to broadcast a statement of Ofcom’s findings in a form determined by Ofcom immediately before the start of the broadcast of the first programme of the eighth series of <i>Big Brother</i> on Channel 4; immediately before the start of the broadcast of the first re-versioned programme of the eighth series of <i>Big Brother</i> on Channel 4; and immediately before the start of the broadcast of the programme in which the first eviction from the eighth series of <i>Big Brother</i> occurs on Channel 4.

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<sup>1</sup> This sanction also applies to Sianel Pedwar Cymru (“S4C”) which transmits Channel 4’s (*Celebrity Big Brother*) series on its service.

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# Summary

- 1.1 On the basis detailed in the Decision, under powers delegated from the Ofcom Board to Ofcom's Content Sanctions Committee ("the Committee"), the Committee has decided to impose a statutory sanction on Channel Four (and S4C) in light of the serious nature of the failure by Channel Four to ensure compliance with Ofcom's Broadcasting Code.
- 1.2 This adjudication under the Broadcasting Code relates to the fifth series of *Celebrity Big Brother*. *Celebrity Big Brother* is produced by Brighter Pictures, part of Endemol UK plc ("Brighter Pictures"), and is broadcast by the Channel Four Television Corporation ("Channel Four" or "the broadcaster") on its Channel 4 service. The Channel Four *Big Brother* series are also broadcast by S4C on its service. It started on 3 January 2007 and ran 26 days until 28 January 2007.
- 1.3 *Big Brother* is a reality based television show where celebrity contestants are confined together in a controlled environment ("the House"), for a set amount of time. Every room (with the exception of the toilets and shower rooms) and every contestant is recorded by cameras and microphones. Recording of all actions and conversations occurs 24 hours a day. Each week, contestants are nominated for eviction from the House. The ultimate decision as to who is to be evicted is then left to the public by means of voting via telephone or text. The last housemate left at the end of the series is the winner of the show.
- 1.4 As the fifth series progressed, disagreements began to develop between some of the housemates, in particular, between Shilpa Shetty on the one hand and Jade Goody, Jo O'Meara and Danielle Lloyd on the other. Viewers, and others who were aware of the events in the House, became increasingly concerned that Shilpa Shetty was being subjected to bullying, some alleging that the bullying was racist. Ofcom received just over 44,500 complaints about *Celebrity Big Brother 2007*.
- 1.5 Under the Communications Act 2003, Ofcom has a statutory duty to set standards for the content of broadcast television programmes in a Code with which broadcasters must comply. Ofcom must ensure broadcasters comply with the Code and perform its duties in light of the European Convention of Human Rights which provides for the right to freedom of expression. Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these rights in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.
- 1.6 In setting standards for the content of broadcast television programmes, Ofcom requires broadcasters to ensure that "generally accepted standards" are applied to the content of television programmes so as to provide adequate protection from the inclusion of offensive or harmful material. Under Ofcom's Broadcasting Code ("the Code"), broadcasters are required in applying these generally accepted standards to ensure that material which may cause offence is justified by the context. Context includes such matters as the editorial content of the programme, the service on which it is broadcast and the likely expectations of the audience.

- 1.7 In making its adjudication, Ofcom has taken account of representations made by Channel Four.<sup>2</sup>
- 1.8 Channel Four is a public service broadcaster with a unique statutory remit to provide a broad range of high quality and diverse programming which, in particular: demonstrates innovation, experiment and creativity in the form and content of programmes; appeals to the tastes and interests of a culturally diverse society; makes significant contribution to meeting the need for the licensed public service channels to include programmes of an educational nature and other programmes of educative value; and exhibits a distinctive character.<sup>3</sup>
- 1.9 Channel Four's representations are fully considered and addressed in this adjudication below. In summary, Channel Four submitted that: the incidents broadcast were responsibly handled; appropriately scheduled and edited and justified by the context being within the expectations of the *Big Brother* audience. It maintained that the series had been in keeping with its statutory remit. It accepted and regretted that many viewers had been offended but submitted that important freedom of expression issues were at stake. Channel Four considered the debate stimulated by what occurred had been of "undeniable public value" regardless of the fact that it had not set out to create a national debate about racism. It believed that the broadcasts had been fully in compliance with the Code.
- 1.10 In considering whether there had been breaches of the Code, Ofcom recognises that material that is potentially offensive or harmful may be properly broadcast in compliance with the Code so long as its inclusion is justified by the context so as to provide adequate protection to members of the public. The Code does not prohibit the broadcast of potentially offensive or harmful material in any circumstances. What is essential for compliance with the Code is the way in which such material is transmitted by the broadcaster. Accordingly, in considering whether Channel Four has breached the Code in this instance, Ofcom's starting point is not that material which is potentially offensive or harmful has been transmitted, but whether such material has been appropriately handled by Channel Four.
- 1.11 Ofcom has considered whether a number of events in the House were in compliance with the Broadcasting Code. It has found that there were three events which were broadcast during the series which were in breach of the Code (see paragraphs 8.1 – 8.38 below for a full explanation of the breach findings). Ofcom has found that in relation to the following three incidents, Channel Four failed to appropriately handle the material so as to adequately protect members of the public from offensive material:
- Remarks about Cooking in India (transmitted 15 January 2007)
  - "Fuck off home" comment (transmitted 17 January 2007)
  - "Shilpa Poppadom" comment (transmitted 18 and 19 January 2007)
- 1.12 Ofcom has also found that in relation to a number of other incidents, Channel Four was either not in breach of the Code and on one occasion, Ofcom has found that the issue was resolved. See paragraphs 6.1 to 7.12 for Ofcom's reasoning on these incidents.

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<sup>2</sup> S4C has relied on Channel Four's representations to Ofcom.

<sup>3</sup> Section 265(3) Communications Act 2003

- 1.13 *Big Brother* is an entertainment programme and viewers therefore perceive what happens in the House as “entertainment”, they also view it as “reality” i.e. they view the events as real events happening to real people. This means that the audience can genuinely become concerned for the welfare of housemates, but in the knowledge and expectation that any serious problematic or anti-social behaviour will be appropriately dealt with. This has become one of the generally accepted standards of *Big Brother*.
- 1.14 Channel Four in the *Big Brother* programme format has established various editorial mechanisms through which inappropriate behaviour in the House can be challenged. For instance, through discussion in the Diary Room, *Big Brother* can confront and reprimand housemates about their behaviour thereby acting as an important arbiter to what the public may perceive to be offensive language or behaviour. Reactions by housemates, *Big Brother* interventions and the Diary Room are all part of the well understood architecture of the programme and the context within which Channel Four is able to appropriately broadcast potentially offensive material.
- 1.15 However, in relation to the incidents outlined in 1.11 above Channel Four failed adequately to apply generally accepted standards by justifying the inclusion of the offensive material by its context. It is Ofcom’s view that when these three incidents were broadcast, Channel Four failed sufficiently to address the potential for offence or left this behaviour unchallenged. This resulted in offence being caused to a very large number of viewers.
- 1.16 Exceptionally, in the circumstances of this case, Ofcom judged that the relationship between the broadcast incidents and Channel Four’s overall awareness of the events within the House was relevant in terms of compliance. We therefore asked Channel Four to submit any relevant untransmitted material. In deciding whether to impose a sanction, Ofcom has taken into account, in addition to the incidents broadcast, this footage from the House which was not transmitted.
- 1.17 The events from this untransmitted footage occurred before the *broadcast* of two of the incidents (one of which was broadcast twice) which Ofcom has found to be in breach of the Code. This material included conversations between housemates which were instructive of the relationships, tensions and attitudes in the House at this particular time and were logged as “racist” at the time by Brighter Pictures, the producer.
- 1.18 Channel Four was not aware of this material at the relevant time and therefore was not able to take account of it when making its editorial decisions as to how to handle the broadcast of these two incidents. Channel Four has submitted that this was due to a breakdown in communications between itself and Brighter Pictures, which the broadcaster considers resulted from a failure by the producer to follow established procedures and therefore draw the material to Channel Four’s immediate attention. Whether this was the case or not, this does not excuse Channel Four from its obligations under its licence to comply with the Code. Ofcom considers that Channel Four’s compliance processes were clearly not adequate in light of this failure and that Channel Four should have been more proactive at this time in ensuring that it was aware of all relevant material.
- 1.19 Ofcom has found that there was a serious failure within Channel 4’s compliance procedures for the series which meant that it was not fully aware of the events in the House so that it could handle potentially offensive material through its editorial mechanisms. In our view, if Channel 4 had seen this material, at the time it was

recorded, it would have handled the unfolding situation in the House very differently in order to ensure compliance with the Code.

- 1.20 Ofcom also considers that Channel Four failed in its handling of the incidents broadcast to take account of the cumulative effect of the events in the House. The audience's understanding of the events in the House and, in particular, the alleged racist bullying, was changing as the series developed and therefore comments which may in other circumstances have been interpreted as "borderline" in terms of offence became much more offensive given what was happening in the House, as well as beyond the House, in the outside world.
- 1.21 **Ofcom considers that the breaches by Channel Four of the Broadcasting Code when taken together show a serious failure to apply generally accepted standards.**
- 1.22 **In light of Ofcom's findings and having taken into account the representations made by Channel Four, and all the evidence before it, the Committee has concluded that it should impose a statutory sanction on Channel Four (and S4C).**
- 1.23 The Committee has taken into account in its decision as to the appropriate sanction to be applied both the fact that Channel Four acted promptly as soon as it became aware of the untransmitted material in exercising control over subsequent events in the House; and has carried out a full review of its compliance programme and put in place more comprehensive compliance procedures and guidelines.
- 1.24 The Committee has also taken into account the fact that the breaches did not result from deliberate, reckless or grossly negligent actions by Channel Four but rather represents a serious error of judgment in relation to material that requires the most careful handling.
- 1.25 The Committee has a range of statutory sanctions available to it. In this case the Committee considers that the most appropriate sanction is to require Channel Four (and S4C) to broadcast a statement of Ofcom's findings in a form determined by Ofcom. Furthermore, the Committee decided that this should be broadcast on three separate occasions when it would reach the highest number of viewers. That is, at the start of the first programme of the new series of *Big Brother* and at the start of its re-versioned programme the following morning and also at the start of the first eviction show.
- 1.26 The Committee would take very seriously any future failure of compliance leading to a similar situation as that which the Committee has dealt with in this case.

# Background

- 2.1 This adjudication under the Broadcasting Code relates to the fifth series of *Celebrity Big Brother*. *Big Brother* is produced by Brighter Pictures, part of Endemol UK plc (“Brighter Pictures”) and broadcast by the Channel Four Television Corporation (“Channel Four” or “the broadcaster”).
- 2.2 *Big Brother* is a reality based television show where celebrity contestants are confined together in a controlled environment, the ‘House’, for a set amount of time. The fifth series started on 3 January 2007 and ran for 26 days.
- 2.3 As part of the show, contestants in the House must undertake regular tasks. Each week, contestants are nominated for eviction from the House. The ultimate decision as to who is to be evicted is then left to the public by means of voting via telephone or text. The last housemate left at the end of the series is the winner of the show.
- 2.4 Every room (with the exception of the toilets and shower rooms) and every contestant is recorded by cameras and microphones. Recording of all actions and conversations occurs 24 hours a day. The constraints imposed on contestants, the nominations and evictions and the knowledge that they are under 24 hour scrutiny and must gain the public vote to win, can create a highly emotive atmosphere, where contestants are regularly brought into conflict with each other. Viewers are now very familiar with the format of the show and how Big Brother interacts with participants in the House.
- 2.5 The entire fifth series was broadcast on Channel Four (and on S4C in Wales) and E4.
- 2.6 An edited version of the previous day’s main events is broadcast on Channel 4 generally between 21:00 and 22:00 (“the main show”)<sup>4</sup>. That show itself is edited for *pre-watershed* purposes and retransmitted at around 07:30 the following morning on Channel 4 (“the re-versioned show”)<sup>5</sup>. Live evictions also take place on Friday nights and the final Sunday of the series. In addition, parts of the day’s events are streamed live on E4. These live programmes have a 15 minute delay for compliance purposes.
- 2.7 There are also other ancillary programmes which explore and discuss events in the House:
- Big Brother's Little Brother (E4: Tuesday-Friday 19:30, Channel 4: Sunday 14:00)
  - Big Brother's Big Mouth (E4: Sunday-Friday 22:00)
  - Diary Room Uncut (E4: Saturday 22:00 & Monday 19:30)
  - Big Brother's Big Brain (Channel 4: Monday 23:00)

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<sup>4</sup> The main show was transmitted on S4C normally at 22:00

<sup>5</sup> The re-versioned show was transmitted on S4C normally at 07:30

- 2.8 In the fifth series, in relation to this Adjudication, the main contestants present in the House were Jackiey Budden, Jade Goody, Danielle Lloyd, Jack Tweed, Jo O'Meara, Jermaine Jackson and Shilpa Shetty. Others also present in the House were Cleo Rocos, Ian Watkins, Carole Malone, Leo Sayer and Dirk Benedict. On 28 January 2007, Bollywood actress Shilpa Shetty was voted the winner of *Celebrity Big Brother* with a reported 63% of the final vote.
- 2.9 As the fifth series progressed, disagreements began to develop between some of the housemates, in particular, between Shilpa Shetty on the one hand and Jade Goody, Jo O'Meara and Danielle Lloyd on the other. This culminated in a full-blown row between Jade Goody and Shilpa Shetty on Tuesday 16 January 2007 seemingly over an Oxo cube. As the events unfolded, viewers, and others who were aware of the events in the House, became increasingly concerned that Shilpa Shetty was being subjected to bullying, some alleging that the bullying was racist.

### **Complaints received by Ofcom**

- 2.10 Ofcom received just over 44,500 complaints about *Celebrity Big Brother 2007*, an unprecedented number of complaints received by it (or any previous broadcasting regulator) in relation to any programme or series. The majority of these complainants (around 40,000) were concerned about alleged bullying and material of a potentially racist nature.
- 2.11 The events in the House became the subject of public debate and sparked widespread anger and demonstrations in India where the alleged racism was reported on the news. The series was also subject to an extensive press coverage which spread worldwide, and permeated even the political arena; being the subject of questions in the House of Commons and causing controversial tension between the British and Indian Governments.
- 2.12 The complaints fell into a number of general categories. In summary they contained allegations of:
- Bullying;
  - Racist abuse, language and behaviour, including racist bullying;
  - The risk of emulation both by children and adults of racist abuse, language and behaviour, and/or bullying;
  - A lack of appropriate intervention by Channel Four; and
  - Incitement to crime (for example, racial hatred).
- 2.13 In light of the number of complaints received about this series, Ofcom regrets that it is unable to respond individually to each complainant.

# Legal Framework

## The Communications Act 2003

- 3.1 Ofcom has a duty under section 319 of the Communications Act 2003 (“the Act”) to set standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives.
- 3.2 The standards objectives are set out in section 319(2) of the Act. They include:
- That persons under the age of eighteen are protected (section 319(2)(a));
  - That material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services (section 319(2)(b));
  - That generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material (section 319(2)(f)).
- 3.3 In discharging its functions, Ofcom’s principal duties are to further the interests of citizens in relation to communications matters and the interests of consumers (section 3(1)) and to secure a number of other matters including:
- The availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests (section 3(2)(c));
  - The maintenance of a sufficient plurality of providers of different television and radio services (section 3(2)(d));
  - The application in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services (section 3(2)(e)).
- 3.4 In performing these duties, Ofcom is also required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles representing best regulatory practice (section 3(3)); and where relevant, a number of other considerations including:
- The desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom (section 3(4)(a));
  - The need to secure that the application in the case of television and radio services of standards relating to harm and offence is in the manner that best guarantees an appropriate level of freedom of expression (section 3(4)(g));

- The vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection (section 3(4)(h));
- The desirability of preventing crime and disorder (section 3(4)(j));
- The different interests of persons in different parts of the United Kingdom, of different ethnic communities within the United Kingdom (section 3(4)(l)).

## The Human Rights Act 1998

- 3.5 Under section 6 of the Human Rights Act 1998, there is a duty on Ofcom (as a public authority) to ensure that it does not act in a way which is incompatible with the European Convention of Human Rights (“the Convention”).
- 3.6 Article 10 of the Convention provides for the right to freedom of expression. It encompasses the broadcaster’s right to “*impart information and ideas*” and also the audience’s “*right to receive information and ideas without interference by public authority*”. Such rights may only be restricted if the restrictions are “*prescribed in law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary*” (Article 10(2) of the Convention).
- 3.7 Ofcom must exercise its duty in light of these rights and not interfere with the exercise of these rights in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

## The Ofcom Broadcasting Code

- 3.8 Standards set by Ofcom in accordance with section 319 of the 2003 Act are set out in Ofcom’s Broadcasting Code (“the Code”) which came into force on 25 July 2005.<sup>6</sup>
- 3.9 Accompanying Guidance Notes to each section of the Code are published and from time to time updated, on the Ofcom website.<sup>7</sup> The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.
- 3.10 By virtue of section 325 of the Act, a condition is included in a broadcaster’s licence requiring the broadcaster to secure observance with the Ofcom Code in connection with the provision of their services and the programmes included in their services.
- 3.11 Channel Four is required under its licence to ensure that the programmes it transmits comply with the Rules of the Code.
- 3.12 Ofcom does not regulate independent production companies who supply programmes to broadcasters. However, when considering whether a broadcaster has complied with the Code, issues concerning the adequacy of the broadcaster’s compliance function may arise and in this context, Ofcom may need to consider the arrangements for supply of programmes by independent production companies to broadcasters. Brighter Pictures supplies *Big Brother* programming to Channel Four.

