

Ofcom Broadcast Bulletin

**Issue number 144
26 October 2009**

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Introduction

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes which broadcasting licensees are required to comply. These include:

- a) Ofcom's Broadcasting Code ("the Code") which took effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). This Code is used to assess the compliance of all programmes broadcast on or after 25 July 2005. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>
- b) the Code on the Scheduling of Television Advertising ("COSTA") which came into effect on 1 September 2008 and contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at http://www.ofcom.org.uk/tv/ifi/codes/code_adv/tacode.pdf.
- c) other codes and requirements that may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at <http://www.ofcom.org.uk/tv/ifi/codes/>

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

It is Ofcom policy to state the full language used on air by broadcasters who are the subject of a complaint where it is relevant to the case. Some of the language used in Ofcom Broadcast Bulletins may therefore cause offence.

Standards cases

In Breach

Boys and Girls Alone

Channel 4, 3 to 24 February 2009, 21:00

This finding was originally published on 19 October 2009.

Introduction

This four-part documentary series showed ten boys and ten girls, aged between eight and twelve years old, as they, according to the first programme, experienced life without adults for two weeks. Episode one showed the boys and girls moving into two 'villages' (cottage complexes), half a mile apart in Cornwall. The narrator opened the series by saying:

"Imagine a world without grown-ups. A world governed by children, where every decision is made by a ten year old. Two separate communities, one full of boys and one full of girls, will find out what it's like to live without parents. Will they rule with wide eyed innocence, or has modern society made our children grow up too fast? Will they be able to survive on their own? Or have we created a nation of cotton wool kids?... Who will build a better world, the boys or the girls? And what can the communities they create teach us about our own society?"

Throughout the series the children were encouraged to complete everyday tasks such as cooking, cleaning and managing money. During episode two the separate 'villages' were given money to spend to see whether the boys or girls would cope better with financial freedom. Episode three showed the children on a two-day camping trip when they were given tasks such as catching and preparing food from the wild for their dinner. The final episode showed the boys and girls moving into the same complex to see how they coped living together.

During episode one of the series the narrator explained at the beginning of the programme that:

"the boys and girls will be observed by their parents... they will also be monitored by trained chaperones who will only step in if a child's safety is compromised."

At the beginning of episode two the narrator stated that:

"the children will also be observed by chaperones, who will step in if their safety or welfare is compromised."

Ofcom received 180 complaints about the series, which included general concerns raised by: the Children's Commissioner for England; Cornwall Children, Young People & Families, on behalf of Cornwall & Isles of Scilly Local Safeguarding Children Board; the Family and Parenting Institute; the NSPCC; and a number of psychologists. The complaints covered a number of issues regarding the series in general, in particular: the purpose of the series; possible exploitation of the children involved in the series and related ethical issues; and the protection of the children involved in the series. The complainants also raised concerns relating to the content of specific episodes.

Having carefully assessed each of the 180 complaints, Ofcom considered that the majority of the complainants were concerned primarily about the safety and welfare of the children who had participated in the series. Ofcom's investigation concerned the following Code rules in relation to both the general issues and the content of specific episodes:

Rule 1.26: "Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis"; and

Rule 1.27: "People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes".

In addition, several complainants made clear that they had been offended by the content and nature of the series, both generally and in relation to specific issues. Ofcom's investigation concerned the following Code rule:

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context... Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

Ofcom therefore asked Channel 4 to comment in the context of these three rules, regarding the following issues.

General issues raised by the series as a whole

i. The purpose of the series, possible exploitation of the children involved in the series and related ethical issues

A number of complainants questioned the aims of the series and what it set out to achieve. Some claimed the series was falsely presented as an educational "social experiment". Complainants also said that the series did not reveal any observations that viewers did not already know. Others raised concerns that the series was not in the best interests of the children involved.

A number of complaints also related to the ethical issues of involving young children in this type of reality/documentary programme. Some complainants claimed that the series was exploitative of the children involved and that it used them for the purposes of entertainment. In particular, complainants raised concerns about whether there was justification for broadcasting the bullying and distress of some of the children.

ii. Protection of the children involved in the series

A number of the complainants raised concerns about the physical and emotional welfare of the children during the making of the series, including pre- and post-production and after transmission. In particular, complainants were concerned about the age and personalities of the children selected for the series and the environment created for them, which some claimed put them deliberately in uncomfortable and vulnerable situations. Complainants also raised the issue of the potential long and/or

short term psychological damage that may have been caused to the children through taking part in the series and from the material being broadcast.

Issues and complaints relating to specific episodes

iii. Episode one (broadcast 3 February 2009)

- concern regarding the emotional distress of eight year old Sophia after the older girls painted threatening graffiti in her house, and the broadcast of this material

During this episode, some of the older girls decided that they would scare some of the younger girls by creating a 'haunted house' as a joke. They painted graffiti over the walls in one of the abandoned houses in the girls' 'village'. The graffiti included "*if I'm dead you're next*", "*why did this have to be me?*" and "*help!*" Some of the younger girls were upset and scared when they read the graffiti. Sophia in particular was visibly upset by the incident and was shown crying. She told the production team that she was crying because she was scared by the references to death in some of the graffiti.

- concern regarding bullying behaviour towards certain children, in particular the behaviour of some of the girls towards Lorna and the treatment of the younger children during the 'haunted house' incident (described above), and the broadcast of this material

This episode featured several arguments between 11 year old Lorna and some of the other girls in the 'village'. On the first night girls in two of the houses had a water fight and Lorna was upset because Taisha and Charley (both 11 years old) would not let her go to sleep. An argument between the girls followed. The next day Lorna was upset again because Taisha accused her of using a dish cloth to clean the dustbin, and an argument broke out later that day between Lorna and Taisha and Charley after Lorna did not do the washing up.

- concern that the environment the children were placed in during this episode was potentially dangerous, e.g. access to dangerous utensils, sharp objects, garden tools (such as rakes) and water pistols filled with paint. Complainants were also concerned by the possible hunger of some of the younger children because they were not able to cook for themselves

During this episode the narrator told viewers that the children were provided with "*everything they'll need to settle in*". This included paint to decorate their houses. The boys were shown later playing with water pistols filled with the paint and a garden rake. This episode also showed, for example, nine year old Sid trying to cook a pot noodle, which he could not do as he did not know how to boil the kettle. He resorted to adding cold water instead. He was later heard complaining that he was hungry and could not cook.

- the treatment of the children who wanted to leave the 'village'

Two of the boys suggested they wanted to leave the village during the first episode. In particular, nine year old Sid expressed a wish to leave, saying "*I hate it*". Sid's mother was then shown meeting with him to discuss whether he should leave. During this discussion Sid asked to leave a number of times but the narrator explained that after a hot meal he decided to stay. Sid's mother told the camera she would "*take it a day at a time*". At the end of the episode Sid locked himself in the bathroom until he

was allowed to leave. His mother agreed and he then left the village. Nine year old Matthew also asked to leave, but stayed after his parents explained to him that he had already got much out of the experience and had learnt a lot about himself including that he *“doesn't like a messy room and doesn't like a messy house”*

- the presentation of the trailer for episode two (at the end of episode one). Complainants were concerned that the trailer depicted: scenes of the girls smoking what appeared to be cigarettes; the boys having physical fights; and references to a knife being used in a threatening way by the one of the children

The trailer for episode two shown at the end of episode one included: a clip of a physical fight between two of the boys, with one of the boys being restrained by a member of the film crew; two girls smoking 'cigarettes' (which, in fact, turned out to be fake, although this was not explained to viewers during the trailer), with 11 year old Taisha saying *“light mine up”*; and Matthew describing a knife, directly followed by 10 year old Adetoro asking if he was in trouble.

iv. Episode two (broadcast 10 February 2009)

- concern from complainants for allowing the girls to undertake “inappropriate” behaviour, including smoking fake cigarettes and gambling, and of this material being broadcast

During this episode the children were given money and had to decide what to spend it on. After returning from a shopping trip the girls were shown smoking fake cigarettes. The narrator explained that the girls bought them from a joke shop and 11 year old Shannon said *“I asked the man at the joke shop and he said it was just breathing out dust”*. Some of the younger girls said they did not want to try them but were shown later giving into peer pressure and 'smoking' them. This episode also showed the girls at a local amusement arcade, where they spent most of their remaining money.

- concern regarding the physical violence and aggressive behaviour between the boys

During this episode 10 year old Adetoro put himself in charge of the money for the boys' village. As part of this role Adetoro attempted to ration the food allocation to the other boys and tried to stop nine year old Ryan from eating a second packet of crisps. A physical fight then broke out between the two boys. After this incident the other boys began to challenge Adetoro's authority. In response, Adetoro was later shown riding his bike into nine year old Cooper. Later that day there was a further incident, which the narrator described as *“from ten feet away Adetoro has just harmlessly waved a cutlery knife in TJ's direction, but that's not how he [11 year old TJ] saw it”*. The other boys and TJ later described what they believed had happened, with TJ stating that Adetoro *“picked up this knife and went like that [indicates a stabbing action] to me”*. However, the narrator told viewers that *“the rest of the boys' memories of what actually happened are becoming increasingly imaginative”*. After this incident the other boys excluded Adetoro from the group.

- concern regarding the bullying of Adetoro by the other boys, after the knife incident (described above)

After the knife incident Adetoro was rejected from the boys' group. He then spent some time with his parents. The next day Adetoro apologised to TJ for waving the

knife in his direction and apologised to the other boys for his behaviour. The other boys were reluctant to accept his apology and said they would not forgive him unless he did exactly as they said. He was eventually accepted back into the group.

v. Episode three (broadcast 17 February 2009)

- objection by complainants for asking the children to skin and prepare dead animals for food for the purposes of the programme, and of this material being broadcast

This episode was preceded with the warning: “*There’s some strong language and the preparation and cooking of dead animals. Trust is the aim of the game in Boys and Girls Alone*”. The children were taken on a two day camping trip. During this trip the girls were challenged to prepare and cook three dead rabbits and one dead chicken, including skinning and plucking the animals. Some of the girls were shown taking part in this activity despite being initially upset by the challenge.

vi. Episode four (broadcast 24 February 2009)

- the treatment of Lorna by some of the other girls when she did not do the washing up after making a cake

During this episode the boys and girls moved into the same complex. Taisha cooked a meal for everyone and at the end of the meal Lorna started a food fight. This upset Taisha who refused to give Lorna any dessert as punishment for starting the fight. Lorna retaliated by making her own dessert. Lorna did not clean up after herself, which annoyed some of the girls who said they had spent a long time cleaning up after the dinner. In response to Lorna leaving a mess, some of the girls, including Taisha, Shannon and Charley, shouted at Lorna and she became upset. The boys then stepped in and separated the girls, and Lorna cleaned her dirty dishes.

Channel 4’s response

General issues of the series

i. The purpose of the series, possible exploitation of the children involved in the series and related ethical issues

Channel 4 said that this was an observational documentary series intended to be both educational and entertaining for viewers and those taking part. It said that the main editorial purpose of the series was to explore how children would behave and manage when given autonomy to create their own communities. It explained that the idea for the series had its roots in the debate about whether parents today are over-protective and are creating a generation of ‘cotton-wool kids’, who are less able than previous generations to think and fend for themselves. Channel 4 said that a key part of the format of *Boys and Girls Alone* was an examination of the differences that might emerge between the boys and girls and whether the groups or individuals would conform to sexual stereotypes. It also said the series gave the parents and viewers a unique insight into how children behave when parents are not present.

Channel 4 continued that the series was never billed as being an “experiment” or “social experiment”. The series was observational and did not seek to draw any formal conclusions; nor did it set out to prove any pre-conceived theories. It said that the aim was to explore certain broad questions, and observe and present material

(i.e. events and behaviour), in an informative and entertaining way. Channel 4 said that the programme was not “Big Brother for children” or “Lord of the Flies”, as some complainants alleged.

Channel 4 said that it was always the intention that the children taking part would benefit from their involvement and above all enjoy it. Channel 4 said that the programme presented the children with new positive experiences, for example: enabling them to make new friends; form new relationships; have fun in a completely new environment; learn new practical and social skills; and learn to understand their own behaviour better. It said that these benefits would have been apparent to viewers throughout the series.

Ofcom received a number of complaints which suggested that the series was exploitative of the children involved and that it used them for the purposes of entertainment. In line with these concerns Ofcom raised particular issues with the broadcaster, including: whether there was justification for broadcasting the bullying and distress of some of the children; what consideration was given towards the possible short and/or long term psychological impacts of the children from broadcasting such material; and whether there was sufficient justification for Channel 4 to create an environment which would place children in a position that would require a number of safeguards, such as the involvement of psychologists.

In response to these concerns Channel 4 stated that, with regard to the broadcast of behaviour such as bullying and distress for some of the children, it was important that the series fairly and accurately reflected the events that took place within the two ‘villages’. It also said that there was a real and significant educational value and public interest in including certain footage, storylines and contributors’ experiences within the broadcast programmes. For example, footage showed children dealing with and learning from conflict and showed that children from different backgrounds, cultures and with different personalities can have disagreements but can resolve their differences and eventually bond as a group. It said that it was important that the programmes showed not just negative experiences and behaviour but also showed the positive outcomes that could come from negative experiences.

The broadcaster said that, along with the programme-makers and its expert advisors¹, it considered carefully the contents of each programme, the way in which material was being presented and the possible effects this might have on the children concerned. It repeated that the programme-makers consulted with the families and children with regard to particular storylines as and when appropriate, and, as a result, some editorial changes were made to programmes. The broadcaster stated that given these factors, there was sufficient editorial justification for including material, in context, showing conflict between the children.

With regard to the possible psychological impacts and/or other possible consequences for the children involved in the programme, the broadcaster said that “the programme-makers and Channel 4, in consultation with a number of experts and professionals, including educational and clinical psychologists, considered all the possible side effects of participation for the children”. It said that the format was

¹ Channel 4 described the experts who advised on the series as: Professor Andrew Samuels (who advised on gender issues only), an internationally recognised analytical psychologist with particular interest in gender parenting issues; Lori Ferguson, an educational psychologist specialising in children and adolescents; Dr David Schaich (see footnote 2); Professor Michael Wyness, Associate Professor in Childhood Studies at the Institute of Education; and Adrienne Burgess, a sociologist with expertise in gender issues.

devised in such a way as to protect participants and to ensure they enjoyed and benefited from the experience and did not suffer harm either in the short term or in the longer term. In addition, Channel 4 stated that there had been overwhelmingly positive feedback from the families since filming and transmission of the series. As part of its response on these particular issues, Channel 4 provided Ofcom with documentary evidence of positive feedback from the parents of some of the children involved.

As part of its formal comments, Channel 4 confirmed that neither it nor the production company, Love Productions (the independent production company who made the series), had received any negative feedback from the children who took part in the series or their parents, from which it could reasonably be inferred that the programme makers and Channel 4 had not ensured due care of their physical and emotional welfare or dignity. Nor were there any comments or feedback from which it could be reasonably be inferred that any child had been caused unnecessary distress or anxiety as a result of their involvement in or broadcast of the series.

With regard to the justification for creating an environment which would place children in a position that would require a number of protective measures, Channel 4 referred to similar and previous programmes which had been broadcast and received little or no critical comment. It said that other programmes involving children being given autonomy and being separated from their parents for short periods have been produced and transmitted both in the UK and abroad in the past. For example: Channel 4's *Boys Alone* (broadcast in 2002), *Girls Alone* and *14 Alone* (both broadcast in 2003). The broadcaster also said that the involvement of psychologists in formatted programmes involving adults and/or children is commonplace and directly in line with Ofcom guidance. Therefore, in that respect the involvement of psychologists was not unique to this series.

ii. Protection of the children involved in the programme

Channel 4 said that safeguarding the welfare of the children was of paramount importance to everyone involved in the production from the start. It went on to explain in detail a range of areas in which safeguards had been put in place.

- Selection criteria and process

Channel 4 said that the selection criteria and processes for the series were specifically designed and conducted to ensure that all due care was given to the children's physical and emotional welfare. It said that the safeguards were also designed to ensure the children would not suffer any unnecessary distress or anxiety as a result of their involvement in the series or as a result of its broadcast.

With regard to the age of the children involved in the programme, Channel 4 stated that at the very start of pre-production the programme-makers sought expert advice and were advised that middle childhood was the ideal age range from which to select children for the series. The broadcaster said that the experts advised that children within this age band would be sufficiently confident to take part and enjoy and benefit from the experience and, at the same time, were also likely to be the most imaginative and articulate of the age groups, willing to engage in group activities and work positively as part of a group.