<sup>6</sup> The Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

<sup>7</sup> Guidance Notes can be found at <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/>

3.13 The following are the Rules of the Code which are relevant to this adjudication:

Section 1: Protecting the Under-Eighteens

**1.3** Children must...be protected by appropriate scheduling from material that is unsuitable for them.

**1.11** Violence, its after-effects...whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed...and must also be justified by the context.

**1.12** Violence, whether verbal or physical, that is easily imitable by children in a manner that is harmful...must not be broadcast before the watershed... unless there is editorial justification.

Section 2: Harm and Offence

**2.1** Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.

**2.3** In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include...humiliation, distress, violation of human dignity, discriminatory treatment or language (for example, on the grounds of...race...). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.

**2.4** Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises...seriously antisocial behaviour and is likely to encourage others to copy such behaviour.

Section Three: Crime

**3.1** Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services.

**“Generally Accepted Standards”**

3.14 In setting standards for the content of programmes to be included in television services best calculated to secure the standards objectives in accordance with section 319 of the Act and consistent with Article 10 of the Convention, Ofcom’s Code does not prohibit the broadcast of language or behaviour because it is, or may be perceived to be, offensive or racist. Such material can be transmitted so long as “generally accepted standards” are applied to the broadcast content so as to provide “adequate protection” to members of the public from the inclusion of harmful or offensive material.

3.15 The Code sets out examples of offensive material to which generally accepted standards must be applied which include but are not limited to: offensive language, violence, sex, sexual violence, 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).

## **“Justified by context”**

3.16 In applying generally accepted standards, broadcasters must ensure that material which may cause offence is justified by the context (Rule 2.3 of the Code). The Code sets out the meaning of “context” as including but not limited to:

- the editorial content of the programme, programmes or series;
- the service on which the material is broadcast;
- the time of broadcast;
- what other programmes are scheduled before and after the programme or programmes concerned;
- the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description;
- the likely size and composition of the potential audience and likely expectation of the audience;
- the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information; and
- the effect of the material on viewers or listeners who may come across it unawares.

# Issues raised with Channel Four and Channel Four's Response

## Issues raised with Channel Four

- 4.1 Having considered the issues raised by the complaints and in accordance with its normal procedures, Ofcom wrote to Channel Four asking it to comment on how various incidents of the material broadcast by it complied with the Code, both in the context of the series as a whole and in the context of the individual programmes.
- 4.2 Ofcom also requested recordings of transmitted and certain untransmitted material, as well as other information (such as transcripts and compliance policies) which it believed would be relevant to the investigation.
- 4.3 Channel Four responded fully both generally and in relation to the specific incidents complained of. Ofcom has included in this adjudication a summary of that response (see following section) and has taken the response fully into account in making its adjudication.

## Introduction

- 4.4 Channel Four stated that in light of the unprecedented level of complaints and the extensive press coverage, it was in the public interest that these matters should not only be properly and independently examined but seen to be so examined. It stated that Ofcom's investigation had received the utmost priority at the most senior levels of both Channel Four and Brighter Pictures to ensure that the regulator had all the relevant facts at its disposal before making any decision.
- 4.5 Channel Four accepted that many viewers had been undoubtedly offended. However, it believed at the time of transmission and still believes now that important freedom of expression issues are at stake both in terms of the right to broadcast material and the right of the audience to see it. It strongly believed that what was broadcast was responsibly handled and edited and fully in compliance with the relevant sections of the Code.
- 4.6 Channel Four suggested that the unprecedented public reaction may well have been exacerbated and distorted by a number of extraneous events not least the timing of Gordon Brown's trip to India, the widespread international misreporting that the word 'paki' had been used in the House (rather than the c-word which was actually used), and the highly provocative news pictures of burning effigies reminiscent of the Danish cartoons controversy.
- 4.7 As a starting point, Channel Four referred to Article 10 of the European Convention on Human Rights which, as the Code itself states, "*encompasses the audience's right to receive creative material, information and ideas without interference but subject to restrictions proscribed by law and necessary in a democratic society*".
- 4.8 Channel Four accepted that as a responsible broadcaster it was bound to ensure that there was adequate protection from harmful or offensive material, although the law

provides that any restrictions on Article 10 must be proportionate. It believed that it had achieved that balance in the material that was broadcast in that it was appropriately scheduled and edited and justified by context as well as being within the expectations of the *Big Brother* audience and in accordance with Ofcom's previous findings on *Big Brother*.

- 4.9 Channel Four reminded Ofcom that it was no stranger to controversy and that its distinctive and unique statutory remit required it to push and challenge boundaries. It explained how its core values included "...making trouble, inspiring change and doing it first..." and how its unique status and public service remit informed its editorial policy and creative risk-taking. Channel Four quoted section 265(3) of the Communications Act 2003, which provides that:

*"The public service remit for Channel 4 is the provision of a broad range of high quality and diverse programming which, in particular:*

- o *demonstrates innovation, experiment and creativity in the form and content of programmes;*
- o *appeals to the tastes and interests of a culturally diverse society;*
- o *makes a significant contribution to meeting the need for the licensed public service channels to include programmes of an educational nature and other programmes of educative value; and*
- o *exhibits a distinctive character"*.

- 4.10 Channel Four believed that its remit lay at the heart of many of the issues concerning this series of *Celebrity Big Brother* and the debate on race that it had stimulated. However, it pointed out that it did not "...set out to create a national debate about racism with the fifth series of *Celebrity Big Brother*" but that whatever the intention, Channel Four submitted that "...there was undeniable public value in having the debate."

- 4.11 Similarly, Channel Four said that it did not set out deliberately to cause offence and where offence is taken, as in the case of *Celebrity Big Brother*, that is a matter of genuine regret. However, it did not believe that the events that were broadcast from and concerning the *Big Brother* House, even with the benefit of hindsight, constituted 'racist abuse, language and behaviour, including racist bullying'. What was clear, Channel Four said, was that the issues raised were complex and that it was necessary to consider the motivations behind and context of each incident before making any firm conclusions. Furthermore, it did not believe that any material broadcast constituted an incitement to any crime (whether racial hatred or otherwise). Neither did it accept that there was any risk of emulation by either children or adults of 'racist' abuse, language or behaviour.

- 4.12 Channel Four did accept that there was a level of ignorant and bullying behaviour in the House by some of the housemates, but it did not accept that the manner in which it was presented meant that there was any risk of emulation by either children or adults. Channel Four was satisfied that in relation to all incidents that required it, there was quite clearly an appropriate level of intervention by Channel Four and *Big Brother*. It would have been clear to viewers that what was occurring inside the House was neither condoned nor deemed acceptable.

- 4.13 Channel Four stated that *Big Brother* was a series which defied categorisation. It dealt with the dynamics of human relationships and the behaviour of real people in an unusual setting cut off from the outside world. It believed that it was important to bear in mind that the audience expected and were entitled to see what happened in the House, even where it involved extreme behaviour, provided that the footage was responsibly edited in accordance with the Code for its time of transmission.

### **Social Impact of *Big Brother***

- 4.14 Channel Four said that from the evidence of previous years *Big Brother* had a proven record of very positive social impact becoming an indisputable champion at breaking down stereotypes and lowering social barriers. It noted that:

*“Over the years it has become increasingly clear that Big Brother viewers are largely uninfluenced by issues such as gender, disability, class, ethnicity, religion or sexuality. What is key to them is personality – cutting through any prejudice or bigotry they may have previously held in relation to these minority groups. From Brian Dowling, the openly gay air steward (Big Brother 2) and Cameron Stout, the Christian (Big Brother 4), to Nadia Almada, the Portuguese transsexual (Big Brother 5), and Peter Bennett, sufferer of Tourette’s Syndrome (Big Brother 6), the roll call of past Big Brother winners is strong evidence that viewers positively embrace diversity. ... Big Brother has very clearly played an important role in breaking down misconceptions and furthering the public understanding of minority groups.”*

### **Streaming Compliance Policies & Role of Reversioning**

- 4.15 Channel Four provided Ofcom with full details of its compliance process, including that related to “Streaming” and “Re-versioning”, which we took into account when considering the complaints.
- 4.16 Channel Four said that the training and procedures in the area of compliance that were put in place for *Celebrity Big Brother 2007* were based upon those that had been adopted successfully for previous series, but that every year these are necessarily updated to reflect and incorporate any issues that may have been at issue in previous series.

### **Key Personnel in *Big Brother***

- 4.17 The broadcaster supplied brief details of all key people in the Channel Four and Brighter Pictures teams working on *Big Brother* to show how between them they have considerable expertise in producing, managing and advising on the show which has been developed over the 12 series since the show was first launched in 2000. It pointed out that the editorial team and the legal and compliance team have a very diverse multicultural background which they were able to draw upon in making key judgments. This enabled the editorial and compliance teams to have an additional degree of expertise and insight when considering and advising on issues of cultural and racial sensitivity and offence.

### **Specific Response to Complaints**

- 4.18 Channel Four provided Ofcom with a large amount of detail indicating where, within the broadcast of the main show itself, there were significant moments that

contextualised the relationships between the housemates. Similarly, during the course of its response the broadcaster listed many examples of where supporting programmes analysed, discussed and debated the issues that were arising from the broadcast of the main show. We have not repeated the material relating to the ancillary shows here, but bore it in mind as we considered the specific incidents and the series as a whole.

## **The Introduction of the Goody Family**

**Friday 5 January 2007, transmitted 5 January 2007**

- 4.19 The broadcaster said that the introduction of the Goody family into the House was an idea that had originally been conceived for the previous main summer series but which was eventually deferred for the celebrity version.

## **Jackiey Budden's mispronunciation of 'Shilpa'**

**Saturday 6 January 2006, transmitted main show on 7 January 2006 and other dates**

- 4.20 During the course of Jackiey Budden's stay in the House she and Shilpa Shetty became increasingly antagonistic with each other. Occasionally, Jackiey Budden would mispronounce the name "Shilpa". At one point, during one such argument, the following exchange took place:

**Jackiey**

Princess, Mute said –

**Shilpa**

My name is Shilpa, Jackiey – get that right.

**Jackiey**

Well, I'm sorry, I can't understand your name.

**Shilpa**

Well, then, get it.

**Jackiey**

I can't understand it.

**Shilpa**

You don't need to understand it – it's not a sentence – it's a (bleep) name.

**Jackiey**

What's your name?

**Shilpa**

Shilpa.

**Jackiey**

Right. When I say Shoopa [sic], if it comes out wrong, that's not my fault.

**Shilpa**

It's okay. You can try.

**Jackiey**

Shoopa [sic]. Shoopa [sic]? You haven't moaned about it until now, okay? I've called you Princess –

**Shilpa**

I have been telling you that. Princess is very beautiful, thank you – that's very, very kind – but that's my name.

**Jackiey**

Right, Shoopa [sic]? Okay. Shoopa [sic]? Mute said he's done it already. That's what I had to tell you.

**Shilpa**

Thank you very much.

**Jackiey**

Right. Is that okay, Shoopa [sic]?

**Shilpa**

Thank you, Jackiey.

**Jackiey**

And if I can't pronounce your name any properly, I'm very sorry, but I will try and say Shoopa [sic]. I will not call you Princess no more.

**Shilpa**

Oh, man.

4.21 Channel Four said that:

*“After the fight we see Jade intervene with her mother to challenge her on her behaviour and the fact that Shilpa has a right to want to be called by her proper name...”*

**Jade**

*You can't have an argument with somebody –*

**Jackiey**

*Well, I didn't.*

**Jade**

*Or a disagreement with somebody – not an argument, a disagreement with somebody, because they want to be called by their name. Because you went, 'You know what, I can't call you your name' and then – I heard you.*

**Jackiey**

*No, I went, 'Do you know what, I will call your name, but if I get it wrong, then that's not my problem?' Then I came out. That's exactly what I said.*

**Jade**

*You said, 'Do you know what, I don't call you your name, because I can't pronounce it. That's why I call you Princess' –*

**Jackiey**

*That's when she first asked me.*

**Jade**

*She then said again. Mum, I was standing there, because –*

**Jackiey**

*She come up to me and then she went to me, 'Well, I would like you to call me –*

**Jade**

*She answered the door, standing there, and then she said, 'I would like you to call me Shilpa', and then you said, 'Do you know what, I'll try and call you your name –*

**Jackiey**

*No, I didn't –*

**Jade**

*But if I can't –*

**Jackiey**

*I went, 'I will call you Shoopa [sic], but if it comes out wrong, I can't help it'. That's what I said.*

**Jade**

*Yeah. So obviously, that was another disagreement that you had about her name.*

**Jackiey**

*Then I just walked out.*

**Jade**

*That's two disagreements.*

#### 4.22 Channel Four continued:

*"After this we see Jackiey head to the Diary Room. It is clear that she is very upset by the argument with Shilpa... In the Diary Room Jackiey gives a very clear explanation of her behaviour towards Shilpa and how upset she is with herself and Shilpa for the way the argument escalated. There is nothing in this altercation to suggest that Jackiey's inability to pronounce Shilpa's name is anything but genuine and that her frustration is also genuine...Indeed it is clear from observing Jackiey from her time in the programme that she does have genuine issues with pronunciation of some words – for*

*instance in the Diary Room sequence discussing this argument she has real problems with the word 'apologise'...*

## **Jackiey Budden's Use of the Expression "The Indian"**

**Monday 8 January 2007, transmitted main show on 9 Jan 2007 and others**

4.23 With reference to Jackiey Budden's use of the words "the Indian", Channel Four said:

*"By this stage it is already clear that Jackiey has rubbed up a number of housemates the wrong way – Ken Russell walked out of the House the day before following arguments with Jackiey and Jade. Relations between Shilpa and Jackiey are still quite tense with both of them finding the other difficult to interact with positively... Jackiey is very sensitive to her relationship with Shilpa and the way in which she was rebuked by Shilpa, Jade and Jermaine for mispronouncing her name and calling her 'princess'. Accordingly she makes the decision to refer to her as 'Indian' – which appears to be a generic reference to her country of origin. Neither Carole (who had already demonstrated that she was prepared to speak her mind) or Cleo corrected Jackiey, suggesting that they saw this as indicative of Jackiey's annoyance at Shilpa and her inability to articulate Shilpa's name rather than as a racially motivated remark. If Jackiey has a racist motivation either consciously or unconsciously it was not apparent from any of her other behaviour or explanations. If a motivation like this had been detected or expressed then Big Brother would have intervened to challenge her on this and a decision on whether to broadcast the use of this generic name would have been more difficult."*

*"In any event, Jackiey's actual motivation here is not the key point...clearly if any language or behaviour had been used that was clearly motivated by racism or unequivocally offensive then there would have been a challenge to the user and careful consideration as to broadcast – however Jackiey's use of the term 'Indian' here did not warrant that action. This was discussed editorially at Channel 4 and the legal and compliance department was consulted. It is left to the viewers to make a judgment on her behaviour towards Shilpa themselves, possibly by exercising their vote to evict her. ...this is completely consistent with Ofcom's own view (in a previous Big Brother finding – see Broadcast Bulletin Issue Number 50 dated 19 December 2005) that "the Big Brother audience expects to see all aspects of the housemates' characters exposed during their stay in the House. Channel 4 would not have been expected to keep key character information from viewers, since it is the viewers who decide who to vote for."*

4.24 Later, the broadcaster discussed Davina McCall's exit interview with Jackiey Budden after she had been evicted (transmitted on 10 January 2007):

*"Referring to and following on from the discussion of Jackiey's earlier use of the word 'Indian' to describe Shilpa as well as the discussion surrounding the mispronunciation of Shilpa's name, we do not*

*believe that their use in Davina's eviction interview, recorded as live with a short delay, of Jackie was in breach of the Code. As viewers of Big Brother are aware, Davina's interview is the first place where housemates are challenged or asked to give their explanation for behaviour that occurred whilst they were in the House, particularly where it has been the subject of criticism inside or outside the House. This is crucial not just for the viewer, who may well have voted to evict Jackie – but also in terms of fairness because it gives Jackie herself a chance to answer any criticism that she may not have had a chance to answer in the programme, face on. It is also important to note that Jackie was clearly flustered and somewhat fazed at having been unexpectedly and with very little notice evicted from the House. Davina was therefore conscious of handling the interview carefully and also of giving Jackie a fair opportunity to explain her behaviour. It is clear from the interview that Davina is questioning these issues with Jackie and also her relationship with Shilpa in accordance with the style of the Big Brother eviction shows where interviews are seldom confrontational. ... At that time Jackie's use of the term 'the Indian' was not viewed by those concerned at the production company or Channel 4 as racist or racially motivated but rather as simply rude and ignorant. It revealed a particular dynamic between the two housemates which it was right to show to the audience even if some found the remarks offensive themselves. This interview took place before the extraordinary press furore - and before there was any unusual level in the complaints received regarding Jackie's behaviour to Shilpa, and Jackie's use of this term to her face. When viewed now, very much with the benefit of hindsight of the tensions and furore that followed, we feel it may have been better editorially if Davina had been firmer in questioning Jackie on her failure to pronounce Shilpa's name properly and use of this term. Nevertheless we do not believe that the interview was in breach of the Code."*