The broadcaster said that the series looked for children from all social classes, ethnic origins and family backgrounds from across the country to represent a suitable cross-section of children within the UK. The selection process included: an initial search by

Love Productions, which contacted schools and various children's groups; 'recces' (research visits) and interviews with the child and parent/s at their home; and finally the "Casting Finals" where the children and parents met with the programme's clinical psychologist, Dr David Schaich², who specialises in child psychology and development, and the inclusion of children in television programmes. Channel 4 said that during the Casting Finals Dr David Schaich conducted psychological checks on all the children, as well as the parents.

Channel 4 stated that Dr David Schaich was able to appraise fully the nature and format of the series and the demands it would place on contributors. It said that through his expertise and experience, he was able to evaluate and make recommendations as to which children would be best suited to participate. Channel 4 also said that a number of senior editorial staff at Love Productions had a great deal of experience of working on challenging television programmes involving under eighteens.

Channel 4 said that decisions on whether or not to select children were based on the following criteria: their intelligence, confidence and imagination; whether they were well adjusted; their reason for wanting to be involved; whether they had something to say; whether they fully understood the concept of the series and process; and if it was felt the child would benefit from the experience. It said that the final twenty children selected were chosen because they were felt to be the strongest candidates in light of these criteria. With regard to Lorna, who was the only child who had experienced some bullying in the past, Channel 4 said that she was carefully assessed by the programme-makers and the clinical psychologist. It continued that even though she had been picked on in the past, Lorna was assessed as having a strong personality, as someone who could stick up for herself, knew her own mind and had good reasons for wanting to take part. It was also considered that she had a close network of family and friends to support her.

With regard to the possible short and long term consequences for the children that could result from participation in the series, Channel 4 said that these were explained to the families by the programme-makers and the clinical psychologist at both the 'recces' and the Casting Finals before any final decision to participate was made by the families. In terms of the potential negative consequences, Channel 4 said that discussions focused on issues such as feeling embarrassed or being humiliated on television and this being shown to viewers; and peer pressure and conflict between children, for example, possible bullying during production. Channel 4 said that programme-makers also discussed with parents and children potential negative consequences arising after transmission, including: the pressures of being in the public eye generally; teasing and bullying in the playground; people coming up to the children and parents in the street and saying unkind things or criticising them; and the fact that critical comments may be made about them by individuals, for example, on online chat sites, or by the press.

- Payments to parents

The broadcaster stated that contributor fees were not paid to any of the families. Expenses were paid for travel and production (including accommodation for parents

² Channel 4 described Dr David Schaich as: a Clinical Director of one of the United States' leading psychological organisations which deals with assessing the suitability of contributors for participation within television series and their supervision. He is a licensed clinical psychologist and former Director of Psychology at Kirby Hospital in New York City.

whilst attending filming), hire cars if required and catering on site. Channel 4 said that, exceptionally, one parent was paid for loss of earnings. This was because the broadcaster made it a condition of taking part that at least one parent would be present on site but, in this case, the only way this could happen was for the father to take unpaid leave from work. In light of this, Channel 4 said that it considered it appropriate to reimburse him for lost earnings.

- Environment

Channel 4 said that at the start of pre-production, the programme-makers consulted an experienced educational psychologist, Lori Ferguson³, to ensure that the environment during the making of the series would be appropriate for the children taking part. Ms Ferguson helped the programme-makers devise tasks and activities that were both informative and imaginative. This was in order to observe: how the children would react and cope without adults telling them what to do; how self-sufficient the children were; what sort of community the children would create; and any differences that might exist between the boys' group and girls' group.

The broadcaster said that the environment and tasks were never devised for the purpose of generating conflict. It also said that whilst the idea for the series - children being placed in an environment without parents – was artificial, it did not consider that it was altogether 'unnatural', and there were clearly parallels with the experience of going to summer camp, for example.

- Safeguards in place during filming

Channel 4 said that all the children were monitored throughout their stay by production crew, parents, chaperones and security, and the children were constantly in the presence of adults. It said that CCTV cameras were installed in every room in each house in both 'villages', except for the bathrooms and toilets for privacy reasons. Channel 4 also stated that there were fixed cameras covering the entire outside area. It continued that the cameras were monitored 24 hours a day, 7 days a week by chaperones and production crew or security. It said that there were microphones in each room and a feed from each child's radio microphone to both production and to the parents.

Channel 4 continued by saying that there were four members of production in each 'village' during the day and two overnight, and there were two assistant producers on location day and night. The Line Producer and members of the production team also stayed on site and on call for the duration of filming. Channel 4 stated that the crews were very experienced in observational documentary production and were fully trained and briefed in relation to all of the programme protocols and guidelines, including its own Intervention Policy, including its own procedures about intervention (see below under 'Level of intervention'). It said that the production also employed 24 hour paramedic and nurse cover on site, and extra paramedics and scout leaders were employed to accompany the children on the camping trips.

Channel 4 said that eight licensed chaperones were employed with a minimum of two working in each 'village' 24 hours a day. All the chaperones were experienced in caring for children in situations away from their parents and their primary focus was the child's physical and emotional welfare. In addition to the chaperones, as stated above, Channel 4 said that two experienced scout leaders were employed for the

³ Lori Ferguson was described by Channel 4 as an educational psychologist specialising in children and adolescents.

duration of the camping trip. There was a strict rule that if any child did any cooking, a chaperone must be standing nearby watching closely. It also stated that the chaperones monitored the children's rest and food intake closely and extra meals were provided at any time if requested. In addition, every day the chaperones would update and discuss any concerns or issues with the children's parents, the psychologist and production team, as appropriate.

The broadcaster explained that every fourth day was a 'down day' when no filming of the children would take place at all. It said that on this day the chaperones were completely in charge of the children's activities, e.g. playing games, watching films and generally relaxing. It also said that tutoring was also carried out on these days. Channel 4 stated that production provided three catered hot meals on the 'down days', and the kitchen and the rest of the site were cleaned by production staff. It said that the chaperones also ensured that all children and their clothes were properly cleaned on these days.

Channel 4 stated that appropriate emotional care and support was provided to the children at all times by the chaperones, as well as by the parents, crew and psychologists. Channel 4 said that the chaperones developed strong bonds with the children they were looking after. It explained that they provided comfort and support if and when the children became angry or upset, carried out activities with them, taught them to cook and helped settle them down to sleep at night-time.

Channel 4 said that the clinical psychologist, David Schaich, was on location with the children every day and spoke to each child every day during the filming period. In addition, it said that the children could ask to see the psychologist at any time as he was on call 24 hours a day. It said that he also talked and consulted with the chaperones and the parents throughout the filming period and attended the daily editorial meetings. It continued that he also scheduled individual interviews with the children every fourth day (the 'down day') as a further check.

- Monitoring by the parents

Channel 4 said that all parents were invited to observe their children 24 hours a day. It added that they were able to monitor real time footage from portakabins with CCTV monitors, situated just outside the children's 'villages'. Channel 4 said that generally the parents were on location from between 09:00 and 10:00 until approximately 21:00. If any parents were not present, then members of the production team phoned them to update them on events involving their child.

The broadcaster said that during filming, the parents were able to see the pictures from the fixed cameras which also covered the entire outside area, but were not able to view footage recorded by hand held cameras at the site. However, Channel 4 explained that the parents could listen to the children's radio microphones at all times. However, Channel 4 said that parents could not monitor and watch their children when the children left the site and went on shopping trips and went camping for two days. It explained that during the camping trips members of production contacted parents and kept them up to date on the children's behaviour and wellbeing.

- Level of intervention

Channel 4 said that there were clear referral-up procedures within the production team. Each day, the programme-makers would assess the day's events and would refer matters up to the Executive Producer and to Channel 4's editorial and legal and

compliance departments, as appropriate. The procedures were devised in consultation with Channel 4's editorial and legal and compliance departments with regard to unacceptable behaviour and intervention to control it (this included dealing, for example, with any behaviour involving violence, racism and bullying). It said that the programme-makers also used an intervention procedure to give producers a clear guide on how best to defuse any potentially harmful situations.

Channel 4 said that it was made clear to everyone that the chaperones on site were ultimately in charge of the welfare of the children. However, any adult present representing the production company could and did intervene, in accordance with the policies in place. It explained that if a chaperone stated that filming should cease, the film crew knew they must comply. Channel 4 gave examples of intervention by the chaperones which could be described as being 'detrimental' to filming, such as when Dawn woke up during the night in the previously abandoned 'haunted house' and wanted to move into another house. The production crew were on standby overnight and were keen to film Dawn leaving the house. However the chaperones on duty did not want Dawn to have to wait for the film crew and insisted she leave immediately so Dawn could get back to sleep as soon as possible.