## **Use of the Expression "White Trash" by Jermaine Jackson**

**9 January 2007, transmitted on the main show on 10 January 2007**

- 4.25 In the main show on Wednesday 10 January at 21:00, there was a discussion between Jermaine Jackson and Shilpa Shetty in which Jermaine Jackson used the expression 'white trash'. This comes in the context of Shilpa Shetty asking her friends in the House to help her try to understand Jackie Budden's behaviour towards her.
- 4.26 At one point Jermaine Jackson, discussing how impressed he is with Jade Goody, says:

*"She's [Jade's] a star and so she has a following and a fan base; her mother doesn't. She does not care and I don't want to... feel like this. It was referred to her... They brought up the word 'white trash' [the word 'trash' is mouthed by Jermaine – not actually spoken] and I don't want to bring that up but... and I wouldn't call her that because she's a human being, but the fact is, she doesn't care. Have you seen the show Jerry Springer? Have you heard about the show Jerry Springer, where they bring people and tell all their business*

*and they go crazy? They get people like that because they have no self-respect sometimes. I mean, I help her because I'm supposed to. Not supposed to, but I feel it's a godly thing to do to help her if she needs help. Don't worry about it – just be strong. You told me to calm you. I... Put it like this: we have to be bigger and stronger. We have to. At the end of the day, we have to be bigger and stronger. We have to be. Just think: if you hadn't have walked through the door, I would have been the only one in here with colour, and it has nothing to do with anything, but sometimes you feel... you feel alone. You feel alone. But when I saw you, I felt better. No, I'm okay now. I'm okay."*

- 4.27 Channel Four said that Jermaine Jackson's 'white trash' comment was clearly something he was uncomfortable with – he used it carefully and cautiously, mouthing the word 'trash' rather than speaking it; making it clear he did not approve of such terms. He was using it as an illustrative tool to try to explain the class differences between Shilpa Shetty and Jackie Budden as he perceives them. Channel Four went on to say that it was very important to note Jermaine Jackson's specific mention of the issue of 'colour' at that point, particularly that he was very clear to distinguish this issue from things going on in the House, clearly saying "*it has nothing to do with anything*". Channel Four also noted that this scene had been widely misrepresented in the press with many reports erroneously stating that Jermaine Jackson himself had called Jackie Budden 'white trash', which led to a number of viewer complaints. It said that this was an early example of the gap between what was actually being broadcast from the House and the press reports about what was broadcast. This misreporting also contributed to many viewers complaining that it was unfair to accuse Jade Goody of alleged racism when many wrongly believed Jermaine Jackson was equally guilty of similar conduct.

### **Jack Tweed's comments to Jade Goody about Shilpa Shetty**

**Wednesday 10 January 2007, transmitted on the main show on 11 January 2007**

- 4.28 Jack Tweed is in bed with Jade Goody and they are discussing Shilpa Shetty. In the course of the discussion Jack Tweed says (in reference to Shilpa Shetty):

**Jack**

I hate her. [bleep]

**Jade**

Jack!

**Jack**

I don't care. She annoys me [imitates Shilpa's laugh]. Wanker.

- 4.29 In reference to the masked word that Jack Tweed used, Channel Four said the following:

*"In terms of the public reaction to the series and the resultant press furore we believe this clip is a pivotal moment because of the mistaken interpretation of it by the national and international press and the way this was used to initially establish that there had been 'racist' comments made in the House...the word that is actually used*

*by Jack in this clip is ‘cunt’, not ‘paki’ as widely reported in the press. We learned some days later that the clip had been shown on the YouTube website with the word deliberately erroneously subtitled as ‘paki’ (with the additional and equally inflammatory subtitle ‘makes monkey noises’). This then became widely reported on the web, which we believe contributed significantly to the subsequent press reports that the words ‘fucking paki’ had been used of Shilpa, inevitably fuelling public outrage in India and in the UK in particular. Clearly both the words ‘cunt’ (especially when used in a derogatory way about a woman) and ‘paki’ are highly offensive however in the context of the current complaint the use of the second unambiguously racist word would have been viewed as considerably more offensive and inflammatory and certainly would have resulted in Jack being reprimanded by Big Brother – there would have to have been very serious consideration as to whether the word could be justified for broadcast. It is unlikely, in this particular context, i.e. without a reprimand, that it would have been considered justified for broadcast...”*

*“The decision whether to broadcast a housemate’s use of the word ‘cunt’ on the other hand, which is a highly offensive word to many viewers, is generally more straightforward when dealing with programmes transmitting at 2100. ... It has only ever been sanctioned for broadcast in Big Brother on rare occasions and only then usually in main shows that transmit after 2200, accompanied by an appropriate warning for viewers of very strong language. Given these strictures the c-word is normally bleeped out of a 2100 show as a matter of course.”*

- 4.30 Ofcom also asked Channel Four to provide the rushes of this incident to determine what was actually said by Jack Tweed.

### **The Exchange in which Danielle Lloyd Describes Shilpa Shetty as “a dog”**

**Friday 12 January 2007, transmitted on the main show on 13 January 2007**

- 4.31 Channel Four told us that this exchange occurred between Jo O’Meara and Danielle Lloyd shortly before Carole Malone was evicted. The comments Danielle Lloyd made were clearly about Shilpa Shetty. Danielle Lloyd was obviously still upset about what she perceived to be Shilpa Shetty’s role in Carole Malone’s eviction (she even admits this the following morning – transmitted on the main show on Sunday 14 January). Channel Four state that both women had been drinking.

**Danielle**

I just don’t like that. I don’t fucking trust her.

**Jo**

No, I don’t trust her. I don’t trust her – at all.

**(SHOTS IN BEDROOM OF SHILPA AND CAROLE)**

**Danielle**

No buts ay - she’s a dog.

**Ian**

What did she say? Danielle? What did she say?

**Danielle**

I need a wee. I need a poo. I need a wee but I've got to wipe her arse.

**(Background conversation)**

**Jo** (to Danielle)

Behave yourself, Mrs.

**Danielle** (in toilet)

Fuck.

**Jo**

She's a dog.

**Danielle**

No, but like me, you and Jade get on.

**Jo**

Yeah.

4.32 Channel Four said that:

*"This exchange...while undeniably nasty, does not in our view constitute material that is in breach of the Code. In context it is important to show viewers the extent to which Danielle is angry with Shilpa and also for them to see how she is prepared to talk behind Shilpa's back as opposed to honestly confronting the issues she has to her face. In terms of an insult to a woman, 'dog' is defined in the Collins Concise Dictionary Plus as meaning 'unattractive' and more colloquially is used as a general pejorative term for a woman. There is no evidence, however, to suggest that the insult was motivated by racism or indeed had anything at all to do with Shilpa's race. Certainly the editorial team did not then and do not now view it as racist. That is not to say the remark was viewed as pleasant. In any event, at the time it is also clear that Jo, although she laughs at the comment, has some reservations about it - making the comment 'behave yourself Mrs' to Danielle.*

*It is also Jo later on that night and the following morning who makes it clear that she thinks the comments were terrible and urges Danielle not to drink again and to apologise to Shilpa. Accordingly, although not pleasant, the context of the show and the ongoing series made the inclusion of it totally justified by context and within the Code rules."*

4.33 Channel Four pointed out that there was further important context to be found in how this situation progressed after Carole Malone's eviction in which Danielle Lloyd clearly showed remorse for her behaviour towards Shilpa Shetty and the apparently good intentions of her, Jo O'Meara, Cleo Rocos and Jade Goody to try and make amends. Unfortunately, these attempts backfire, escalating into a fight between Jade Goody and Shilpa Shetty in which Shilpa Shetty accuses Jade Goody of not being

respectful of her. Although the argument calms down, viewers were then shown Jermaine Jackson advising and supporting Shilpa Shetty afterwards. After that, Shilpa Shetty is comforted in the bathroom by Cleo Rocos and Jo O'Meara, who then engineer a reunion between Shilpa Shetty, Danielle Lloyd and Jade Goody.

### **Jermaine Jackson's comments regarding "colour" in the Diary Room**

**Saturday 13 January 2007, transmitted on the main show on 14 January 2007**

4.34 Channel Four said that the relevant parts of this show were all to do with the housemates' reflections on the interactions between Danielle Lloyd, Jade Goody and Shilpa Shetty from the night before. It stated that they were important because they showed that moods had calmed in the House - both 'sides' were supported - as well as giving various analysis of what might lie behind these conflicts (for example, Danielle Lloyd admits that part of her blamed Shilpa for Carole Malone leaving). The sequence in which Jermaine Jackson discussed "colour" with Big Brother was as follows:

#### **Big Brother**

*What's the mood like in the House this morning?*

#### **Jermaine**

*There's a little bit of tension between some of the females because I think the drinking had gotten to them. Danielle may have had a bit too much and I think she thought that Shilpa was trying to be territorial with her... You see, it's very tough because, when Shilpa says and feels like she's not liked and not being treated right, then I try to listen, but at the same time, it's very emotional for her, because she's, kind of, singled out. I haven't heard them say it but, she's the only woman of colour in the House and I'm the only guy of colour in the House. I make that point because, if we were all black and there was one white face, then that person would stick out, and the fact is she's carrying herself because of the way she is - her culturally balanced, her fine family, loves her family very much, loves her god and very respectful to others and to herself. Those who are secure become a threat to those who have insecurities.*

4.35 Channel Four said that:

*"This is the first express link that is made in the House between any of the conflict or tension and the issue of colour. However it is only raised as a possible motive - he has not 'heard them say it'. What he is very clear about is the importance of the issue of cultural and religious background and good upbringing vs. bad. Clearly it is important that this scene is included as it gives the viewer an insight into Jermaine's perspective of the tensions as Shilpa's friend and confidante - and as a black man. There is nothing in its inclusion which breaches any part of the Code, indeed it adds context to the tensions and conflict seen in the House."*

## Jo O'Meara and Danielle Lloyd's Remarks about cooking in India

Sunday 14 January, transmitted on the main show on 15 January 2007

4.36 In the main programme transmitted on Monday 15 January 2007 at 21:00 there was a discussion between Danielle Lloyd and Jo O'Meara about cooking in India. The background to this discussion was that according to them, Shilpa Shetty had undercooked a chicken in the oven. This was followed by Shilpa Shetty asking Ian Watkins in the garden "why do they detest me?"

**Jo**

I said, maybe they cook them differently in India, might do mightn't they?

**Danielle**

They probably fucking cook it for, like...

**Jo**

That's why they're all thin, because they're sick all the time, because they're ill.

**Danielle**

They're ill off Shilpa's cooking.

**Jo**

The thing that aggravates me with Shilpa is she fingers your food off your plate. You could see when she was picking the onions, just with her fingers, she's just done it to Ian as well, she went 'oh this chicken is fine' [mimics Shilpa's accent] and on his plate, started eating his chicken off-of his plate. That grates me.

**Danielle**

Do they do that in India, eat with their hands or is that in China? It's in India isn't it?

**Jo**

Not sure, I don't like all that though.

**Danielle**

I don't know where her fingers have been.

4.37 Channel Four said that Jo O'Meara and Danielle Lloyd were clearly within their rights to be concerned about potential food safety and hygiene issues if they perceived there was a risk. By making a crude generalisation that all Indian people are thin and suffer from food poisoning because of the way they cook chicken – particularly in a way that suggests this is humorous – Jo O'Meara's ignorance of Indian culture is made clear to viewers. Similarly Danielle Lloyd's comment asking whether it is India or China where people eat with their hands highlights her clear ignorance of other cultures. Nonetheless, Channel Four considered that the comments "...stop short of being clearly motivated by actual racial prejudice".

## Danielle Lloyd's Comment About Flicking Dried Thrush into Curry

Sunday 14 January 2007, transmitted on the main show on 15 January 2007

- 4.38 This was a comment by Danielle Lloyd in *Celebrity Big Brother's* main show on Monday 15 January at 21:00 about flicking dried thrush into Shilpa Shetty's curry as follows:

**Cleo**

Let's all put our pennies on the table and take a private jet to Monte Carlo where we can bag a millionaire and dry up our thrush

...

**Danielle**

And then we shave it all off and put it in Shilpa's curry

- 4.39 Channel Four said that although this is certainly a crude and offensive comment it is a typical example in context of the type of off-hand 'school-yard' nasty comments that Danielle Lloyd was making to express her annoyance at Shilpa Shetty, and that were upsetting Ian Watkins. Ian Watkins' final Diary Room in the show is particularly revealing of his upset with Danielle Lloyd and Jade Goody's behaviour towards Shilpa Shetty. In fact, he acknowledges that he sees it "almost like bullying". Intercut with this scene directly in reference to Danielle Lloyd's nasty comments comes the above quote about putting dried thrush in Shilpa Shetty's curry. As such, Channel Four believed it was entirely justified by context and not in breach of the Code.

## Jade Goody and Shilpa Shetty's row over the stock cube

Tuesday 16 January 2007, transmitted on main show on 17 January 2007

- 4.40 Channel Four addressed these issues in the following response:

*"What happened next was the definitive climax to the tensions that had been growing between Shilpa and the three girls over the last week, although played out largely between Shilpa and Jade...it starts as a very petty argument but escalates into a far more personal verbal fight between two fundamentally different and incompatible personalities. ..."*

*"Shilpa clearly feels that Jade does not show the appropriate respect or appreciation towards her; that Jade is enjoying the spectacle of fighting on a reality TV show and that Shilpa doesn't wish to get dragged down to her level. Shilpa is perplexed at how the row has arisen and, not surprisingly, feels Jade is aggressive, crude, stupid and bad mannered; Shilpa's indignation that Jade seems to be attacking her upbringing and accusing Shilpa of being stuck up is the last straw. For example Shilpa says:*

**Shilpa**

*"I don't want to fight, you want to get argumentative, it's fun for you, please go on and be my guest, I don't want to do that, it's not my style."*

**Shilpa**

*"You know what I don't need to dignify this stupid, stupid argument it may be fun for you Jade."*

**Shilpa**

*"I ordered the condiments. Oh please, get some, learn some manners. You need etiquette classes, Jade – you need etiquette classes"*

**Shilpa**

*"I am not going to dignify this."*

**Shilpa**

*"You know Jade, I don't use that language, so you can..."*

**Shilpa**

*"You know what, your claim to fame is this – good for you."*

**Shilpa** (to Jermaine afterwards)

*"I cannot fight with people like that, I am not from the roadside, she must be, and she is."*

**Shilpa**

*"I'm not apologetic about the way I've been brought up, why should I be?"*

*"Jade on the other hand is upset with what she sees as Shilpa's controlling manner in the kitchen and Jade's belief that Shilpa is not genuine and doesn't confront the truth in a way that Jade thinks she should. It also betrays Jade's conviction that Shilpa is stuck up and that she believes she is better than other people and it is clear that Jade thinks Shilpa needs to be brought down a level and she is the person to do it".*

4.41 Channel Four said that it believed these clashes were rooted in class and cultural misunderstandings and differences and were to that extent "...utterly typical *Big Brother*". It continued to believe that the events in the programme did not stray beyond the bounds of previous *Big Brother* arguments and tensions, some of which had involved the threat of physical violence and sexist, homophobic and even racist undertones. The argument, they believed, was between two strong women, one intelligent and articulate and the other aggressive and forthright. Channel Four noted that there was no suggestion of any slurs based on race, rather the row apparently centred on class and cultural differences. It said that this was demonstrated by Jade Goody's reference to the 'slums', which again "... was *misreported in the media as 'go back to the slums'.*" The clear implication and intention of the comment, in Channel Four's view, was in line with Jade Goody's previous perceptions of Shilpa Shetty, in that Shilpa Shetty led a privileged life and did not know how 'normal' people lived and therefore should visit the slums.

4.42 Channel Four went on to say that:

*“In addition, Shilpa was not a victim and was shielded and supported, to the extent that she needed to be, by Jermaine. Notwithstanding this, given the very public reaction that the series was receiving at this stage with allegations of racist bullying being levelled against the housemates it was clear that the programme had to be very carefully scrutinised and considered prior to broadcast to ensure that the scenes to be broadcast were editorially justified by context and that any offence caused by the programme itself was warranted.”*

4.43 Channel Four said that the broadcast of this crucial scene and the scenes surrounding it were specifically referred up to senior management and compliance personnel. As a result, a number of edits were made following the viewings to reduce the scene but ensuring it faithfully reflected what had happened.

4.44 In addition, Channel Four said:

*“It is important to explain why it was felt crucial that this argument be broadcast and why we strongly believe that it did not breach the Code. It was vital, at that stage, more than ever, to allow viewers to see for themselves that, although the argument was undoubtedly very uncomfortable to watch at times, Shilpa more than holds her own – she stands her ground with dignity and, as soon as the argument becomes very heated, has support. It was also important to show that even in the height of her fury – despite the media furore suggesting she was racist, Jade did not attack Shilpa about her colour or race – but very clearly focussed on her social class and upbringing (as the repeated use of the words ‘princess’, ‘stuck up’ and ‘you need to feel real life’ clearly evidence). Shilpa and Jade had clearly had a serious and uncomfortable clash, but it certainly did not constitute racist abuse or racist bullying in the minds of those who viewed it before broadcast...”*

*In addition it is clear that at no stage was there any threat of physical violence; as soon as the verbal fight becomes heated Cleo calls upon Jermaine to intervene. He separates the women by taking Shilpa into the bedroom, in a clear show of solidarity and support for Shilpa...”*

*“This fight was a pivotal event in the House and it would have been absolutely wrong to have diminished the impact of the row significantly by over-editing and an utterly disproportionate act of censorship to have omitted it from the programme altogether...some edits were made – but extreme care was taken to ensure that the balance of the argument was not materially affected, while at the same time not gratuitously overplaying it...”*

*“The argument was responsibly and justifiably edited and broadcast post-watershed. Although it contained no physical violence, the combination of aggressive swearing and shouting required some significant editing to make it appropriate for the pre-watershed repeat version of the show. Accordingly no issue arises under Rules 1.3, 1.11 or 1.12 of the Code. ... Altercations such as this fall squarely within the audience’s expectation for Big Brother and we strongly believe that the broadcast of this argument was entirely*

*justified and in all respects complied with the Code... Channel 4 would not have been expected to keep key character information from viewers, since it is the viewers who decide who to vote for. It is to some extent expected that high emotion, disagreements, and separation into partisan groups may result... Although there is an argument that Jade's behaviour towards Shilpa during the fight could be classed as 'seriously anti-social behaviour', it is very clear that it is not condoned. Jade is subsequently ostracised by several of the other housemates, even her supporters Danielle and Jo are plainly uncomfortable as is her boyfriend Jack who says "stop it you psycho" when Jade is just refusing to calm down. It is clear that many of the other housemates' sympathies lie with Shilpa. Therefore it certainly could not be said to have been glamorised – accordingly there could be no breach of Rule 2.4 or 3.1."*

### **"Fuck off home" Comment by Danielle Lloyd**

**Tuesday 16 January 2007, transmitted on the main show on 17 January 2007**

- 4.45 Channel Four explained that after the fight the House divided into groups for an analysis of the argument and to discuss ways of going forward from there. There was clear support for Shilpa Shetty from Jermaine Jackson and Dirk Benedict – and also from Cleo Rocos and Ian Watkins. Jo O'Meara and Danielle Lloyd's sympathies clearly lay with Jade Goody. The following reaction by Danielle Lloyd to the Oxo cube fight was the only comment that, in Channel Four's view *"...raised the spectre of possible racist motivation and accordingly had to be very carefully considered before broadcast"*:

**Danielle**

That was fucking fantastic, I loved it.

**(Danielle and Jo laugh)**

**Jo**

Got to say, made my day.

**Danielle**

That fucking brightened my day up, I'm telling you.

**Jade**

Actually I know when I'm at the end of my tether, my eyes are filling up with water. How dare she say to me I need elocution lessons and lie in my face, right there, right there? How dare she?

**Danielle**

I think she should fuck off home (*laughs*). Does that mean that I need elocution lessons, because she can't understand what I fucking say? She can't even speak English properly anyway.

- 4.46 It was decided by Channel Four at this stage that, although it was not clear what Danielle Lloyd had actually intended by the comment *"...fuck off home"*, i.e. whether it was used as a term of racist abuse or whether she meant it more literally as 'leave

this House', the comment clearly had the potential to be viewed as such by viewers who were already sensitised to alleged racist bullying as an issue. This was, Channel Four said, clearly compounded by her following comment "*She can't even speak English properly anyway*", even though it apparently related to the misunderstood alleged need for elocution lessons (as opposed to what was actually said – "etiquette lessons").

4.47 It went on to say that:

*"The producers had rightly referred this comment to Channel 4 on the day it happened...it was agreed that Big Brother must call Danielle to the Diary Room to challenge her on these comments and ask her what she meant. It was the belief of those concerned that she did not intend them in a racist way and advice was given on the risk of libel or unfairness if she was unfairly presented as a racist, particularly without a proper opportunity to respond. This Diary Room intervention was arranged and took place that evening...this challenge of Danielle by Big Brother clearly demonstrated to viewers that where comments that could have been perceived as motivated by racism were made, that they would not be tolerated or accepted by Big Brother. Danielle's response to the challenge is again open to interpretation but it does appear unlikely she meant the comment as anything other than a literal one – that Shilpa should go home – not as a term motivated by racism. In any event viewers could be under no doubt that Big Brother intervened to question this language and investigate the matter in line with Big Brother's own rules (which do not tolerate seriously offensive behaviour) and the Code."*

4.48 Channel Four explained that Big Brother was balancing two duties with their intervention – the duty to challenge Danielle Lloyd on her use of wording that might be construed as offensive – but also a duty of fairness to Danielle Lloyd herself – to give her an opportunity to explain her use of the language as either ignorance or something more sinister as suggested by the tabloid press. It said that there was one other relevant duty here – to accurately show voting viewers what the characters in the House were doing – when they are being nasty and when they are explaining their motivations – 'warts and all'.

4.49 In its response, Channel Four included more broadcast scenes of the aftermath of the argument to show the all important broadcast context - re-affirming the possible explanations for the parties' motivations, which remain consistent – i.e. class, cultural and social differences. Ofcom took note of them in its consideration of the matter.

4.50 Channel Four then went on to say:

*"...importantly, this is the one occasion on which Shilpa herself questions whether her colour, or the fact she is Indian, may have something to do with the conflict she is having with Jade. ... Not presenting these views would clearly have presented a distorted image to viewers of what was happening in the House and also deprived viewers of clearly seeing how race itself was actually addressed and considered as an issue by Shilpa herself, and her supporters in the House, and then eventually discounted as a likely motivation. It is important to note at this stage that Jermaine, who had previously voiced concerns about the issue of colour as a possible motivation, now clearly considers it to be an issue of class*

instead. The following scenes were intended again to reassure viewers on this front:

**Shilpa**

*You think they're reacting to me like this because I'm Indian?*

**Jermaine**

*It's not because you're Indian, it's because you have class.*

**Dirk**

*Yeah.*

**Jermaine**

*They want you to tell them what colour your underwear are, when did you first lose your virginity, all these questions they ask you, and they want you to pass gas like they've been doing.*

**Dirk**

*Exactly.*

**Jermaine**

*Then you're down, so that makes you down, because you disrespect yourself, don't do that.*

...

**Ian**

*But you kept your composure, you did, I mean, you gave her a back hander which really shut her up.*

**Shilpa**

*What did I say?*

**Ian**

*About you're famous for this, and I was like ooooh.*

**Shilpa**

*That is her claim to fame, that's her class. I said, this is your claim to fame, enjoy it. I am sorry, I have much more to go back home to. I am not Shilpa Shetty for being famous in Big Brother, I am Shilpa Shetty for the work I have done for so long.*

**Dirk**

*It's just by showing up, it's just by walking in the room you do that.*

**Shilpa**

*And then she said such a rude thing Ian...*

**Dirk**

*You could wash the toilets, cook the food, clean the dishes and it would still happen.*

**Jermaine**

*It still wouldn't matter.*

4.51 Channel Four continued:

*“Later in the same evening Shilpa questions Cleo as to whether Jade’s motivations could possibly have something do with her ethnicity in a conversation in the bedroom. Again it is clear that Cleo believes the issues are class and culture rather than anything racist:*

**Shilpa**

*I’m representing my country, is this what today’s UK is? It’s scary, it’s quite shame actually.*

**Cleo**

*I don’t think it’s to do with where you come from.*

**Shilpa**

*It is to do with that.*

**Cleo**

*I think, yes, culturally I really, I don’t think there’s anything racist in it if that’s what you’re implying.*

**Shilpa**

*It is, I’m telling you.*

**Cleo**

*I don’t think so. It’s because you come from such a different, it’s a different background...*

**Shilpa**

*Am I not human, what about me is so different? She just aired all her insecurities.*

**Cleo**

*I would have to say that Jade is not a racist, and neither are the other girls, there’s nobody in here that’s a racist, and it may be fear but they’re not racist, they’re really not, but the culture thing and the way in which they communicate.*

**Shilpa**

*What is so different or so difficult to understand, have I been in any way condescending, have I in any way tried to show that I am one up on them?*

### **Jade Goody’s “Shilpa Poppadom” Comment**

**Wednesday 17 January 2007, transmitted on main show on 18 January 2007**

4.52 In a conversation the morning after the ‘Oxo cube row’, Jade Goody, talking with Danielle Lloyd and trying to recall her surname calls Shilpa Shetty, amongst other things, ‘Shilpa Poppadom’. Channel Four said that Jade Goody was called to the Diary Room to discuss her remark in what the producers called an exploratory Diary Room. It said that:

*“...given the importance of this exploratory Diary Room, the voice of Big Brother was delivered by one of the executive producers. It was clear that Jade recognised her voice and immediately understood the seriousness with which the matter was being treated. Jade did acknowledge that her comments were not acceptable and she assured Big Brother that they were not intended to be racist. Jade also offered an apology to any Indian viewers for any offence that might have been caused. Nevertheless it was the belief of those at Channel 4, when they viewed the comment and the corresponding exploratory Diary Room on the morning of the day it was to be broadcast that, despite Jade’s assurances of her motivation, there was a danger of it being construed as racist, like Danielle’s “fuck off home” remark. It was therefore agreed by Channel 4 and the producers that Jade should be called back to the Diary Room and made to understand that regardless of her intentions Big Brother would not tolerate language that could be seen as racist.”*

- 4.53 This second reprimand took place on Thursday 18 January and instigated by senior editorial executives at Channel Four. It was broadcast in the main show on Friday 19 January.

### **The “Re-Versioned” Pre-Watershed shows**

- 4.54 Channel Four then addressed the pre-watershed shows broadcast on weekdays at around 07:30. These are re-versioned editions of the 21:00 main show and are made appropriate for their pre-watershed slot. It said that Ofcom should be mindful of the editorial reasoning it had already set out, which is equally applicable to its justification for the broadcast of the pre-watershed programmes. But with reference specifically to these programmes, and considering them against Rules 1.3, 1.11 and 1.12 (aimed at protecting children from unsuitable content) after a discussion of relevant incidents and their context, the Channel said the following:

*“As outlined above, extensive edits are made to all the pre-watershed repeats in order to make them suitable for the time of transmission. The decisions on what to edit out are made taking into full consideration the fact that the programme is repeated early in the morning, when children may be expected to be watching television unsupervised. Strong language, inappropriate sexual conversations, inappropriate drinking and smoking, aggressive behaviour as well as dangerous behaviour likely to be imitated by children are all removed; along with anything else that the editor feels will be unsuitable for the time of transmission.*

*“Following these edits any aggressive behaviour contained in the programmes was extremely limited and fully justified by the context. It was also balanced by strong attempts at conflict resolution by other members of the group, who also made it clear that behaving in this manner was not socially acceptable. Big Brother’s action of calling the main protagonists into the Diary Room and confronting them with their behaviour also made it clear that it was not acceptable to behave in an antisocial way towards other members of the group. The direct confrontation of Jade and Danielle with language that could be deemed to be racist also made a very strong statement that this type of behaviour is unacceptable. The amount of*

*time dedicated in all the programmes to highlighting the more responsible members of the group, and contrasting their behaviour with those involved in the conflict, makes heroes of those who remain neutral and calm during the whole affair. It is obvious that respect is given to these group members for guiding and caring for the members of the group who are upset and angry.*

*“While a number of comments made by Jade, Jo and Danielle were clearly born of ignorance and a lack of cultural sensitivity Channel 4 is firmly of the view, as with the post-watershed original broadcasts, that the comments in the context of each programme were suitable for the time of transmission and that they were not in breach of the Code.”*

### **Untransmitted Material**

- 4.55 In response to Ofcom’s inquiries, Channel Four also provided Ofcom with untransmitted material from the show, which it considered relevant to Ofcom’s investigations. This material contained untransmitted footage of conversations between some of the housemates. Channel Four gave this material to Ofcom in confidence. In the particular circumstances of this case, Ofcom does not consider the content of untransmitted material to be relevant to deciding whether or not there has been a breach of the Code in transmitted material. We will however refer to the implications of the material in our Decision below.
- 4.56 Since this material was not broadcast, Channel Four said it raised no issue under the Code. However, it had made Ofcom aware of the information in the interests of ensuring that Ofcom has “*access to all the relevant material which is pertinent*” to the consideration of its investigations.
- 4.57 Channel Four informed Ofcom that these conversations, although they had been logged as “racist” in the daily log on the night of Tuesday 16 January (following the ‘Oxo cube’ argument), had been missed when the log was first read by the senior producer. Channel Four stated it only discovered the material some days after it had been recorded. The Channel also stated that this delay did reveal a breakdown in the production company’s referral up processes to the broadcaster. Channel Four informed Ofcom that once the footage was shown to senior executives at Channel Four, it was agreed that formal reprimands of the relevant housemates should take place. Channel Four stated that since the original offending material had not been broadcast it did not believe it to be appropriate to air the reprimands. Following these events, Channel Four therefore sought and had gained formal assurances from the production company Brighter Pictures, that it had reviewed its internal reference up procedures.

### **Appropriate Intervention**

- 4.58 Channel Four was satisfied that there was appropriate intervention in relation to the broadcast conversations which featured behaviour which could be considered to be racially motivated. In particular, after discussion between Brighter Pictures and Channel Four, Danielle Lloyd (on the Tuesday evening shortly after the Oxo cube row) was called to the Diary Room after her “*I think she should fuck off home*” and challenged on her remark. In addition, Brighter Pictures organised an exploratory Diary Room with Jade Goody following her “*Shilpa Poppadom*” reference on Wednesday (the day after the Oxo cube row). The following day, Channel Four requested, and Brighter Pictures agreed, that Jade Goody be called back to the Diary

Room and have it clearly explained to her that, notwithstanding her stated motivation the remark could be seen as racist and would not be tolerated. Channel Four said:

*“The important issue is that Big Brother, within the parameters of fairness to housemates whose behaviour was being judged through the distorting prism of extraordinary media hype, was seen to challenge housemates’ behaviour and intervene within the rules and traditions of the show expected by the audience. In relation to conversations that were broadcast this did happen, even though the remarks made were ambiguous and were not at the time (and are still not) considered racially motivated either by those who made them, by Shilpa herself, the other housemates or indeed by Channel 4 and Brighter Pictures/Endemol.”*

4.59 Channel Four also stated that in the live eviction show on Friday 26 January 2007 at 20:30, Davina McCall (the presenter) said:

*“What a few days it’s been. You can’t have escaped the furore. This series of Celebrity Big Brother has got everybody talking and, indeed, divided the nation like never before. And we genuinely regret any offence this has caused some of you.”*

4.60 Channel Four said:

*“...it was important that we reflect on air to our audience the genuine regret for the offence that had been caused.”*

4.61 The broadcaster pointed out that this was:

*“...not an apology for broadcasting the material and nor was it an admission that it should not have been broadcast”.*

4.62 Davina McCall repeated this sentiment of regret for offence caused at the top of the live finale two days later on Sunday 28 January 2007.

### **Channel Four’s Concluding Remarks**

4.63 Channel Four concluded its response with the following statement:

*“Big Brother is a programme that defies categorisation. It entertains but it also shocks and sometimes offends. It is occasionally banal and silly and yet sometimes dark and uncomfortable. It can take viewers from the sublime to the ridiculous and its audience appreciates that and understands the phenomenon it undoubtedly is. Big Brother is an unusual series and never more so than this particular series of Celebrity. It has provoked many different views – Big Brother has a habit of doing that – but one thing everyone can agree on is that the media storm it generated and that came to surround it was unprecedented. It is questionable whether everyone – viewers, politicians or even the press themselves – agrees, now that time has passed, that the strength of this storm was warranted...Ofcom’s role, of which we appreciate it is fully aware, is to judge us under the law and the Code. We believe that we have demonstrated in this very detailed response that we have put in place and operated effective procedures for compliance and*

reference up which are entirely appropriate to the demands of this extraordinary programme.

*“Storylines and conflicts in the House, in the main series of Big Brother, often play out over many weeks. Bullies - and there are always bullies - get their comeuppance and the public votes them out. Violent behaviour, threats of violence and other clear rule breaches are the subject of appropriate reprimand, warning and even punishment but unpleasantness and disagreements are generally resolved by the housemates themselves.*

*“There is no other series like this in terms of the hours of footage it produces, the level of press scrutiny it attracts and the interest of the public it generates and not least the sheer volume of programmes either live or edited close to transmission which are broadcast. Not everything about the handling of this extraordinary series was perfect; it would be foolish to argue that it was. Our internal review will examine a number of matters that do not fall under Ofcom’s jurisdiction and we will take on board any lessons learned and improve our practice in the future. As to the broadcast programmes, unquestionably they offended some viewers. We have publicly expressed regret for that offence, twice on air, but we are very clear and firmly believe that the material we broadcast complied fully with the Code. We believe any material with the potential to offend was fully justified by context and appropriately scheduled as we have set out in detail in the main body of this letter. Not to have broadcast these comments and this behaviour in the context we did would have been an utterly unnecessary and wholly disproportionate act of censorship and we hope that Ofcom will take the same view and vindicate our right to broadcast the programmes and the right of the audience to view them.”*

# Ofcom's Adjudication: Introduction

- 5.1 As set out above, this decision on *Celebrity Big Brother* has been reached pursuant to Ofcom's statutory powers under the Communications Act 2003 and in light of Ofcom's duties under the Human Rights Act and the relevant provisions of the Broadcasting Code.
- 5.2 In particular, in considering whether or not there have been breaches of the Code, Ofcom has had regard not only to the relevant Code rules but also to Article 10 of the European Convention of Human Rights which, as outlined earlier, secures the broadcaster and the audience's "*freedom to hold opinions and to receive and impart information and ideas without interference by public authority...*" and in light of which Ofcom has set its Broadcasting Code standards. Ofcom recognises that such rights are fundamental rights which may only be limited by restrictions which are "*prescribed in law and necessary in a democratic society...*"
- 5.3 In reaching this decision, Ofcom has carefully considered all the relevant evidence including:
- a) The issues raised by the complaints received;
  - b) The programmes as transmitted; and
  - c) The broadcaster's response.
- 5.4 As is clear from the summary of Channel Four's detailed response set out in the previous section of this adjudication, Channel Four has taken the issues raised in the course of this investigation very seriously and conducted an in-depth analysis of the events in the House. Channel Four has also supplied Ofcom with its detailed guidance manuals which are provided to all those involved in the production of the programme and which are aimed at ensuring compliance with Ofcom's codes.