- Follow-up monitoring

Channel 4 said that at the end of the filming period the clinical psychologist conducted de-briefing sessions with each child and their parent(s). It said that the psychologist explained to families that if there were any developments which they were concerned about they should contact the production company. Channel 4 said that families were also offered further sessions with a psychologist as support for the children if required.

The broadcaster said that since filming, members of the production team have kept in regular phone contact with all the families involved. It said that the first programme was shown to all the families at a viewing in London prior to transmission. It added that where individual children were prominently featured in particular story lines, their families were given the opportunity to view these programmes and to discuss any issues with the programme-makers. It said that this was to ensure they were entirely happy for the footage to be broadcast and with the way it was being presented. Channel 4 said that the families had been warned and were well aware that the series might generate significant media interest, including some negative comment. They were therefore told they should contact the programme-makers and Channel 4 if they had any concerns or required any support. It continued that the schools of all the children were made aware of when the programmes were being transmitted.

Following transmission of episode one and the weeks thereafter, the broadcaster said the series generated a significant amount of press and public interest. Channel 4 said that around this time, programme-makers and Channel 4's press officers were in daily contact with the families to ensure they were fully supported. It added that since transmission, the programme-makers have continued with their monitoring of the children and this monitoring will continue for the foreseeable future.

- Transparency of information with the viewers

Channel 4 stated that whilst not every safeguard for the children was flagged directly to viewers, there was a range of information contained within the programmes to reassure viewers that appropriate and sufficient safeguards were in place. It cited the following examples:

- information in the voice-over about specific safeguards;
- adult production crew speaking on camera and interviewing children, and from time to time being seen on camera;
- numerous instances where parents were shown monitoring their children and commenting on events; and
- occasions where parents were shown visiting their children, comforting them and counselling them.

Channel 4 said it would have been unprecedented and unnecessary for viewers to have been informed about each and every safeguard that had been put in place. It said that a careful balance needed to be made between the editorial freedom to allow the programme to fulfil its editorial purpose and the need to ensure that viewers are appropriately reassured, to avoid unnecessary offence being caused.

Issues and complaints relating to specific episodes

iii. Episode one (broadcast 3 February 2009)

- concern regarding the emotional distress of eight year old Sophia after the older girls painted threatening graffiti in her house, and the broadcast of this material

Channel 4 said that careful consideration was given to the way the footage, which showed some of the girls creating a 'haunted house', was included and presented within episode one. It stated that when Sophia became upset she was spoken to and comforted by the crew and the chaperones. It also said that she was only upset for a few minutes and was carefully monitored by the chaperones, psychologist and her mother following the incident. The broadcaster said that, in addition, Sophia and her parents viewed this material before broadcast and were entirely happy with its inclusion and the way it was presented.

Channel 4 stated that the broadcast of this material was justified by context for a number of reasons: it was a significant event that showed the dynamic that was developing within the girls' group; the audience knew that adults were present throughout and were monitoring the children, along with the parents (Sophia's mother was shown within this section of the programme); the footage of Sophia being upset was kept brief and viewers could hear a female adult member of the crew speaking with Sophia; and immediately following the footage of Sophia crying, Taisha and Charley were shown being questioned about their actions by a member of the crew.

- concern regarding bullying behaviour towards certain children, in particular the behaviour of some of the girls towards Lorna and the treatment of the younger children during the 'haunted house' incident, and the broadcast of this material

Channel 4 said that it was important that the series should be "an honest portrayal of what happened during the two weeks". It also said that there was a significant educational value and public interest in including footage showing children exhibiting bullying behaviour, its effect on others and the way in which it was handled and dealt with.

With regard to the argument that took place between Lorna, Taisha and Charley on the first night, Channel 4 said it was important to include this as it was this argument and the divisions it created that largely shaped the girls' group over the next few days. Channel 4 said that during the arguments the crew and chaperones intervened, stopped Taisha and Charley from continuing to bother Lorna and took Lorna to one side to ensure she was all right. It continued that Taisha and Charley were made to

settle down and were asked to reflect on what had happened. The chaperones then saw to it that all the girls went to bed and that Lorna was left alone to sleep. Channel 4 also said that in the days following this argument the programme-makers, chaperones, clinical psychologist and the parents were all conscious that there were tensions between Taisha, Charley and Lorna. Therefore, they were closely monitoring the children's behaviour, particularly Lorna's, to ensure they were not suffering any ill-effects. Channel 4 stated that in spite of the conflict with Charley and Taisha, Lorna was continuing to enjoy herself and at no time did she request to leave.

With regard to bullying behaviour generally, Channel 4 stated that as above the programme-makers, chaperones, psychologist and parents were constantly monitoring events, discussing matters and intervening where appropriate. It said that interventions were made on the second day following the 'haunted house' incident.

Channel 4 said that there were a number of elements included within the programme to remind and reassure viewers that events were being overseen by adults and that the children, including Lorna, were being adequately protected. For example, viewers knew that adult production crew were present and were explicitly told earlier in the programme that both chaperones and parents were close by, monitoring events and ready to intervene if necessary. Viewers were also shown the parents visiting their children on site and speaking to their children about their behaviour.

- concern that the environment the children were placed in during this episode was potentially dangerous, e.g. access to dangerous utensils and sharp objects, garden tools (such as rakes) and water pistols filled with paint. Complainants were also concerned by the possible hunger of the younger children as they were not able to cook for themselves

Channel 4 said that an experienced health and safety officer was contracted for the duration of pre-production and production. Any objects that were considered an unacceptable risk to the children were removed. It said that any objects that remained, e.g. kitchen equipment and gardening tools, were considered by the health and safety advisor to be acceptable, with adults present to constantly monitor events.

The broadcaster stated that there was a strict rule that a chaperone was always present when children were in the kitchen. It also said, further to ensure their safety in the kitchen, the programme-makers contracted a chef who runs a cookery school for children, to assist the children with cooking. With regard to the paint, Channel 4 said that this was supplied so the children could personalise their rooms, and when the boys used it for the water pistols it was removed from both 'villages'.

Channel 4 also stated that there was 24 hour paramedic and nurse cover in the event that any children did become ill or were hurt in any way.

Channel 4 said that the children were never left to go hungry for extended periods of time. It said that if chaperones felt at any time children needed to eat, they either cooked a nutritious meal for them or arranged for the child to have food prepared by the onsite catering team. Channel 4 said that "this happened regularly". In addition to this food, every fourth day, on 'down days', regular cooked meals were provided for all the children. The broadcaster stated that in the first few days it became apparent to the programme-makers that the boys' group could not or would not cook for themselves. Therefore, after a few days, it was decided that cooked meals should be regularly provided for the boys' group. Channel 4 also said that children were shown eating food at various points throughout the series and were told specifically towards

the start of the series that: *“The villages have been stocked with a full range of food, both healthy and not so healthy”*.

- the treatment of the children who wanted to leave the ‘village’

Channel 4 stated that in all cases requests to leave were taken seriously. It provided details of how decisions were made when a child asked to leave the ‘village’. These procedures were applied to ensure the welfare of the children participating in the series, irrespective of parental consent. These are outlined below.

Channel 4 stated that any decision was made very carefully with the welfare of the child being the paramount consideration. It continued that when such issues arose they were always carefully considered by the programme-makers and Channel 4, in consultation with the chaperones, the clinical psychologist, parent/s and child. It said that requests to leave by the children were referred up to senior producers who would consult with Channel 4’s commissioning editor (and where necessary Channel 4’s legal and compliance team) and they would then assess each situation and make a decision on how best to proceed. As part of its consideration Channel 4 said that they consulted with the chaperones, the child’s parent/s, and the series’ clinical psychologist to ascertain what impact the decision may have on the child and to ensure that decision was in the child’s best interests and in no way detrimental to the child’s welfare.

With regard to Sid, Channel 4 said when he first expressed a desire to leave this was immediately referred up to senior producers and the Channel 4 commissioning editor. The chaperone on location and the series psychologist discussed the issue with Sid himself and his parents were consulted. It said that all parties involved were of the opinion that Sid’s request to leave was based on the fact that he had been feeling tired and hungry and missed his mother’s cooking. It said that the senior editorial team in conjunction with the commissioning editor made the informed decision that it was in the best interest of the child if he stayed but he would be closely monitored over the evening and following day to see if there was a change in mood which might mean further consultation on the issue was needed.