## **"Generally Accepted Standards"**

- 5.5 As stated above, in setting standards for the content of programmes to be included in television services best calculated to secure the standards objectives in accordance with section 319 of the Act and consistent with Article 10 of the Convention, Ofcom's Code does not prohibit the broadcast of language or behaviour because it is, or may be perceived to be, offensive or racist. Such material can be transmitted so long as "generally accepted standards" are applied to the broadcast content so as to provide "adequate protection" to members of the public from the inclusion of harmful or offensive material.
- 5.6 It is for instance, a generally accepted standard that offensive or harmful material may be included within the context of a documentary exposing racism, a drama where racism is part of the plot or in a televised debate.
- 5.7 The Code sets out examples of offensive material to which generally accepted standards must be applied which include but are not limited to: offensive language, violence, sex, sexual violence, 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).

- 5.8 For these purposes, Ofcom considers generally accepted standards in light of changing times and circumstances. What is generally accepted now may not necessarily have been generally accepted twenty years ago. What constitutes generally accepted standards must be judged in the context of, among other factors, the broadcast programme, the service it is broadcast on, and the likely expectations of the audience for any particular broadcast service or programme. Therefore, what may be generally accepted standards for the audience of *Big Brother* may not be standards which would necessarily be generally accepted for other programme services where the likely audiences may have entirely different expectations.
- 5.9 While *Big Brother* is an entertainment programme and viewers therefore perceive what happens in the House as “entertainment”, they also view it as “reality” i.e. they view the events as real events happening to real people. This means that the audience can genuinely become concerned for the welfare of housemates, but in the knowledge and expectation that any serious, problematic or anti-social behaviour will be appropriately dealt with. This has become one of the generally accepted standards of *Big Brother*. See for example Ofcom’s Broadcast Bulletin (Issue number 69, September 2006 in paragraph 89) where Channel Four through *Big Brother* informs a housemate that it “*will not tolerate aggressive or intimidating behaviour from any housemates*”.
- 5.10 In the context of *Big Brother*, Ofcom has adjudicated on issues arising from previous series of the programme as to whether there have been breaches of the Broadcasting Code (see paragraphs 5.21 to 5.22 below). In adjudicating on these matters, Ofcom has had to consider what “generally accepted standards” means in the context of that programme. It is recognised that *Big Brother* is the type of programme in which controversial matters will inevitably be raised and emotional and offensive exchanges occur, as the characters of the participants are revealed. Given this, what is broadcast may contain language and behaviour which is capable of causing offence to viewers. However, viewers expect the broadcaster, through *Big Brother*, to challenge such behaviour. For instance, viewers expect that inappropriate behaviour will be confronted by *Big Brother* and participants questioned over it and asked to explain themselves, when appropriate.
- 5.11 Whatever the generally accepted standards are in any particular case, it is of critical importance in terms of Ofcom’s Code that when these standards apply, broadcasters ensure that material which they wish to include in their particular service and which may cause offence is justified by the context (see further below).

### **“Justified by context”**

- 5.12 As outlined earlier in this adjudication, the Code explains that “context” can include a number of things. In the case of *Big Brother*, factors of particular relevance are:
- the editorial content of the programme, programmes or series;
    - This includes, for example, the nature and purpose of the *Big Brother* series as a whole, the editing of the footage, or the general rules of the show.
  - the service on which the material is broadcast;

- *Celebrity Big Brother* was broadcast on Channel Four and E4. Channel Four's public service remit as defined in the Act is therefore important.
  - the time of broadcast;
    - This ensures, for example, that protection is provided to children on pre-watershed programmes or that more adult material is broadcast later in the schedule.
  - the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description;
    - This means that it is relevant when judging the degree of harm or offence likely to be caused by *Big Brother*, to take into account the particular type of programme that *Big Brother* is;
  - the likely size and composition of the potential audience and likely expectation of the audience;
    - This includes the expectations and attitudes of the likely audience for *Big Brother*. It also incorporates the changing views and expectations of the audience as the series progresses.
- 5.13 Ofcom recognises that in terms of the nature and purpose of the *Celebrity Big Brother* show, it is an integral part of the context of the programme that viewers are given information about the participants' true characters to enable the audience to express its disapproval of them if necessary, for example by voting to evict them at the earliest opportunity.
- 5.14 Ofcom recognises that in this respect, within the British media, *Big Brother* is an important series which has a role to play in demonstrating how freedom of expression can raise matters of social importance which may lead to legitimate public debate on key issues affecting society at large.
- 5.15 Another unique feature of the programme is that the broadcaster can utilise additional tools, such as the role of Big Brother itself and the Diary Room, to justify any offensive material and guide audience expectations of what is acceptable behaviour in the House. Reactions by housemates, Big Brother interventions and the Diary Room are all part of the well understood architecture of the programme and the context within which offensive material may be broadcast. Through discussion in the Diary Room, Big Brother can confront and reprimand housemates about their behaviour thereby acting as an important arbitrator to what the public may perceive to be offensive language or behaviour. Such intervention, as well as the reactions of housemates, may be crucial for applying "generally accepted standards" to potentially offensive material.
- 5.16 In addition, broadcasters have at their disposal a wide range of tools which Ofcom would expect them to use to justify the inclusion of offensive or harmful material. For example:
- through the particular editing of the recorded footage (this affects what is shown to the public, and for instance, in what order);

- through the addition of supplementary material within the same show (for example, the inclusion of in-studio debates);
- through the broadcasting of ancillary programmes.

It is important to note that *how and when* a broadcaster intervenes or moderates is an editorial matter for the broadcaster. However, what is important is that the broadcaster needs to be able to assess the potential level of offence that may occur in order to reach a considered view on what is required in terms of the Code (i.e. to apply generally accepted standards, so as to provide adequate protection for viewers from the inclusion of the offensive material). It is therefore crucial that the broadcaster's assessment of the material it intends to broadcast is as well informed as possible since the degree of intervention required to justify its inclusion in the programme, will largely depend on an accurate assessment of the potential offence that may be caused.

- 5.17 However, the broadcaster is also required to take into account the likely expectations of the audience. In the case of *Big Brother*, the audience has become accustomed to anti-social behaviour within the House being addressed by some form of intervention within the main show (by whatever means).
- 5.18 In considering issues of justification by context in the case of *Celebrity Big Brother*, Ofcom has been mindful of the particular complexities involved in ensuring compliance on this particular programme. On any given day of a *Big Brother* series, there are number of shows that need to be simultaneously considered by the broadcaster which are all transmitted at different times. Channel Four is simultaneously responsible for:
- The editing of the main show, which relays events of the day before;
  - The re-versioning of the main show for the pre-watershed version the following morning;
  - The live streaming of that day's events broadcast on E4 (the broadcaster must not only ensure compliance, it must also consider the impact of the live events on the ongoing edit of that night's main show);
  - The ancillary programmes;
  - The keeping track of events going on *outside* the House to fully appreciate the likely expectation of the audience.
- 5.19 Ofcom therefore recognises that a programme such as *Big Brother* requires a number of fine editorial judgements to be made. For the purposes of compliance under the Code, importantly, the broadcaster cannot assume that viewers are watching all the programmes. Consequently, audience expectations may differ between the main Channel 4 service and Channel Four's other services (such as E4).
- 5.20 Ofcom notes that in these circumstances, ensuring compliance across two services (both Channel 4 and E4) for the entirety of the *Celebrity Big Brother* series is a complex matter.

## Ofcom's Previous Findings on *Big Brother*

5.21 As stated above, Ofcom has taken into account previous findings not only in relation to Channel 4 but also on its sister channel E4, as such findings informed Ofcom of the generally accepted standards of *Big Brother* and the audience's general interaction and expectations of the programme. In these previous findings, it has been stated, amongst other things that:

"The series' editorial purpose is to explore how people behave when under pressure and cooped up with people of greatly differing personalities, backgrounds and outlooks."

*Ofcom's Broadcast Bulletin (BB), Issue number 50, 19 December 2005*

"It has been established over seven series that the *Big Brother* audience expects to see all aspects of the housemates' characters exposed during their stay in the House. Channel 4 would not have been expected to keep key character information from viewers, since it is the viewers who decide who to vote for. It is to some extent expected that high emotions, disagreements, and separation to partisan groups may result. By including scenes featuring individuals upset and in conflict with other housemates, Channel 4 offered viewers an insight into the housemates' characters. In Ofcom's view this is in line with both the audience and the contestant's expectation."

*BB, Issue number 69, 18 September 2006*

"...we considered whether the inclusion of these scenes of bullying or distress went beyond generally accepted standards. In our opinion, the material shown did not dwell on distress or humiliation longer than was editorially necessary. The broadcaster also demonstrated that it took its duty of care seriously. For example, in one scene in the Diary Room, it was clear that (one of the housemates), in a heightened emotional state, was treated sensitively and responsibly by the production team. Similarly, when the production team felt that one housemate's behaviour had grown too aggressive, she was called into the Diary Room and informed that "Big Brother will not tolerate aggressive or intimidating behaviour from any housemates."

*BB issue number 69, 18 September 2006*

"The apparent absence of intervention by Channel 4 to prevent the situation escalating to this point, having 'engineered' the situation originally, clearly caused distress and offence to viewers. While accepting that security men may have been positioned, the production team's eventual intervention appeared too late, particularly since the confrontation had turned physical. The offence was compounded by the text message captions running at the bottom of the screen, which gave the viewers the impression that

Channel 4 was continuing to treat as entertainment, a situation that had from what viewers could see, become serious.”

*BB issue number 20, 18 October 2004*

- 5.22 From this it may be seen that it is clearly expected, in accordance with freedom of expression rights, that the *Big Brother* audience should be given the opportunity to see the true behaviour and key characteristics of housemates. Viewers do not expect censorship either by the broadcaster or the regulator. However, it is also clear that in certain circumstances, the audience also expects appropriate intervention by the broadcaster.

### **Adjudications Under the Code**

- 5.23 In the approximately 44,500 complaints Ofcom has received about this series, complaints were made about a wide number of incidents in the House. Ofcom has endeavoured in this adjudication to deal with those incidents considered to be the most significant and with the main issues highlighted by the complaints and any related compliance issues on which Ofcom has remit to adjudicate.
- 5.24 Ofcom has considered these incidents under the Code. In considering whether any of them are in breach of relevant provisions of the Code, we have considered the nature and context of the incident, the relevant Code Rules, the nature of the complaints and Channel Four’s response to the issues raised.
- 5.25 To reach our decision, we have looked at each incident in light of the requirements of the Code: in particular, that generally accepted standards are applied and that the inclusion of any offensive material is justified by context. We have also taken full account both of the immediate and overall context in which the incidents took place.
- 5.26 Whilst we have adjudicated separately on each incident, these separate adjudications should be read in light of and in conjunction with the more general findings regarding the *Big Brother* programme contained in this adjudication.
- 5.27 It is important to note that there were variations in the edited material broadcast between different programmes. However, the dialogue quoted throughout this finding generally comes from the main show.

# Not In Breach

## The Introduction of the Goody family

Transmitted 5 January 2007

### Summary of Incident

6.1 On 5 January 2007 Jade Goody, her boyfriend Jack Tweed and her mother Jackie Budden, entered the House as contestants.

### Issues

6.2 Complainants expressed concerns that the arrival of the Goody family was deliberately engineered by Channel Four to cause racist behaviour in the House.

6.3 We considered the introduction of the Goody family under:

- Rule 2.1 of the Code: "*Generally accepted standards must be applied to the contents of television...services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material*"; and
- Rule 3.1 of the Code: "*Material likely to encourage or incite the commission of crime or lead to disorder must not be included in television services.*"

6.4 We also considered the issue as broadcast in the reversioned programme the following morning under the same Rule 2.3 (as above) and:

- Rule 1.3 of the Code: "*Children must be protected by appropriate scheduling from material that is unsuitable for them.*"

### Response

6.5 Ofcom took into account Channel Four's submissions regarding this incident, in particular, that:

- The introduction of a family had originally been conceived for the previous main summer series but was eventually deferred for the celebrity version.

### Decision

6.6 As stated above, the Code does not prohibit the broadcast of language or behaviour because it is, or may be perceived to be, offensive or racist.

6.7 Ofcom does not have any evidence to support the suggestion that the arrival of the Goody family was deliberately engineered by Channel Four to cause racist behaviour in the House. We note that Channel Four had originally planned to introduce the Goody family in the previous series of *Big Brother*, but that there was an editorial decision to bring the family into the celebrity series instead. It is not uncommon for

Channel Four to introduce elements into the House that may cause unease or disturb what has become the natural balance in the House. Housemates fully expect this. In our opinion, therefore, there can be no significance attached to their arrival in this particular series, other than that this is an example of the well-established device of the injection by *Big Brother* of elements designed to create a new dynamic among housemates.

**NOT IN BREACH OF RULES 2.1 AND 3.1**

**NOT IN BREACH OF RULE 1.3 (REVERSIONED PROGRAMME)**

### **Mispronunciation of 'Shilpa' by Jackie Budden**

**Transmitted 7 January 2007 (and other dates)**

#### Summary of Incident

6.8 On a number of occasions Jackie Budden was heard to mispronounce Shilpa Shetty's first name, both in front of Shilpa Shetty and in front of others.

#### Issues

6.9 Complainants considered Jackie Budden's mispronunciation of the name "Shilpa" to be potentially racist.

6.10 We considered this issue under Rule 2.3 (generally accepted standards).

6.11 We also considered the issue as broadcast in the reversioned programme the following morning under the same Rule 2.3 and Rule 1.3 of the Code (protection for children).

#### Response

6.12 Ofcom took into account Channel Four's submissions regarding this incident, in particular, that:

- After the fight, the viewer sees Jade Goody intervene with Jackie Budden to challenge her on her behaviour and the fact that Shilpa Shetty has a right to be called by her proper name;
- When Jackie Budden heads to the Diary Room after the argument there is nothing to suggest that her inability to pronounce the name "Shilpa" is anything but genuine;
- It is clear from Jackie Budden's time in the House that she has genuine issues with pronunciation of some words (e.g. the word "apologise" in the Diary Room sequence).

#### Decision

6.13 We have no evidence to suggest that Jackie Budden was deliberately mispronouncing the name in order to cause offence. Our viewing of the programmes showed that there were many occasions where Jackie Budden had difficulty in

pronouncing words, for example, her pronunciation of the word “apologise” as “apolidge” (sic) later in the same show, and her repetition of “dilemma” as “dimella” (sic). Ofcom considers that it is clear that she had genuine difficulty with certain words.

- 6.14 Further, Ofcom also considers that Channel Four sufficiently justified transmitting this mispronunciation with context. Firstly, immediately after Jackie Budden’s argument with Shilpa Shetty, the viewers see Jade Goody challenging her mother about her failure to pronounce Shilpa’s name correctly. Jade Goody implies that Shilpa Shetty had a right to want to be called by her real name. Secondly, Jackie Budden is challenged once again in her eviction interview with Davina McCall about her inability to say ‘Shilpa’. In the interview, she still struggles to pronounce Shilpa’s name, suggesting further that she had a genuine difficulty with the name. We therefore do not consider this incident to be in breach of the Code.

**NOT IN BREACH OF RULE 2.3 OF THE CODE**

**NOT IN BREACH OF RULE 1.3 OF THE CODE (REVERSIONED PROGRAMME)**

### **Use of the expression “White Trash” by Jermaine Jackson**

**Transmitted 10 January 2007**

#### Summary of Incident

- 6.15 In discussion with Shilpa Shetty, Jermaine Jackson was heard to say the word ‘white’ and seen to mouth the word ‘trash’.

#### Issues

- 6.16 Complainants considered Jermaine Jackson’s use of the term “white trash” to be racially offensive.
- 6.17 We considered the issue under Rule 2.3 (generally accepted standards).
- 6.18 We also considered the issue as broadcast in the reversioned programme the following morning under the same Rule 2.3 and Rule 1.3 of the Code (protection for children).