Channel 4 said that after Sid expressed a desire to leave again on day two it was agreed on the advice of the chaperone and series psychologist that Sid should meet, have dinner with and talk to his mother outside of the village about his desire to leave the production. After doing this he appeared much happier and wanted to stay. Following this, the senior producers and Channel 4’s commissioning editor took the decision that it was in Sid’s best interests if he stayed for the time being.

Channel 4 said that on the third day, Sid woke up happy and played with the other children. However, on seeing his mother later that day he became upset and asked to leave. Channel 4 continued that the senior producers and Channel 4’s commissioner editor were kept fully informed of the situation involving Sid as it developed and, before making a final decision, they discussed the situation with Sid’s parents and sought the view of the chaperones and series’ clinical psychologist who had been monitoring him. It was unanimously agreed by all that it would now be in Sid’s best interest for him to leave the village.

Channel 4 said that an important consideration at the time was what effect leaving may have on Sid and how not completing the residency may affect him. After Sid left, the programme-makers checked on the family that night, and the following day Sid and his mother met for a debriefing session with the clinical psychologist. Channel 4

said that the programme makers kept up regular contact with the family to check on Sid's progress.

With regard to Matthew, who also expressed a wish to leave the 'village', Channel 4 said that he changed his mind about wanting to leave several times during the first few days and therefore the chaperones and psychologist, as well as his parents, monitored him closely. The chaperones and clinical psychologist advised, having received input from Matthew's parents that it would not be in his best interests to leave at this point, particularly given the uncertainty about his attitude. Therefore the senior producers and commissioning editor decided that Matthew should stay in the 'village' but be closely monitored in relation to this request. Channel 4 said that Matthew was later observed by the chaperones as generally happy and excited to be in the 'village'.

- the presentation of the trailer for episode two, which featured at the end of episode one. Complainants were concerned that the trailer depicted scenes of the girls smoking what appeared at the time to be real cigarettes; the boys having physical fights; and references to the use of a knife in a threatening way by the one of the children

Channel 4 said that the footage included at the end of episode one was clearly a 'tease' for episode two. It said that viewers understand that teases contain material intended to whet viewers' appetites in order that audiences watch the next episode, and to see the material in its proper, fuller context. With regard to the inclusion of Taisha and Lizzie smoking fake cigarettes, Channel 4 said that the brief sequence included in the tease showed Lizzie blowing the cigarette, rather than sucking on it, and a strange puff of "smoke" coming out the end. It therefore considered "if viewers were in any doubt about whether the cigarettes were real or not, at this point it became clear to most that they weren't". With regard to the boys fighting, Channel 4 said that images were brief and one of the boys is seen being restrained by an adult. With regard to the reference to the knife incident, Channel 4 said that the child recounting the incident did not appear upset or distressed.

Channel 4 said that all the material contained within the trailer was justified in context. It explained that the material was transmitted well after the watershed, close to 22:00, on Channel 4; footage and references were non-graphic and accompanied with the same playful music as in the rest of the programme; viewers had been informed earlier in the programme of many of the safeguards in place; and "the material was in a tease, so viewers would have known not to take the material entirely at face value." Channel 4 said that given all these factors, this footage would not have exceeded the expectations of the vast majority of viewers.

iv. Episode two (broadcast 10 February 2009)

- concern from complainants for allowing the girls to undertake "inappropriate" behaviour, including smoking fake cigarettes and gambling, and of this material being broadcast

The broadcaster said that one of the main aims of this episode was to see how the children behaved when they were given their own money to spend. Channel 4 said that all the scenes in this episode fairly reflected events as they happened and the programme explained that the children had visited a joke shop and purchased fake cigarettes. Channel 4 went on to say that the footage included in episode two was properly contextualised as part of the programme's exploration into how the girls would choose to spend the money they were provided with and how this would affect

the group. Channel 4 said that the programme did not endorse the children's behaviour and the programme concluded by including comments from some of the children that money had had a negative effect on the group. Channel 4 therefore submitted that the scenes complained of would not have exceeded the expectations of the vast majority of viewers.

- concern regarding the physical violence and aggressive behaviour between the boys

Channel 4 stated that the boys' group was very carefully monitored throughout and crew and chaperones stepped in and intervened wherever necessary to control any aggressive behaviour and prevent fighting. It continued that approximately half way through the residence it was decided that the clinical psychologist should sit down with each boy and discuss any aggressive behaviour within the group.

Channel 4 also said that the footage of fighting and aggressive behaviour that was included in the programmes was brief, non-graphic and always contextualised. Channel 4 said that the programme-makers always sought to reassure viewers by showing glimpses of on-camera interventions, crew and chaperones that were present at the time, and by frequently inter-cutting interviews with the parents of the boys concerned. It said that for these reasons the footage included would not have exceeded the expectations of the vast majority of viewers.

- concern regarding the bullying of Adetoro by the other boys, after the knife incident

The broadcaster said that following the incident involving the cutlery knife and the resulting behaviour of the other boys towards him, Adetoro was carefully monitored by the programme-makers, chaperones, clinical psychologist and by his parents. It said that Adetoro talked to the psychologist a number of times, and also spent time with his parents. Channel 4 said that, through discussion with his parents and the psychologist, Adetoro came to appreciate the reasons why the other boys were treating him the way they were, for example, because of his earlier dominating behaviour towards them, and his main concern was to win back the boys' friendship and approval. Channel 4 responded that after the incident Adetoro did resume his position as one of the more dominant boys within the group and went on to continue to enjoy the experience – as viewers saw in the programmes.

v. Episode three (broadcast 17 February 2009)

- objection by complainants for asking the children to skin and prepare dead animals for food for the purposes of the programme, and of this material being broadcast

With regard to the objections that the children were asked to skin and prepare dead animals for food, Channel 4 said that the programme-makers contracted two experienced scout leaders as consultants for the planned camping trips. Part of their role was to advise on activities suitable for the children, bearing in mind the age range of the group. Channel 4 said that the programme-makers were advised that the skinning and preparing of dead animals for cooking would be a suitable educational activity. Channel 4 added that there was no pressure on children to touch or prepare the dead animals if they did not wish to and the children were being overseen and carefully monitored by the crew, scout leaders and chaperones.

With regard to the possible offence caused to viewers from the broadcast of this material, Channel 4 responded that the footage included in the programme fairly and accurately portrayed events as they happened. It added that the sequence ended positively by making clear to viewers that the experience had had a positive effect on the group, bringing the group closer together. Channel 4 stated that for these reasons the material would not have exceeded the expectations of the vast majority of viewers.

vi. Episode four (broadcast 24 February 2009)

- the treatment of Lorna by the some of the other girls when she did not do the washing up after making a cake

Channel 4 stated that, following the argument between Lorna and the other girls, the girls were split up. It said that Lorna was upset but spoke with the psychologist and was comforted by members of the crew and chaperones, and she went to bed happy. The broadcaster said that later that night, some of the girls, including Taisha, Charley and Emma were spoken to and warned about their behaviour. All apologised to Lorna the following morning.

Channel 4 said that at the start of part three of this episode, the programme showed Lorna eating breakfast whilst Charley and some of the others washed up. It said that the commentary explained that after a night's sleep, the tensions between the girls had subsided. Interviews with Emma, Charley and Taisha were then included, in which they all appeared thoughtful and contrite about their behaviour. Following this, Lorna was shown playing happily with Ryan. Channel 4 added that Lorna and her mother were given the last word in the series, confirming and reassuring viewers that the experience was a positive and educational one for Lorna.

Overall, Channel 4 concluded that there was a strong educational editorial justification for commissioning and broadcasting this series. With regard to Rules 1.26 and 1.27, it stated that "all due care was taken with regard to the physical and emotional welfare and the dignity of all contributors; that contributors were not caused any unnecessary distress or anxiety and indeed there is no evidence to suggest that any child was harmed by their involvement in the series". With regard to Rule 2.3, it concluded that "the programmes contained many elements which would have reassured viewers that all due care was being taken with regard to the children's welfare; and that material included within programmes was always justified editorially and by the context."

Decision

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. In setting standards for the content of broadcast television programmes, Ofcom requires broadcasters to ensure that people under eighteen are protected. Ofcom considers the standards it has set for the protection of children, as set out in Section One of the Code, to be amongst the most important. These rules require that broadcasters take due care over the physical and emotional welfare and the dignity of children who take part or are otherwise involved in programmes, and are aimed at preventing children from suffering any unnecessary distress or anxiety as a result of being involved in a programme or by its broadcast.

Ofcom also 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 Section Two of the Code, broadcasters are required, in applying these generally accepted standards, to ensure that material which may cause offence is justified by the context.

One complainant claimed that Channel 4 breached legislation requiring children who perform in certain circumstances to be licensed by the local authority. Channel 4 did not seek a licence from the local authority in question because it considered it was not necessary for it to apply for a licence in the circumstances. Ofcom's role does not extend to investigating allegations of potential breaches of licensing legislation.

Freedom of expression

When setting the standards in its Code, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998. This is the right of a broadcaster to impart information and ideas and the right of the audience to receive them. Accordingly, 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 are necessary to achieve a legitimate aim.

Ofcom notes that Channel 4 is a public service broadcaster with a unique statutory remit to broadcast a range of high quality and diverse programming. This programming should in particular: demonstrate innovation, experiment and creativity in the form and content of programmes; appeal to the tastes and interests of a culturally diverse society; make 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 exhibit a distinctive character⁴.

Ofcom has carefully considered Channel 4's right to freedom of expression and the viewers' right to receive information when weighing up all the factors in this case.

Relevant rules of the Code

As stated in the Introduction, Ofcom considered that the majority of the 180 complainants were concerned primarily about the safety and welfare of the children who had participated in the series. Ofcom's investigation concerned the following Code rules in relation to both the general issues and the content of specific programmes:

- Rule 1.26: "Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis"; and
- Rule 1.27: "People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes".

⁴ Section 265(3) Communications Act 2003

In addition, several complainants made clear that they had been offended by the content and nature of the series, both generally and in relation to specific issues. Ofcom's investigation concerned the following Code rule:

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context... Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

Context includes various factors such as: the editorial purpose and content of the programme; the service on which the material is broadcast; the time of broadcast; the degree of harm or offence likely to be caused; the likely expectation of the audience; the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information; and the effect of the material on viewers who may come across it unawares.

Rules 1.26 and 1.27

It is important to note that Ofcom does not prohibit the broadcast of factual entertainment programmes of this nature (or, indeed, any nature) providing they comply with the Code. The issues for Ofcom here were whether the programmes breached Rules 1.26 and 1.27, which required that due care was taken over the physical and emotional welfare and dignity of the children who took part, and that those children must not have been caused unnecessary distress or anxiety through their involvement or the broadcast of the series.

For participants aged under sixteen, the Code requires that broadcasters should normally obtain consent from a parent, guardian or other person over eighteen or *in loco parentis*. However, broadcasters' obligations under Rules 1.26 and 1.27 apply irrespective of such consent. Ofcom also understands, on the basis of expert advice, that from an early age, depending on the individual, children are capable of indicating their willingness to participate or be involved in a programme. Therefore, as part of its consideration, Ofcom took into account that all the children who took part in the series had been given detailed information about what might happen if they participated, and had gone on to give their assent to participate. Ofcom also took into account that informed consent was given by all of the parents of the children who took part in the series.

Ofcom notes that, to date, it has not received any complaint or contact from any parents of the children involved in the series that the children had been treated unfairly and/or had their privacy infringed in the series (under Sections Seven and/or Eight of the Code). In addition, Ofcom noted that Channel 4 confirmed that neither it nor the production company, Love Productions, had received any negative feedback from the children who took part in the series or their families from which it could reasonably be inferred that they had not ensured due care of the children's physical and emotional welfare or dignity. Channel 4 also confirmed that there were not any comments or feedback from which it could reasonably be inferred that any child had been caused unnecessary distress or anxiety as a result of their involvement in or broadcast of the series. Ofcom also took into consideration the documentary evidence provided by Channel 4 of positive feedback from the parents of some of the children involved in the production.

Ofcom has conducted research⁵ on the participation of children in non-fiction programmes, and has published detailed guidance to accompany Rules 1.26 and 1.27⁶. This guidance, which is intended to assist broadcasters in their compliance with Rules 1.26 and 1.27, is based on the findings of Ofcom's research in this area and was drafted with the assistance of child experts and child welfare groups. Its research has demonstrated that both adults and children value and enjoy under eighteens being represented in programming. Children form strong views and feelings from a very early age and these deserve to be seen and heard in programmes. However, the ability of participants to weigh up the potential long-term consequences of participation can vary widely depending on age, maturity and individual circumstances.

Central to Rule 1.26 is the concept of "due care". Ofcom's guidance makes clear that "due" is used in the same way as in other areas of the Code. It indicates that the level of care must be "appropriate to the particular circumstances". Responsibility for compliance rests with the broadcaster, who will need to decide what measures are appropriate in the particular circumstances of individual programmes, genres and formats. Relevant factors also include a participant's age, maturity and capacity to make judgements about participation and its likely consequences. With regard to Rule 1.27, Ofcom's guidance recognises that some genres and formats focus on conflict and crisis and that these can often feature experiences that have caused, or may cause, distress and anxiety. Therefore, broadcasters need to make very careful decisions when involving under eighteens in such programmes.

The guidance also contains a wide range of considerations regarding the pre-production, production and post-production stages, and in relation to informed consent and assent to participation. For example, Ofcom recommends that broadcasters ensure that:

- documented guidelines are developed for working with under eighteens, and production staff are made fully aware of these;
- appropriate background checks are made on an under eighteen's social, family, health and educational circumstances and, where appropriate, a thorough risk assessment;
- where they reasonably can, appropriate consultation is made with qualified experts on the likely impact of participation, especially in extreme or unusual cases; and
- programme makers highlight to parents or guardians both the positive and negative likely outcomes of their child's participation.

A further consideration included in the guidance is that the level of care taken by broadcasters to protect participants who are aged under eighteen is not always evident to the audience. Therefore, in certain cases, referring in the programme to the safeguards put in place could, if appropriate, help to reassure the audience that the requirements of Rules 1.26 and 1.27 have been adhered to, and that the welfare and well-being of child participants were one of the broadcaster's central considerations.

Ofcom notes that Channel 4 set out in detail a large number of safeguards it had put in place through each of the stages of the production of *Boys and Girls Alone*.

⁵ Children in programmes: An independent research report for Ofcom by Sherbert Research is available at: http://www.ofcom.org.uk/research/tv/reports/children_in_programmes/

⁶ <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/>

Examples of these included:

Pre-production:

- consultation with various experts, who advised on the appropriate age range from which to select the children;
- selection process included contact with schools and children's groups, interviews with the child and parents, and meetings with a clinical psychologist, who carried out checks and evaluations of the children to select those best suited to participate;
- appraisal of all children by the clinical psychologist regarding the nature and format of the series and the impact it may have on the children;
- discussions between the programme-makers, the clinical psychologist and the families regarding the positive and negative consequences of taking part in the series; and
- consultation with an educational psychologist to create an appropriate environment for the children involved in the series.

During filming:

- the children were monitored 24 hours a day by chaperones and production crew or security - CCTV cameras were installed in every room (apart from bathrooms) and outside area;
- optional 24 hour monitoring and attendance by the parents;
- four members of the production crew were in each 'village' during the day and two overnight;
- 24 hour access to a clinical psychologist (the clinical psychologist spoke to the children every day);
- the use of experienced chaperones (a minimum of two per 'village' 24 hours a day), who were primarily responsible for the physical and emotional welfare of the children, and who had the right and power to stop filming immediately if it was in the best interests of the child;
- 24 hour paramedic/nurse cover;
- employment of scout leaders for the camping trip;
- employment of an experienced health and safety officer, who was contracted for the duration of pre-production and production;
- employment of a children's chef to assist the children with cooking;
- the use of detailed guidelines, protocols and intervention policies, which detailed how the children's welfare should be dealt with. All relevant personnel were obliged to read and follow these;
- daily reporting and referring-up procedures; and
- a 'down day' every fourth day, when no filming took place, the children were encouraged to relax and they were given three cooked meals.

Post-production:

- the families were offered further sessions with the psychologist if required;
- the families were invited to view relevant episodes prior to transmission and make editorial changes where appropriate;
- the programme-makers asked the families who took part in the series to contact their children's schools so they were made aware of when the series was being broadcast;

- Channel 4 offered support to the families to deal with press and publicity issues arising from the transmission of the programmes; and
- the programme-makers/broadcaster maintained regular follow-up contact with the families after the programmes were broadcast.