#### Response

- 6.19 Ofcom took into account Channel Four’s submissions regarding this incident, in particular, that:
- Jermaine Jackson was clearly uncomfortable with the “white trash” comment – he used it carefully and cautiously, mouthing the word “trash” to mark his disapproval;
  - Jermaine Jackson was using it merely as an illustrative tool to explain the class differences between Shilpa Shetty and Jackie Budden;
  - In the same scene, Jermaine Jackson specifically distinguished the issue of colour from events going on in the House;

- The press erroneously reported that Jermaine Jackson himself had called Jackiey Budden “white trash”, giving rise to some viewer complaints.

### Decision

- 6.20 Ofcom has noted various definitions of the term “white trash” in published, as well as online dictionaries. “White trash” appears to be a slang term that is usually used to refer to what some describe as poor and uneducated white people. Whilst we understand that the term “white trash” literally refers to a particular group (i.e. certain white people), we consider it generally accepted that the expression refers to a socio-economic group, rather than a racial one. We noted that Jermaine Jackson referred to *The Jerry Springer Show* immediately after his use of “white trash” to expand on what he meant by the term (“*Have you heard about the show Jerry Springer, where they bring people and tell all their business and they go crazy? They get people like that because they have no self-respect sometimes...*”). Again, this indicated that Jermaine Jackson’s use of the expression did not appear to be concerned with race, but with class and culture.
- 6.21 Nonetheless, Ofcom does consider that the term “white trash” may still have the potential to be offensive to some viewers. However, we believe that the term was appropriately justified by context in this specific instance and therefore not in breach of the Code. It is clear from the scene that Jermaine Jackson was merely reporting the use of the expression by others and he explicitly states that he would not himself apply it to Jackiey Budden (“*They brought up the word white trash ...and I wouldn’t call her that because she’s a human being...*”). Neither did Jermaine Jackson use the term in aggressive or mocking terms.
- 6.22 We also note that the expression was edited out of the re-versioned show transmitted the following morning and therefore raises no issues under the Code.

**NOT IN BREACH OF RULE 2.3 OF THE CODE**

**NOT IN BREACH OF RULE 1.3 OF THE CODE (REVERSIONED PROGRAMME)**

### **Jack Tweed’s comments to Jade Goody about Shilpa Shetty**

**Transmitted 11 January 2007**

#### Summary of Incident

- 6.23 At the end of the programme, following Jackiey Budden’s eviction, Jack Tweed, in bed with Jade Goody, makes a comment regarding Shilpa Shetty, which was bleeped.

#### Issues

- 6.24 Complainants believed that Jack Tweed had used the word “paki” about Shilpa Shetty when he was in bed with Jade Goody.
- 6.25 We considered the comment under Rule 2.3 of the Code (generally accepted standards).

6.26 We also considered the issue as broadcast in the reversioned programme the following morning under the same Rule 2.3 and Rule 1.3 of the Code (protection for children).

### Response

6.27 Ofcom took into account Channel Four's submissions regarding this incident, in particular, that:

- The press widely misrepresented the incident. They claimed that Jack Tweed had used the word "paki" inevitably fuelling public outrage;
- Channel Four's decision to mask the word "cunt" was a simple one – the use of the word has only ever been sanctioned for broadcast in *Big Brother* on rare occasions.

### Decision

6.28 In the programme as broadcast, it was clear that Jack Tweed had used a term of abuse when talking about Shilpa Shetty, but the word itself was masked by bleeping. Jade Goody's reaction "*Jack!*" and Jack Tweed's response "*I don't care. She annoys me. Wanker.*" further suggested that a particularly offensive word may have been used. Ofcom asked Channel Four for the un-edited footage of this scene. Ofcom can independently verify that Jack Tweed referred to Shilpa Shetty as a "cunt". Channel Four's decision to obscure the word to avoid offence, is a matter for the broadcaster. It cannot be relevant to Ofcom's decision that the word was widely misrepresented as "paki" as the Code cannot take into account what an audience may end up simply inferring from a masked word.

6.29 We note Channel Four's point that that the media coverage and complaints that were beginning to grow at the start of this period sprang in part from the erroneous report that Jack Tweed had used the word "paki" in this scene. However, an analysis of complaints by Ofcom showed that the first real dramatic increase in complaints actually occurred on 15 January 2007, when Jo O'Meara and Danielle Lloyd's conversation regarding why people in India were thin and whether they ate with their fingers took place. This was when discussions also started to take place between housemates about the role of race and colour in the House.

6.30 The posting on *YouTube* of a subtitled version of this material including the word 'paki' and the equally inflammatory 'makes monkey noises' is not a matter which is within the control of Channel Four nor the remit of Ofcom.

**NOT IN BREACH OF RULE 2.3**

**NOT IN BREACH OF RULE 1.3 (REVERSIONED PROGRAMME)**

## The Exchange in which Danielle Lloyd describes Shilpa Shetty as “a dog”

Transmitted 13 January 2007

### Summary of Incident

6.31 In an exchange between Jo O’Meara and Danielle Lloyd, just before Carole Malone’s eviction, Danielle Lloyd was heard to describe Shilpa Shetty as “a dog”.

### Issues

6.32 Complainants believed Danielle Lloyd’s reference to Shilpa Shetty as “a dog” was offensive and racially motivated.

6.33 We considered the comment under Rule 2.3 of the Code (generally accepted standards).

6.34 We also considered the issue as broadcast in the reversioned programme the following morning under the same Rule 2.3 and Rule 1.3 of the Code (protection for children).

### Response

6.35 Ofcom took into account Channel Four’s submissions regarding this incident, in particular, that:

- At this point, Danielle Lloyd was obviously still upset about what she perceived to be Shilpa Shetty’s role in Carole Malone’s eviction;
- It was important for viewers to see Danielle Lloyd’s real character;
- There was no evidence to suggest that Danielle Lloyd’s use of the word “dog” was racially motivated;
- Later in the same show, Jo O’Meara made it clear that she thought the comments were terrible and urged Danielle Lloyd to apologise to Shilpa Shetty.

### Decision

6.36 We understand that to refer to a woman as “a dog” is an unpleasant form of abuse and may be considered by some to be offensive. However, we do not consider it to be so offensive that it would need some form of greater context, other than that given to it by the programme itself. In the context of the *Big Brother* show, it is common place for arguments to occur in the House and for housemates to be derogatory about each other. We therefore do not believe that in light of this backdrop, the term “dog” would have gone beyond the *Big Brother* audience’s expectations. In the context of the day’s events, the comment was clearly made by Danielle Lloyd in the belief that Shilpa Shetty had somehow had a role in Carole Malone’s eviction. It was, therefore, used by Danielle Lloyd as a generic term of abuse as opposed to a racial insult, and would have given viewers an insight into the housemate’s character.

6.37 These comments were transmitted in the re-versioned show. For the same reasons above, however, we do not consider that there was a breach of the Code.

**NOT IN BREACH OF RULE 2.3 OF THE CODE**

**NOT IN BREACH OF RULE 1.3 OF THE CODE (REVERSIONED PROGRAMME)**

### **Jermaine Jackson's comments regarding colour in the Diary Room**

**Transmitted 14 January 2007**

#### Summary of Incident

6.38 Jermaine Jackson, in a Diary Room conversation, was seen to be exploring why there may have been tension in the House. He suggested that it could be related to the fact that Shilpa Shetty is a 'woman of colour'.

#### Issues

6.39 Complainants believed comments about colour made by Jermaine Jackson in Diary Room were racially offensive. Jermaine Jackson was exploring why there may have been tension in the House.

6.40 We considered the comment under Rule 2.3 of the Code (generally accepted standards).

6.41 We also considered the issue as broadcast in the reversioned programme the following morning under the same Rule 2.3 and Rule 1.3 of the Code (protection for children).

#### Response

6.42 Ofcom took into account Channel Four's submissions regarding this incident, in particular, that:

- The housemates' reflections on the events in the House were important to show that moods had calmed in the House – that both sides were supported – and to provide various analyses of what lay behind the conflicts;
- Jermaine Jackson only raised the issue of colour as a possible motive, he has not "heard them say it";
- The scene gave viewers an insight into Jermaine Jackson's perspective of the tensions – it added context to the conflict seen in the House.

#### Decision

6.43 We considered it reasonable and appropriate that Channel Four should broadcast a housemate's thoughts on why there may be problems and tensions in the House – whatever those perceived problems may be – so long as it complied with the Code. At this point Jermaine Jackson was making a point about the cultural differences and misunderstandings between the housemates, as well as privately raising the issue of race with Big Brother. We did not consider any of his comments to be racially offensive to the reasonable viewer. Rather, these reflections were important in the

context of the show to help the audience understand what the housemates were thinking and how they were interpreting events in the House.

- 6.44 These comments were transmitted in the re-versioned show. However, given that we do not consider the comments to be racially offensive and that they were an important reflection of the House given by a housemate, they were acceptable for transmission pre-watershed. It should be noted that challenging issues, such as race, are not matters which cannot be dealt with pre-watershed. The manner in which such issues are handled is the key to ensuring compliance with the Code.

**NOT IN BREACH OF RULE 2.3 OF THE CODE**

**NOT IN BREACH OF RULE 1.3 OF THE CODE (REVERSIONED PROGRAMME)**

### **Danielle Lloyd's Comment about Flicking Dried Thrush into Curry**

**Transmitted 15 January 2007**

#### Summary of Incident

- 6.45 During the course of a drinking game, a discussion led to Danielle Lloyd suggesting flicking dried thrush into Shilpa Shetty's curry.

#### Issues

- 6.46 Complainants considered Danielle Lloyd's comments to be racially offensive.
- 6.47 We considered the comment under Rule 2.3 of the Code (generally accepted standards).
- 6.48 We also considered the issue as broadcast in the reversioned programme the following morning under the same Rule 2.3 and Rule 1.3 of the Code (protection for children).

#### Response

- 6.49 Ofcom took into account Channel Four's submissions regarding this incident, in particular, that:
- The comment was a typical example in context of the type of off-hand "school yard" nasty comments that Danielle Lloyd was making about Shilpa Shetty;
  - At the end of the show, Ian Watkins acknowledged in the Diary Room that Danielle Lloyd and Jade Goody's behaviour was "almost like bullying".

#### Decision

- 6.50 We recognise that some viewers found the reference to "curry" sufficient in itself to make the comment racially offensive. However, Ofcom did not consider the comment to be a pejorative generalisation on the grounds of race, the target of Danielle Lloyd's comments appearing to be Shilpa Shetty and her curry more than anything else. Although a crude and offensive comment, it was, as Channel Four stated, a typical example of Danielle Lloyd's off-hand nasty "school-yard" behaviour.

Moreover, it appeared to Ofcom that this type of remark, while obviously crude, was typical of the sorts of remark that were made in the House and fell within the expectations of the majority of the *Big Brother* audience.

- 6.51 Ofcom nonetheless considered that Danielle Lloyd's comments, though not racially offensive, could potentially have caused general offence to many. We therefore examined whether its inclusion had been justified by the context under Rule 2.3 of the Code. It is Ofcom's view that the comment was very clearly placed in context within the main show by Ian Watkins' discussions in the Diary Room. Immediately preceding the incident, Ian Watkins is shown telling Big Brother that Danielle Lloyd had been saying unpleasant things and he criticises her and Jade Goody for their treatment of Shilpa Shetty in the House. Then, following the incident, the programme returns to Ian Watkins describing the behaviour of the women as akin to bullying. With this specific context, we do not consider this incident to be in breach of the Code.
- 6.52 We note that these comments were not broadcast in the pre-watershed re-versioned show that was transmitted on the morning of Tuesday 16 January.

### **NOT IN BREACH OF RULE 2.3 OF THE CODE**

## **Jade Goody and Shilpa Shetty's Oxo cube Argument**

**Transmitted 17 January 2007**

### Summary of Incident

- 6.53 Antagonism in the House escalated on Tuesday 16 January 2006 when an argument between Jade Goody and Shilpa Shetty erupted seemingly over an Oxo cube.

### Issues

- 6.54 Complainants felt that this material was offensive and racially motivated.
- 6.55 We considered the issue under Rule 2.3 (generally accepted standards) and:
- Rule 2.4: "*Programmes must not include material... which, taking into account the context, condones or glamorises violent... or seriously antisocial behaviour and is likely to encourage others to copy such behaviour.*"
- 6.56 We also considered the issue as broadcast in the reversioned programme the following morning under the same Rules 2.3 and 2.4 as well as:
- Rule 1.3 of the Code (protection for children).
  - Rule 1.11: "*Violence, its after effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed... and must also be justified by context.*"
  - Rule 1.12: "*Violence, whether verbal or physical, that is easily imitable by children in a manner that is harmful... must not be broadcast before the watershed... unless there is editorial justification.*"

## Response

6.57 Ofcom took into account Channel Four's submissions regarding this incident, in particular, that:

- In its view, the clashes were rooted in class and cultural misunderstandings and differences and were to that extent "utterly typical Big Brother";
- There was no suggestion of any slurs based on race – Jade Goody clearly focussed on social class and upbringing;
- Shilpa Shetty was not a victim and was shielded and supported by Jermaine Jackson;
- It was vital at this stage of the show for viewers to see the characters of the two women.

## Decision

6.58 This was certainly an extremely volatile row between two strong characters. It was clear that what the two housemates were actually arguing about (the use of the Oxo cubes) was effectively immaterial but that it was an opportunity for both to vent their anger. In particular, Jade Goody directed her anger at Shilpa Shetty calling her "*pathetic and fake*", "*stuck up*" and that she was not a "*princess here*" but "*normal*" in the House. In Ofcom's view, an analysis of the programme and transcript shows that the basis of this argument was class and culture as opposed to race. For instance, Shilpa Shetty says "*I am not from the roadside*", and tells Jade Goody "*you need etiquette lessons*", while Jade Goody tells Shilpa Shetty that she might be "*...some fucking princess from neverland*" but that she should come to terms with the fact that "*...you're a normal housemate like everybody else...*". In fact, it is interesting to note that in the heat of a very extreme and volatile row, neither side made references to race or used racist abuse.

6.59 It should further be noted that Jade Goody stated during the argument that:

*"...you need a day in the slums, go to your community and go round to all those people that look up to you and be real, you fucking fake."*

She did not say "Go back to the slums" as some viewers recalled. The clear implication of this comment was that Shilpa Shetty did not know what real life was like, and how 'normal' people lived.

6.60 This argument was certainly extremely uncomfortable viewing and at certain times shocking. It was made more so, by the comments of Jo O'Meara and Danielle Lloyd during and after the fight, which were regarded by some as supportive of Jade Goody's behaviour:

**Jo:**

"I suddenly feel better"

"Jade you're hilarious"

"Got to say, made my day"

**Danielle:**

“That was so funny when you said ‘go and put your fucking glasses on and cry’”

“That was fucking fantastic”

“That fucking brightened my day up, I’m telling you”

- 6.61 While we understand that the whole event was deeply unpleasant to view, we recognise that this is not particularly unfamiliar territory for *Big Brother* which is no stranger to conflict erupting in the House. Furthermore, in our view, Shilpa Shetty’s attitude to the row and the level of support that she received from housemates during and after it provided viewers with sufficient context to justify the broadcasting of the fight by Channel Four. Shilpa Shetty did not appear to be particularly intimidated or distressed and stood up to Jade Goody’s criticisms with equal strength. She also had the clear support of other housemates, particularly Jermaine Jackson who intervened to separate the two women, and showed his solidarity with Shilpa Shetty by returning to the bedroom to counsel her afterwards. With this context in mind, we reached the view that although the material had the potential to be offensive, its inclusion - given the circumstances - was sufficiently justified by Channel Four under Rule 2.3 of the Code.
- 6.62 For similar reasons, neither was Ofcom of the view that the footage condoned or glamorised seriously antisocial behaviour and was likely to encourage others to copy such behaviour. Despite what may have appeared to be supportive comments by some towards Jade Goody, viewers were also able to see other housemates’ reactions in support of Shilpa Shetty. Given the overall context of the argument and the manner in which it was transmitted, it was clear that such behaviour was not condoned or glamorised in such a way that it was likely to be copied by others. It was therefore not in breach of Rule 2.4 of the Code.
- 6.63 This sequence was heavily edited for language and aggression on the next morning’s re-versioned show. The resultant exchanges, albeit still aggressive at times, were in Ofcom’s view appropriately limited and justified by the context. There was therefore no breach of Rules 1.3, 1.11 or 1.12.

**NOT IN BREACH OF RULES 2.3 OR 2.4 OF THE CODE**

**NOT IN BREACH OF RULES 1.3, 1.11 OR 1.12 OF THE CODE (REVERSIONED PROGRAMME)**

## **The Suggestion that Shilpa Shetty wanted to be White**

### Summary of Incident

- 6.64 Ofcom received complaints that on 12 January 2007, two housemates in the garden had suggested that Shilpa Shetty wanted to be white.

### Issues

- 6.65 We considered the issue under Rule 2.3 of the Code (generally accepted standards).

## Response

6.66 The broadcaster told us that a senior editor viewed all the E4 streaming of 12 January 2007 and conducted a word search on the system. After searching all the relevant material containing the housemates, Channel Four could not find such comments. Channel Four also supplied Ofcom with the relevant material from that day.

## Decision

6.67 This material contained no evidence that these comments had been made. It was therefore concluded on the evidence provided that such comments were not transmitted.