However, on the basis of the programmes as broadcast alone, it was clear to Ofcom that the majority of the safeguards detailed by Channel 4 in its representations would not have been apparent to viewers. This was especially true of episode one. In its examination of the complaints made about individual incidents and issues in the series, it was necessary for Ofcom to take into account the full range and type of measures put in place by the broadcaster (both off-camera and those that were apparent during the programmes as broadcast), together with other relevant factors, such as freedom of expression and informed consent, as referred to above.

Ofcom's consideration of each of the incidents and issues complained about, with regard to Rules 1.26 and 1.27, is set out in detail below.

Specific incidents relating to Rules 1.26 and 1.27

- The broadcast of children being bullied and in distress

There were a number of complaints made about the broadcast of bullying and the distress of certain children during the series. Ofcom appreciates that seeing children as young as eight years old experiencing bullying and appearing distressed has the potential to raise viewer concerns about the welfare of the children. In particular these complaints referred to: the distress of eight year old Sophia during episode one, who was shown to be upset after the older girls painted threatening graffiti in her house; the bullying of Lorna during a water fight in episode one and when she did not do the washing up after making a cake in episode four; and the bullying of Adetoro on various occasions, including after he allegedly threatened another boy with a knife in episode two.

With regard to the incident involving Sophia, Ofcom took into account the safeguards Channel 4 had put in place, and examined how these had worked in practice after this incident. In particular, Ofcom noted that following this incident, Sophia was provided with support off-camera by the crew and chaperones, and was closely monitored after the event by the chaperones, clinical psychologist and her mother. Further, the other girls involved in the incident were spoken to about the matter. Ofcom considered that the programme-makers dealt with this incident in an appropriate manner, and also noted that the broadcaster had ensured that Sophia and her family were content with the presentation of this incident before it was broadcast.

The incidents of bullying of Lorna and Adetoro occurred at various times throughout the series. Ofcom considered each of these events, and the broadcaster's actions to deal with them, very carefully. Ofcom notes that in each of these cases, there was appropriate intervention by the chaperones off-camera and that, if necessary, the other children who were involved were spoken to. Ofcom also notes that the children were closely monitored by the chaperones, their parents and the clinical psychologist at the time and for a number of days after each incident. Furthermore, the children were able to speak to the psychologist if they wanted to and spend time with their parents when necessary.

Ofcom took into account that, in accordance with Ofcom guidance, the programme-makers had talked through the likely potential negative consequences of participating in the series, such as the possibility of bullying occurring during filming, with all the children and families during the selection process. While Ofcom accepts that children are likely to have differing abilities to understand such information in advance, it was nevertheless Ofcom's view that the broadcaster took sufficient steps to ensure as far as possible that the children and their families would be aware of the potential issues that may result from participating in the series.

Ofcom also considered that providing Lorna, Adetoro and their families the opportunity to view the programmes where they predominately featured before transmission, was an appropriate way to ensure that any concerns the children had about the presentation of the material were raised. Further, by providing follow-up monitoring and taking other actions, such as notifying the children's schools about the transmission time of the programmes, in Ofcom's view, the broadcaster took appropriate actions to mitigate any possible distress on the part of the children involved that may have resulted from the broadcast of such incidents.

As part of its consideration of these incidents, Ofcom also noted that Lorna, Adetoro and their families had given positive feedback about their involvement in the series. Ofcom considered what had occurred off-camera, and the measures the broadcaster had put in place to prepare the children for what might occur during filming in advance, and deal with such incidents at the time and afterwards, Ofcom concluded that for these specific incidents there was no evidence to suggest that due care had not been taken over the physical and emotional welfare of the children, or that they had been caused unnecessary distress. However, Ofcom also noted that, from the audience's point of view, the majority of the actions taken by the broadcaster to safeguard the children's welfare would not have been apparent.

- The treatment of the children who wanted to leave the 'village'

During episode one, two boys (Sid and Matthew) asked to leave the 'village'. Some viewers raised concerns about the treatment of these children, who they thought were made to stay against their wishes. This was particularly the case with Sid, who stated a number of times during episode one that he wanted to go home. In light of Channel 4's detailed explanation of what occurred, Ofcom considers that Sid and Matthew's requests to leave were considered carefully and appropriately by the broadcaster, which had a clear set of procedures in place for such occurrences. Ofcom also acknowledges that both children were closely monitored during the time their requests were made by their parents and the clinical psychologist.

Ofcom noted that any decisions regarding Sid and Matthew's participation and welfare were made on the basis of the views of a number of people. This included seeking not only the views of the child and their parent/s, but also taking into account specific expert advice from the chaperones and the clinical psychologist. Therefore, it was apparent to Ofcom that the senior producers and the Channel 4 commissioning editor had processes in place to enable them to make informed decisions, in determining the best interests of the children in such situations. Importantly, Channel 4 confirmed that, if it had been the case that a parent wished his or her child to stay but the child wanted to leave and it was judged on the basis of expert advice that it was overall in the best interests of the child that he or she leave the 'village', Channel 4 would have overruled the parent's view to ensure that the child's best interests were protected.

In light of the above, Ofcom concluded that, with regard to the treatment of the children who asked to leave the 'village', there was no evidence to suggest that such requests were not taken extremely seriously or dealt with appropriately by the broadcaster. Ofcom considered that there was no evidence that due care was not taken of Sid or Matthew, or that they were caused unnecessary distress or anxiety because they were not permitted to leave the village immediately after expressing a desire to do so. Ofcom also considered that there was no evidence to suggest that the broadcaster did not regard the children's best interests as paramount in taking decisions about the welfare of the children.

- Concern regarding the physical violence and aggressive behaviour between the boys

Complainants expressed concern about the broadcast of certain behaviour by some of the boys during episode two of the series. This behaviour included fights and an incident involving Adetoro waving a cutlery knife from a distance at another boy, TJ.

Ofcom took account of the safeguards Channel 4 had put in place in the event of such behaviour occurring among the children. In particular, it noted the 24 hour monitoring and intervention off-camera by crew and chaperones. Ofcom was satisfied that sufficient safeguards had been put in place to protect the children, in accordance with Rule 1.26.

As regards Rule 1.27, Ofcom noted that the physical violence between the boys was addressed off-camera by the programme-makers and the clinical psychologist, who talked to all the boys about their behaviour. In addition, as shown in the programme, Adetoro and the other boys did later resolve their conflict. Taking this into account, and the measures put in place by the broadcaster to safeguard the children and their families post-transmission, as noted above, Ofcom considered that there was no evidence from the broadcast of this material that this behaviour resulted in unnecessary distress or anxiety.

- Concern that the environment the children were placed in during episode one was potentially dangerous

Complainants were concerned in particular by the children's access to potentially dangerous utensils, sharp objects and water pistols filled with paint, as well as the hunger of some of the children. As part of its consideration, Ofcom took into account that a number of precautions were taken to ensure the children were not subject to unnecessary risk, including employing a health and safety officer and 24 hour paramedic and nurse cover. Ofcom notes that any objects that were being misused by the children were removed and that there was a strict rule that if any child did any cooking, a chaperone must be standing nearby watching closely.

With regard to the hunger of the children, Ofcom notes that it was stated during episode one that "*the villages have been stocked with a full range of food, both healthy and not so healthy*". It is clear from Channel 4's response that the children's eating habits were closely monitored by their chaperones. Further, Ofcom notes that the children were helped by a chef to assist with their cooking and in addition to this they were provided all meals every fourth day during the 'down day' or at any other times when the chaperones believed it was necessary.

In light of the above, with regard to the environment provided for the children during episode one, Ofcom considered that there was no evidence to suggest that due care was not taken over the physical and emotional welfare of the children, or that they

were caused unnecessary distress. However, Ofcom noted that the majority of these safeguards would not have been apparent to the audience.

- Concern for allowing the girls to undertake “inappropriate” behaviour

A number of complaints were made to Ofcom about the broadcast of certain behaviour by some of the girls during episode two of the series. In particular, complainants cited the girls smoking fake cigarettes and gambling on slot machines in an amusement arcade, and questioned whether this demonstrated a lack of due care for the children.

However, Ofcom noted that the children were accompanied by adults on the shopping trip who were willing and ready to intervene, if necessary. In addition, the children decided to buy the fake cigarettes and use the slot machines of their own accord, as part of their new responsibility to look after their own money, which was the editorial focus of this particular episode. While Ofcom appreciates the concerns that such behaviour may raise, we believe that on balance, this type of behaviour would not exceed what might typically be expected from many children around the age of twelve, and younger children in their company.