**NOT IN BREACH OF RULE 2.3 OF THE CODE**

## **OTHER MATTERS**

### **The Mimicking of Accents**

#### **Transmitted various dates**

## Issue

6.68 Complainants believed that the mimicking of Shilpa Shetty's accent on various occasions throughout the series was offensive and amounted to racism.

## Response

6.69 Ofcom took into account Channel Four's submissions regarding this incident, in particular, that:

- Mimicking was commonplace in the House throughout the series;
- The motivations for the mimicking did not appear to Channel Four to be racist.

## Decision

6.70 In response to these complaints, Channel Four argued that mimicking was a commonplace part of the dynamic in the House, not confined to Shilpa Shetty's accent, and that where Shilpa Shetty was mimicked, the motivations were various but did not include racism. It pointed out that a number of the housemates had distinctive accents and these were also mimicked by various housemates at various stages. Channel Four believed that the practice of mimicking "*became a real part of the housemates' dynamic with each other over the entire series*".

6.71 In Ofcom's review of all the incidents in which the housemates were broadcast mimicking accents, we noted that many housemates did in fact imitate each other and this was mostly done in good humour. Shilpa Shetty, herself, mimicked others, in particular Jade Goody (for example, she mocks Jade Goody at one point on her pronunciation of the word "whale"). On the whole, where the mimicking was not good humoured, there was no direct evidence to suggest that the motivation was racist. For instance, when Jo O'Meara imitates Shilpa Shetty's apparent "whinging" to Jade

Goody and Danielle Lloyd (transmitted Saturday 13 January 2007 on the main show), it is the tone and pitch of her voice that is singled out and made the main focus of the imitation rather than the accent.

- 6.72 However, Ofcom recognises that there were occasions when the mimicking of accents by housemates appeared to step over the boundary of good humour. There were times when the mimicking was used maliciously and aggressively within a wider discussion about race. In such circumstances, the mimicking could have been interpreted as offensive on racial grounds (see in particular paragraphs 8.4 to 8.17 below regarding remarks about cooking in India). We have dealt with these incidents separately below.

### **Rule 3.1 “Incitement to the commission of crime”**

- 6.73 Rule 3.1 of the Code states that *“Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television... programmes.”*
- 6.74 Some viewers complained to Ofcom that the material broadcast by Channel Four would lead to and encourage racial hatred. Ofcom therefore considered whether Rule 3.1 was breached.
- 6.75 As this Rule implies, a judgement whether or not material is in breach of this Rule has to be taken before the material has been transmitted and when a decision is taken whether or not to broadcast it. We consider it reasonable for the broadcaster in this case, to have taken the view, prior to broadcast, that no one incident, or the material taken as a whole would be likely to encourage those watching to imitate or commit crimes of a racist nature or create public disorder. Consequently, we do not think the broadcaster could reasonably be expected to have reached this conclusion when deciding to include this material in the programme.
- 6.76 The programmes in this series were therefore not in breach of Rule 3.1 of the Code.

### **E4 Streaming**

- 6.77 In response to Ofcom’s enquiry, Channel Four supplied transmission details related to material broadcast on E4. It is clear that the incidents which have resulted in breaches on the main show (see below) had either not been broadcast or the relevant audio had been masked.

# Resolved

## Use of the Expression “The Indian” by Jackie Budden

Transmitted 9 January 2007

### Summary of Incident

7.1 On one occasion in the House, Jackie Budden, whilst handing out gifts said that she wouldn't be giving “the Indian” one. Later, in her exit interview with Davina McCall she called Shilpa Shetty “the Indian” again.

### Issues

7.2 Complainants felt that that Jackie Budden's use of the expression “the Indian” to refer to Shilpa Shetty was offensive and racist.

7.3 We considered the comment under Rule 2.3 of the Code (generally accepted standards).

7.4 We also considered the issue as broadcast in the reversioned programme the following morning under the same Rule 2.3 and Rule 1.3 of the Code (protection for children).

### Response

7.5 Ofcom took into account Channel Four's submissions regarding this incident, in particular, that:

- This was a generic reference to Shilpa Shetty's country of origin;
- The other housemates did not correct her thereby indicating that this was a personality matter, not a racially motivated one;
- If a motivation had been detected or expressed as racist Big Brother would have intervened; and
- Jackie Budden made clear her motivation was related to her feeling Shilpa Shetty was being 'false'.

### Decision

7.6 We considered the use of this term in the light of Jackie Budden's difficulty in pronouncing the name “Shilpa” and that she had tried, at one point, to substitute the expression ‘the Princess’ but subsequently decided not to. Ofcom considered therefore the possibility that calling Shilpa Shetty “the Indian” may have been a substitute for any other name or nickname by someone who had difficulty with pronunciation.

- 7.7 We also considered the way in which the broadcaster had attempted to justify the broadcast of the comment in context. We noticed that in the same show, Carole Malone is shown suggesting to Shilpa Shetty and Leo Sayer that the differences between Shilpa Shetty and Jackie Budden were based on class differences and jealousy, as opposed to race. We were also mindful of Ofcom's previous findings in relation to *Big Brother* where we have accepted that the *Big Brother* audience expects to see all aspects of the housemates' characters exposed during their stay in the House.
- 7.8 There was a context of ill-feeling between Shilpa Shetty and Jackie Budden almost from the moment they were brought together in the House. In the light of this, it was likely that Jackie Budden's labelling of Shilpa Shetty as "the Indian" would be perceived as having derogatory and malicious undertones. There was no further evidence to indicate that the expression was being used in anything other than a pejorative way (for example, it was not being used as a term of affection). We were concerned that the broadcaster had not attempted in other ways to indicate that the expression was potentially racially offensive (depending on the circumstances of its use).
- 7.9 We felt, though, that it was insufficiently clear, from the one broadcast use of the expression in the House, whether it was *intended* to be offensive. Bearing in mind the above context of Jackie Budden's inability to pronounce the name Shilpa, and her belief that she wasn't allowed to call Shilpa Shetty 'princess', we felt that this use of the expression was therefore justified, on balance, by context.
- 7.10 However, in the circumstances of this case, in Ofcom's view there is no doubt that this expression was deeply offensive. In reaching our decision we took into account the fact that Jackie Budden used the expression in a live and highly-charged programme. In such circumstances, the editorial team and Davina McCall chose, in the heat of the moment, to address the remark by concentrating on addressing Jackie Budden's inability to pronounce the word 'Shilpa'. In retrospect this was the wrong decision, and in our view, challenging Jackie Budden on the use of the expression 'the Indian' should have been the priority. Although Channel Four did not believe that the interview was in breach of the Code, it stated that with the benefit of hindsight "...we feel it may have been better editorially if Davina had been firmer in questioning Jackie on her...use of this term...". Elsewhere Channel Four said that it is "...actively considering practical ways of how we can improve the procedures and structures..." and "...we will take on board any lessons learned and improve our practice in the future..."
- 7.11 No doubt, on reflection, and as admitted by Channel Four, the broadcaster would have handled the situation differently. This is evidenced by the manner in which the broadcaster handled the other incidents in the pre-recorded programmes (as outlined in this adjudication).
- 7.12 Ofcom was in no doubt about the offensiveness of this material. However, in light of the fact that the interview was broadcast live and under exceptional circumstances, and taking into account the broadcaster's commitment to review their procedures in this area, on balance, we concluded that no further action was required.

**MATTER RESOLVED**

## In Breach

- 8.1 On analysing Channel Four's response to our investigation, it appeared to Ofcom that Channel Four had failed to fully appreciate the cumulative effect of each incident as it occurred. This resulted in Channel Four focussing too much on the individual impact of each incident rather than taking account of the overall and developing context of the programme and how viewers were perceiving in a cumulative way the events which were being broadcast.
- 8.2 In our view, the events of Saturday 13 January 2007, (for example Jermaine Jackson's comments regarding 'colour') transmitted on the main show on Sunday, put both the broadcaster and the audience on notice that certain housemates were seriously considering the motivations behind some of the housemates' action and wondering whether race was an element. Further, there was evidence from the main show transmitted on 13 January 2007, that some participants were imitating Shilpa Shetty's accent in a more mocking and at times, aggressive and unpleasant manner. From then on, it should have been understood that it was always possible that the audience would see behaviour in the House in this context. It is clear from Channel Four's evidence, that it was acutely aware this issue existed and that it looked at individual events to see whether the behaviour and language of housemates could be explained by class or race. As Channel Four point out, it had to be careful about potentially accusing housemates of racist motivation when it may not have had the evidence. This, we understand, requires fine editorial judgement.
- 8.3 In Ofcom's view, there were three particular incidents which as the events of the series unfolded, were not appropriately justified in context by Channel Four. This resulted in offence being caused to a very large number of people which was not adequately moderated by Channel Four.

### **Jo O'Meara and Danielle Lloyd's Remarks about Cooking in India**

**Transmitted 15 January 2007**

#### Summary of Incident

- 8.4 On Sunday 14 January 2007, viewers saw the House sitting down to eat a roast chicken that Shilpa Shetty had prepared. Some of the housemates were concerned that the chicken had not been adequately cooked. After the meal a conversation took place between Danielle Lloyd and Jo O'Meara about the under-cooked chicken in which they inferred this was why people in India were thin, discussed whether Indian people ate with their fingers and criticised the way that Shilpa Shetty fingered their food.

#### Issues

- 8.5 Many complainants found this conversation racially offensive.

- 8.6 We considered the comment under Rule 2.3 of the Code (generally accepted standards).
- 8.7 We also considered the issue as broadcast in the reversioned programme the following morning under the same Rule 2.3 and Rule 1.3 of the Code (protection for children).

### Response

- 8.8 Ofcom took into account Channel Four's submissions regarding this incident, in particular, that:
- Jo O'Meara and Danielle Lloyd were within their rights to be concerned about potential food safety and hygiene issues;
  - The above comments needed to be viewed in context of the day and the growing antagonism over the course of the preparation and eventual consumption of the lunch;
  - The comments were not viewed at the time as racially motivated by the editorial or compliance staff;
  - In the context of a programme like *Big Brother*, *"it was...important that this scene was presented to viewers as a further insight into these girls' characters"*.

### Decision

- 8.9 Channel Four, amongst other considerations, believed that Jo O'Meara and Danielle Lloyd were within their rights to be concerned about potential food safety and hygiene issues. It said that although they had made crude generalisations displaying their ignorance of other cultures, it nonetheless believed that the comments stopped short of being *"...clearly motivated by actual racial prejudice"*.
- 8.10 This may or may not be the case (and of course, it is not possible to know with any certainty what the motivation behind these comments was), but we considered whether the content of the words were such that they could reasonably be viewed as potentially offensive on the grounds of race, or any other grounds.
- 8.11 There appeared to be two elements to this material which viewers found offensive. The first was the exchange in which Jo O'Meara linked Shilpa Shetty's cooking to people in India being thin and the second was in Danielle Lloyd linking this personally back to Shilpa Shetty's cooking, which viewers perceived to be racist bullying. We agree that on the surface, the target of the women's exchange appeared to be Shilpa Shetty's cooking. However, their comments extended to generalisations about Indians as a race and therefore had the potential to be viewed as stereotyping Indians as a race and offensive by many:

#### **Jo**

I said, maybe they cook them differently in India, might do mightn't they?

#### **Danielle**

They probably fucking cook it for, like...

**Jo**

That's why they're all thin, because they're sick all the time, because they're ill.

**Danielle**

They're ill off Shilpa's cooking.

**Jo**

The thing that aggravates me with Shilpa is she fingers your food off your plate. You could see when she was picking the onions, just with her fingers, she's just done it to Ian as well, she went 'oh this chicken is fine' [mimics Shilpa's accent] and on his plate, started eating his chicken off-of his plate. That grates me.

**Danielle**

Do they do that in India, eat with their hands or is that in China? It's in India isn't it?

**Jo**

Not sure, I don't like all that though.

**Danielle**

I don't know where her fingers have been.

- 8.12 In considering the exchange, we bore in mind the broadcaster's response that the above comments needed to be viewed in the context of the day and the growing antagonism over the course of the preparation and eventual consumption of the lunch. However, Ofcom believed that there were other, more pertinent comments (about race and imitations of accents) being made in the House which should have alerted Channel Four to the potential for this exchange to cause offence and the need to apply generally accepted standards.
- 8.13 We agree with Channel Four that expressing a dislike for another person handling the food you are about to eat with their fingers or taking food from your plate with their fingers would not necessarily lead to offence being caused in the broadcast of this material. However, in the context of the remarks which surrounded it ("*That's why they're all thin, because they're sick all the time...*"; "*Do they do that in India?*") and bearing in mind the pejorative way in which such comments could be viewed, Ofcom is of the view that the conversation had the potential to cause serious offence. Jo O'Meara's quiet mimicking of Shilpa Shetty's accent when saying "*oh this chicken is fine*" also added to the concerns about the offensive nature of this material. This focused the discussion further on race as the issue (and not simply their frustration over the un-cooked chicken), adding to the offence.
- 8.14 We agree with Channel Four that, in the context of a programme like *Big Brother*, "*it was...important that this scene was presented to viewers as a further insight into these girls' characters*". Notwithstanding that such comments may demonstrate cultural ignorance, the audience's reaction to this broadcast was bound to be

influenced more at this time by concerns that the two women's comments had the potential to be offensive on grounds of race.

- 8.15 We further note Channel Four's argument that the women's behaviour was a matter of discussion later in the programme when Ian Watkins raised bullying with Big Brother later in the Diary Room. In this sense, it was clear that the women's behaviour was not as such condoned by the broadcaster. However, given the audience's understanding of what was occurring in the House and the questions some of the housemates were asking, to leave such comments unchallenged meant that Channel Four breached the requirement for the broadcaster to apply generally accepted standards in a way which ensured that the offence which may be caused was justified by the context .
- 8.16 Therefore, it is Ofcom's view that Channel Four failed to apply generally accepted standards to this material and did not adequately justify these remarks by the context and this resulted in a breach of Rule 2.3 of the Code. .

### **BREACH OF RULE 2.3 OF THE CODE**

- 8.17 This incident was broadcast on Channel Four in the re-versioned show the following morning, although edited for language. It was broadcast without the exchange where Jo O'Meara and Danielle Lloyd discussed why people in India are thin. Danielle Lloyd's question whether it was in India or China where people ate with their hands remained. This edit reduced the potential for offence.

### **NOT IN BREACH OF RULES 1.3 OR 2.3 OF THE CODE (REVERSIONED PROGRAMME)**

## **Danielle Lloyd's "Fuck off home" Comment**

**Transmitted 17 January 2007**

### Summary of Incident

- 8.18 After the Oxo Cube row, Danielle Lloyd's commented that Shilpa Shetty should "*fuck off home*" and could not speak English properly.

### Issues

- 8.19 Complainants were of the view that Danielle Lloyd's comments were racially offensive.
- 8.20 We considered the comment under Rule 2.3 of the Code (generally accepted standards).
- 8.21 We also considered the issue as broadcast in the reversioned programme the following morning under the same Rule 2.3 and Rule 1.3 of the Code (protection for children).

### Response

- 8.22 Ofcom took into account Channel Four's submissions regarding this incident, in particular, that:

- The comment clearly had the potential to be viewed as racially offensive and so Channel Four agreed that Big Brother must call Danielle Lloyd to the Diary Room to challenge her on these comments;
- It appeared unlikely in Channel Four's view that Danielle Lloyd meant the comment as anything other than a literal one – that Shilpa Shetty should go home – not as a term motivated by racism;
- The Diary Room scene clearly demonstrated to viewers that where comments could have been perceived as motivated by racism were made, they would not be tolerated or accepted by Big Brother.

### Decision

8.23 Although Ofcom is of the view that the Oxo Cube argument was not in breach of the Code, in terms of compliance, it was the events which occurred after the row which have raised issues. After the argument, the House divided into two groups who then analysed the row. The audience saw Shilpa Shetty leaving the living room, where the argument took place and entering the bedroom. The viewer then saw Shilpa Shetty questioning whether Jade Goody, Jo O'Meara and Danielle Lloyd were reacting to her because she was Indian – though Jermaine Jackson and Dirk Benedict disagreed. Shilpa Shetty then told Cleo Rocos that she believed the issue was racism, clearly confirming some of the viewers concerns. It is clear from this footage however that Shilpa Shetty's concerns were general and did not relate directly to any specific conversation or event. Cleo Rocos disagreed with Shilpa Shetty stating that it was down to culture. It is important to note that while some of the housemates were debating whether the tension in the House was down to class or race, they were not able – unlike the viewing audience – to have a complete understanding of what was occurring in the House. These housemates were unaware of some of the conversations that were taking place.

8.24 Meanwhile in the living room, the viewer saw Jo O'Meara, Danielle Lloyd and Jade Goody, discussing the argument. Danielle Lloyd said about Shilpa Shetty:

#### **Danielle**

I think she should fuck off home [laughs]. Does that mean that I need elocution lessons, because she can't understand what I fucking say? She can't even speak English properly anyway.

8.25 Channel Four says that it was not clear what Danielle Lloyd intended by these comments (i.e. whether it was a term of racist abuse or she meant literally leave this House) but acknowledged that it had the potential to be viewed as racially offensive. The comments were referred up to Channel Four where it was agreed that Big Brother should call Danielle Lloyd in to the Diary Room to challenge her. In such circumstances, we agree with Channel Four that it had to be extremely careful to ensure that it did not unfairly present a housemate as racist. However, equally Channel Four had to ensure, particularly in light of the Shilpa Shetty's own suspicions about racism and the prevailing concerns inside and outside the House that generally accepted standards were applied to Danielle Lloyd's potentially offensive comments.

8.26 In its response, Channel Four accepts that Danielle Lloyd's comments "had the potential to be viewed" as racist abuse. However, in the Diary Room, Big Brother simply asked Danielle Lloyd what she meant by the comments and how she felt about saying them. Danielle Lloyd's response to Big Brother was equally ambiguous:

## Danielle

Oh, I don't know. I don't know Big Brother. I wouldn't have meant it as if she should go home – like 'go home' go home. I don't know, probably just came out. Big Brother, if I have said that then I regret that because I don't want her to go home. I don't want anyone to go home. To be honest, I really can't remember saying it. But if you're telling me I did then, obviously, I did.

- 8.27 We also note that Big Brother did not put to Danielle Lloyd her comments relating to language in the same exchange (*"She can't even speak English properly"*). In the absence of any other appropriate material which could have put these comments into context, the audience could reasonably have expected the broadcaster to have put the issues to Danielle Lloyd in the Diary Room more explicitly. This is because the audience of *Big Brother* is familiar with the way in which Channel Four, through Big Brother, deals with such issues for example by making it clear that Big Brother *"will not tolerate any racist behaviour or anything that could be seen as racist behaviour"* [emphasis added]. However, in this instance, it is Ofcom's view that Channel Four did not make it clear to viewers that her comments would not be tolerated.
- 8.28 It is therefore Ofcom's view that Channel Four failed to apply generally accepted standards to this material and did not adequately justify these remarks by the context and this resulted in a breach of Rule 2.3 of the Code.

### **BREACH OF RULE 2.3 OF THE CODE**

- 8.29 This incident was edited out of the following morning's re-versioned programme and therefore raises no issue under the Code.

## **Jade Goody's "Shilpa Poppadom" Comment**

**Transmitted 18 January 2007**

### Summary of Incident

- 8.30 In a conversation with Danielle Lloyd the morning after the Oxo cube row, Jade Goody, amongst other things, referred to Shilpa Shetty as 'Shilpa Poppadom'.

### Issues

- 8.31 Complainants believed that Jade Goody's reference to Shilpa Shetty as "Shilpa Poppadom" was racially offensive.
- 8.32 We considered the comment under Rule 2.3 of the Code (generally accepted standards).
- 8.33 We also considered the issue as broadcast in the reversioned programme the following morning under the same Rule 2.3 and Rule 1.3 of the Code (protection for children).

### Response

- 8.34 Ofcom took into account Channel Four's submissions regarding this incident, in particular, that:

- The comment caused concern within Channel Four and led to an intervention by Big Brother;
- Jade Goody acknowledged her comments were not acceptable and assured Big Brother that they were not intended to be racist; she also offered an apology to any Indian viewers;
- Jade Goody was called back into the Diary Room the following day to ensure that she understood that Big Brother would not tolerate language that could be seen as racist.

### Decision

8.35 After Jade Goody used the term “Shilpa Poppadom”, she was called into the Diary Room to have a discussion with Big Brother about her use of the phrase. Jade Goody admitted to the possibility that “Shilpa Poppadom” may be seen as potentially racist in nature and she put forward an apology, though she denied that she meant the term in a racist way. In this Diary Room discussion, Big Brother did not put the matter of racism to Jade Goody directly and she left the room and carried on for the rest of the show with activities in the House. It is Ofcom’s view that at this point, the broadcaster did not meet the generally accepted standards required by the Code which expected that potentially racist language and/or behaviour would be effectively challenged.

8.36 It is only on the following day that Big Brother called Jade Goody back to the Diary Room for the second time and made clear what it considered acceptable and not acceptable in the House. In this second reprimand, Big Brother stated clearly that:

*“Big Brother will not tolerate any racist behaviour or anything that could be seen as racist behaviour” [emphasis added].*

It was only at the point of this second reprimand that Ofcom believes that the broadcaster reacted appropriately to Jade Goody’s comment and applied the appropriate standards. It is acknowledged by Ofcom that it was the senior editorial executives at Channel Four that initiated the second reprimand of Jade Goody, which resulted in the matter eventually being dealt with in the appropriate manner.

8.37 In conclusion, Channel Four, in the main show of 18 January 2007 in which Jade Goody was interviewed about this in the Diary Room for the first time, failed to apply generally accepted standards to this material and did not adequately justify these remarks by the context

### **BREACH OF RULE 2.3 OF THE CODE**

8.38 This incident was repeated in the re-versioned programme, on 19 January 2007, the following morning. The programme was edited for strong language. It included both the ‘Shilpa Poppadom’ remark and the Diary Room sequence at the end of the show. Therefore we considered it to be in breach of section 1.3 of the Code that ‘*Children must...be protected by appropriate scheduling from material that is unsuitable for them.*’ It should be noted however, that issues around racism are, of course, subject matters which can be dealt with pre-watershed.

### **BREACH OF RULES 1.3 AND 2.3 OF THE CODE (REVERSIONED PROGRAMME)**

8.39 In light of these considerations, Ofcom has recorded the following breaches of the Broadcasting Code against Channel Four:

- *Celebrity Big Brother* Main Show: 15 January 2007 21:00 was in breach of Rule 2.3
- *Celebrity Big Brother* Main Show: 17 January 2007 21:00 was in breach of Rule 2.3
- *Celebrity Big Brother* Main Show: 18 January 2007 21:00 was in breach of Rule 2.3
- *Celebrity Big Brother* Reversioned Show: 19 January 2007 07:30 was in breach of Rules 1.3 and 2.3

### Further Compliance Issues

8.40 As well as providing recordings of broadcast material, Channel Four supplied Ofcom with untransmitted footage from the House. Since this material was not transmitted, it is not relevant to whether or not there was a breach of the Code. However, untransmitted material may be relevant to whether or not the broadcaster had in place adequate procedures and maintained sufficient processes and safeguards to prevent breaches of the Code from occurring. For reasons set out below, we consider that the untransmitted material shows there was a serious failure in the broadcaster's compliance procedures during *Celebrity Big Brother 2007* and in particular, a breakdown of communication between Channel Four and Brighter Pictures. This contributed to the fact that Channel Four broadcast material which failed to comply with the Code.

8.41 The untransmitted material included some conversations between housemates. In particular, there were recordings of conversations that occurred on Tuesday 16 January 2007 from 23:18 until just after midnight. This was a few hours after the Oxo cube row which took place on Tuesday 16 January 2007 between 18:00 and 19:00 (and was later transmitted on Wednesday 17 January 2007). These conversations are instructive of the relationships, tensions and attitudes in the House at this particular time and took place during an intense period in a House which was highly charged with emotion and when friction between housemates was escalating. We note from Channel Four's response that this material was logged as "racist" in the producer's log.

8.42 We understand from Channel Four that it was not made aware by the appropriate staff at Brighter Pictures of the existence of this material at the time the events took place and so did not view this material in a timely fashion. In fact Channel Four was not made aware of it until at least three days later. Consequently, Channel Four was not in possession of it when deciding what content to broadcast or how the material they decided to broadcast should be treated.

8.43 Ofcom notes that Channel Four say that Brighter Pictures was responsible for the oversight and management of day-to-day events in the House, and the referral-up of any issues of concern to the senior producers at Channel Four. However, Channel Four as the broadcaster remains solely responsible for the compliance of their broadcast service. It is for the *broadcaster* to ensure that they are at all times in possession of all the relevant facts so that they can be in a position to fulfil their legal

compliance obligations under their licence. In this particular case, Ofcom considers that Channel Four was not in possession of all the relevant facts and as a result, failed to maintain proper control over their programme. In Ofcom's view, this was a significant failure.

- 8.44 It is of great concern to Ofcom that despite the explosive tension between the housemates at the time of the untransmitted material, that communication between Brighter Pictures and Channel Four broke down. Not only did it break down, but this failure resulted in Channel Four not being as well informed as it should have been about what was going on in the House at this critical time. Given that the broadcaster and viewers had witnessed one of the most aggressive arguments in the House, against a backdrop of public concern about the motives of certain individuals involved and the fact that complaints had risen from a few hundred to several thousands within the space of two days (from Monday to Tuesday), Ofcom is seriously concerned that the procedures in place between the broadcaster and the production company had failed to secure that Channel Four, through the senior producers at Brighter Pictures, were in full possession of all the relevant facts in the aftermath of the Oxo cube row.
- 8.45 In our view, Ofcom considers that Channel Four should have been more proactive at this time in ensuring oversight and that Brighter Pictures was referring all relevant information. In our view, if Channel 4 had seen this material, at the time it was recorded, it would have handled the unfolding situation in the House very differently in order to ensure compliance with the Code.

# Sanctions Decision

## Referral to Ofcom's Content Sanctions Committee

- 9.1 Ofcom's Executive has concluded that Channel Four, in relation to three incidents broadcast on the fifth series of *Celebrity Big Brother*, were in breach of the Broadcasting Code. In accordance with its published procedures, the Executive recommended that the case be referred to Ofcom's Content Sanctions Committee ("the Committee") for the consideration of a statutory sanction.

## Channel Four's Response on Sanctions

- 9.2 Channel Four has been given the opportunity to make representations on the imposition of any sanction.
- 9.3 In making its representations, Channel Four stated that it accepted that it had breached the Code and accepted that the case had been referred to the Committee.
- 9.4 In summary, Channel Four requested that in considering whether to impose a sanction and if so at what level, the Committee should take into account a number of specific representations, including the following:-
- 9.4.1 In response to Ofcom's view that if Channel Four had known about the untransmitted material when deciding what content to broadcast, it would have avoided breaches of the Code, Channel Four argues that the only event which took place after the relevant untransmitted material was the "Shilpa Poppadom" incident.
- 9.4.2 At the time of the breaches, both Channel Four (the broadcaster), and Brighter Pictures, a subsidiary of Endemol UK (the producer) were working under unprecedented media scrutiny and thus extraordinary pressure in making complex editorial and compliance judgements.
- 9.4.3 That Channel Four has in place detailed and established written compliance procedures which have been in operation since the series began in 2000 and were updated for each new series. Further, Channel Four explained that it had an extensive staff training programme undertaken by Channel Four for all staff working on the programme.
- 9.4.4 That it did not believe that the conclusion of the adjudication that Channel Four and Brighter Pictures had failed to appreciate the cumulative effect of each incident in the House was justified. It was concerned that its forensic approach to dealing with each incident in its substantive response of 21 March 2007 had led Ofcom to reach this conclusion and asked for it to be re-considered in light of this.
- 9.4.5 While Channel Four accepted that as the broadcaster it was ultimately responsible for the content of its programmes, it submitted that it was because of Brighter Pictures' failure to refer the untransmitted material to it that it was not aware of it at the appropriate time.

- 9.4.6 That Channel Four had an excellent compliance record generally and in relation to *Big Brother* and *Celebrity Big Brother* to date. Channel Four stated that there were no previous significant breaches by it of the Broadcasting Code meriting consideration of a statutory sanction and that previous breaches of the Code upheld against it related to relatively minor inappropriate language broadcast pre-watershed.
- 9.4.7 It submitted that the fact that the breaches occurred over such a short period of time (5 days) was not a valid reason to conclude that the breaches are serious, given the typical nature of the House and the fact that tensions between housemates may escalate over a relatively short period of time.
- 9.4.8 It also submitted that it took prompt and responsible action, in the form of an internal investigation and obtained the full detail of the untransmitted material.
- 9.5 Channel Four also explained to Ofcom that having undertaken an internal investigation and review, it had already put in place revised and more comprehensive compliance processes for future *Big Brother* and *Celebrity Big Brother* series. These included New Housemate Rules detailing behaviour that would lead Big Brother to intervene; a clarification for Housemates of what Channel Four considered to be unacceptable behaviour and a revision of Big Brother's interventions and punishments. It had also introduced new anti-bullying guidelines, along with relevant training programmes.

## Sanctions Decision

- 9.6 The Committee carefully considered all of Channel Four's written submissions.
- 9.7 In summary, the Committee's view is that:
- Channel Four argued that the only event which occurred (in real time) after the relevant untransmitted material was the "Shilpa Poppadom" incident. This is not in the Committee's view the relevant issue. The important fact is that not only the "Shilpa Poppadom" incident but also the "Fuck off home" incident were *broadcast* after the events covered in the untransmitted material took place. Since Channel Four was not on top of this material it could not take it into account in its decision on whether to broadcast or how to handle the broadcast of the "Fuck off home" incident – which Ofcom has found to be in breach of the Code.
  - Channel Four has suggested that Ofcom's conclusion that Channel Four did not take a sufficiently holistic view of the events in the House during the critical period to enable it to make appropriate editorial judgments but rather considered each incident in isolation is not justified. The Committee has reconsidered Ofcom's position in light of Channel Four's submissions but remains of the view that had Channel Four had more regard to the cumulative effect of the potentially offensive incidents, it would have been able to mitigate the offence caused to viewers more effectively.
  - Channel Four's submission is that the failure of communication which resulted in it not being appropriately aware of the untransmitted material was a failure of Brighter Pictures. Whether this was the case or not (and the Committee does not take a view on this) it considers that this does not excuse Channel

Four from its obligation as the broadcaster to ensure its compliance with the Code through, amongst others, effective and if necessary, proactive monitoring of the position. The Committee considered that Channel Four's compliance was not adequate in this regard.

- The Committee accepted Channel Four's submission that the short period of time within which the breaches occurred was not in and of itself the reason for a consideration that the breaches were serious. Nonetheless the Committee considered that the fact that most of the significant incidents occurred within five days showed a sudden escalation of the issues and attitudes in the House. Channel Four has also acknowledged that tensions in the *Big Brother* House typically mounted up over a short period of time. The Committee considered that Channel Four should have been particularly alert to escalating situations of this nature and that it did not have an appropriate degree of control during this period over the situation that was developing.
- The Committee acknowledges that Channel Four was under unprecedented media scrutiny and exceptional pressure during the broadcast of the series. However, it does not accept Channel Four's submission that this should be a mitigating factor. Rather the Committee considered that it was at just such a time that Channel Four should have been particularly active in ensuring that it had all the relevant information available to it to allow it to make immediate and difficult editorial decisions and accordingly, its compliance failures were of even more concern.

9.8 The Committee's view is also that:

- It accepts Channel Four's submission that the broadcaster has a good compliance record, particularly given its particular statutory remit to innovate and experiment. Further, in regard to the specific programmes: *Big Brother* and *Celebrity Big Brother*, it accepts that Channel Four has shown a very good compliance record with no significant breaches meriting consideration of a statutory sanction on the Channel 4 service.
- It also accepts that Channel Four has had established compliance procedures since 2000, which it has updated for each *Big Brother* series and that these have included staff training and reference-up procedures intended to ensure that key editorial judgements were taken at an appropriately senior level. For the reasons set out above, these procedures in the event were not adequate. The Committee recognises and takes into account that following the events dealt with in this adjudication, Channel Four has undertaken an internal review and has comprehensively revised and developed its compliance procedures and guidelines for future *Big Brother* series, particularly focussing on issues to do with anti-bullying and appropriate interventions.
- The Committee also recognises and takes into account the fact that Channel Four acted promptly as soon as it became aware of the untransmitted material in exercising control over subsequent events in the House.

9.9 In light of Ofcom's findings and having taken into account the representations made by Channel Four, the Committee has concluded that there have been serious failings by Channel Four such that it should impose a statutory sanction on Channel Four and S4C.

- 9.10 The Committee has a range of statutory sanctions available to it which are, in the case of Channel Four:
- A direction not to repeat a programme
  - A direction to broadcast a correction or a statement of Ofcom's findings
  - The imposition of a financial penalty (of a maximum of 5% of Channel Four's qualifying revenue)
- 9.11 The Committee has decided to direct Channel Four and S4C to broadcast a statement of Ofcom's findings in a form determined by the Committee on three separate occasions at the following times:
- At the start of the first programme of the new series of Big Brother;
  - At the start of the first re-versioned programme the following morning;
  - At the start of the first eviction show of the new series of Big Brother.
- 9.12 The Committee has decided that a direction to broadcast a statement of Ofcom's findings is the appropriate sanction in this case. In making this decision, the Committee has taken into account the fact that the breaches did not result from deliberate, reckless or grossly negligent actions by Channel Four but rather represent a serious error of judgment as to the handling of the potentially offensive material to provide adequate protection to viewers. The Committee has also taken into account the fact that Channel Four acted promptly as soon as it became aware of the untransmitted material in exercising control over subsequent events in the House; and has already put in place more comprehensive compliance procedures and guidelines.
- 9.13 The Committee believes that a direction to broadcast a statement of its findings at the times identified by it will ensure that the largest number of relevant viewers will be made fully aware of the seriousness of Channel Four's failure to comply with the Code.
- 9.14 Noting that Channel Four has put in place new compliance procedures intended to ensure that similar failures to comply with the Code should not occur again, the Committee would take seriously any future failure of compliance leading to a similar situation as that which the Committee has dealt with in this case.

Members comprising the Committee for the decision are:

Philip Graf (Chairman)  
Millie Banerjee  
Tim Suter  
24 May 2007