Therefore, Ofcom considered that the broadcaster managed this behaviour appropriately and there was no evidence to suggest that due care had not been taken over the physical and emotional welfare of the children, or that they were caused unnecessary distress in this instance.

- Objection by complainants for the broadcast of children skinning and preparing dead animals for food for the purposes of the programme

Some viewers complained about the distress of some of the girls when they were asked to prepare the dead animals to eat during episode three. In Ofcom’s view, Channel 4 had given careful consideration to this organised task, with the employment of scout leaders to advise on a suitable and educational activity for the children. Ofcom also notes that the children were being carefully monitored by the scout leaders and chaperones throughout these activities. In addition, it was clear that this was an optional activity and the children were not forced to participate if they did not want to. Further, as shown in the programme, although some of the children did appear to be upset initially by the activity, once they had the chance to observe other children experiencing it, most did eventually join in, and went on to refer to it positively. We consider that having the opportunity to participate in such activities would not be unfamiliar to this age group. School children often go camping and in such circumstances may well be exposed to such pursuits as cooking from the wild and living outdoors.

In light of the above, Ofcom concluded that there was no evidence to suggest that due care had not been taken over the physical and emotional welfare of the children, or that they were caused unnecessary distress in this instance.

Conclusions regarding Rules 1.26 and 1.27

Ofcom has thoroughly investigated the background to and production of *Boys and Girls Alone* with Channel 4’s full cooperation.

In Ofcom’s view, the safeguards outlined above are numerous and comprehensive. Such measures illustrate that Channel 4 gave detailed and careful consideration towards the protection of the children involved in the series, and to all manner of

eventualities that might arise during the course of the production. Ofcom had particular regard to the very careful consideration given by the producers to the type of children selected in terms of age, personality and background, and that all children were given informed consent by their parents to participate in the series. Ofcom also acknowledges that, in accordance with Ofcom's guidance, the programme-makers sought advice from experts throughout the pre-production and production process, including clinical and educational psychologists, and trained chaperones were employed to monitor and supervise the children's welfare.

It is clear from Ofcom's investigation that decisions regarding the welfare of the children were made by the broadcaster in view of the best interests of the child. The evidence available to Ofcom shows the broadcaster had clear procedures in place and sufficient expert advice to help it make informed decisions in determining the best interests of the children, in accordance with Rule 1.26 of the Code. In addition, it is clear from both the detailed documentary evidence Ofcom has been provided by the broadcaster, and the confirmation that Channel 4 has received positive feedback from all the participating families, that the children involved in the series enjoyed and benefited from the experience.

Given this, and its consideration of the specific incidents outlined above, Ofcom concluded that, taken together, these safeguards provided sufficient evidence that overall the care provided for the children was appropriate in the circumstances and that due care was taken by the broadcaster over the physical and emotional welfare and dignity of the children who were involved in this series. The measures put in place before, during and after the production of the programme were extensive and demonstrated that Channel 4 had complied with the relevant rules of the Code concerning child welfare. Ofcom also took into account that the parents and children gave their full consent before and after the programme was produced, and there was no actual evidence that the broadcaster had compromised the physical or emotional welfare of the children participating.

As regards Rule 1.27, Ofcom was also satisfied that, on the basis of the evidence it assessed during this investigation, the children were not caused unnecessary distress or anxiety by their involvement or by the broadcast of the programmes. Although the series included sequences showing some of the children temporarily distressed or upset, or occasionally showing them in what may have appeared to the audience to be potentially unsafe situations, it is clear to Ofcom that in reality the likely risks to the children were in most cases negligible. In any event, any likely risks were carefully managed by the broadcaster, in accordance with the Code and relevant Ofcom guidance. Measures were in place from pre-production through to giving support to the children after the series was broadcast to ensure that the children received due care and were not caused unnecessary distress, in compliance with Rules 1.26 and 1.27.

However, as detailed further below under Rule 2.3, despite there being such an extensive range of measures in place to protect the child participants of the series, the vast majority of these safeguards were not made clear to the audience.

Episodes one, two, three and four: Not in breach of Rules 1.26 and 1.27

Rule 2.3

Background

Ofcom received a number of complaints about the offence caused to viewers from material broadcast throughout the series. The majority of such complaints were made about episode one. Some complainants criticised the purpose of the series, stating that it was not in the best interests of the children and did not reveal anything to viewers that they did not already know. Others raised the potential ethical issues of involving young children in this type of reality/documentary programme and questioned whether there was justification for broadcasting the bullying and distress of some of the children.

As stated above, both the broadcaster and its viewers have rights to freedom of expression, which includes the freedom to impart and receive information and ideas. Children also have the right to participate in programmes so long as the broadcaster ensures their welfare and complies with the requirements of the Code. Channel 4 has a special statutory remit to innovate, and offer educational and distinctive programmes. Against this background Channel 4, like all broadcasters, has the editorial freedom to make programmes about any subject it chooses – including challenging topics and programmes which in some viewers' opinion may not necessarily reveal anything new to the viewer – providing they remain within the Code.

The Code does not prohibit the broadcast of potentially offensive material in any circumstances. What is essential for compliance with the Code is the way in which such material is transmitted by the broadcaster. As set out in the Code, material that is potentially offensive may be broadcast as long as its inclusion is justified by the context, so as to provide adequate protection to members of the public.

In terms of context and the editorial content of the series, Ofcom firstly took into account that *Boys and Girls Alone* was presented as an observational documentary series that was intended to be both educational and entertaining. Ofcom therefore considered that viewers were most likely to have considered that the events portrayed in the series reflected what had actually occurred, and the entirety of the children's experiences.

The series explored how children as young as eight years old would behave living without their parents and making their own decisions. Given the editorial purpose of the programme and the age of the children participating, Ofcom considered it likely that the audience would therefore have expected to see that the children were being adequately cared for and protected appropriately. Ofcom acknowledges that, when broadcasting such programmes involving children, broadcasters generally summarise, and are not required to enumerate in detail each and every measure put in place to ensure compliance with the Code. Clearly, broadcasters must have the editorial freedom to decide when and how it is most appropriate to do so.

Nonetheless, as already noted, Ofcom's guidance accompanying Rules 1.26 and 1.27 states that in certain cases, referring in the programme to the safeguards put in place could, if appropriate, help to reassure audiences that the welfare and well-being of child participants were one of the broadcaster's central considerations. Appropriate information about these safeguards therefore can help to adequately protect viewers by mitigating the risk of being caused offence. Rule 2.3 also states that "appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

In light of this, Ofcom gave careful consideration to the potentially offensive material broadcast in all four episodes in the series. It took into account what information was provided to viewers in each episode of the series regarding the various safeguards that were in place to protect the children. It also considered whether this information was appropriate in terms of providing viewers with sufficient reassurance regarding the welfare of the children, and therefore providing adequate protection to members of the public. Ofcom's consideration of each of the episodes with regard to Rule 2.3 is set out below.

Episode one

Ofcom noted that episode one of the series was preceded with the following information:

"Now on four, in a brand new series, it is life without mum or dad as two groups of children have to fend for themselves. Boys and Girls Alone contains some strong language and scenes of animal dissection."

During the opening two minute sequence of this episode the narrator said:

"Imagine a world without grown-ups. A world governed by children, where every decision is made by a ten year old. Two separate communities, one full of boys and one full of girls, will find out what it's like to live without parents. Will they rule with wide eyed innocence, or has modern society made our children grow up too fast? [shot of two children smoking what appeared to be real cigarettes]. Will they be able to survive on their own? [shot of child skinning a rabbit] Or have we created a nation of cotton wool kids? [shot of child crying saying he misses his "cosy bed"] They have two weeks to create their new societies and try not to kill each other along the way. [shot of boys fighting and girls arguing/crying] Who will build a better world, the boys or the girls? And what can the communities they create teach us about our own society?" [shot of child saying "fuck"]

Further, Ofcom noted that within the first two minutes of the programme viewers were shown content which included the children:

- apparently smoking;
- fighting;
- discussing bullying;
- arguing;
- describing the situation as a "living nightmare"; and
- swearing.

This material presented in the opening minutes of the programme was broadcast without any information regarding the welfare or safety of the children. The first reference to any safeguards in place did not occur until approximately seven minutes into the programme (see further below). Ofcom therefore considered this material to be particularly challenging and had a clear potential to offend viewers.

It should be noted however that audiences are likely to expect opening scenes of such programmes to contain a montage of material shown out of context in order to give a flavour of the programme ahead. Ofcom therefore also had to consider the content of the rest of the programme in terms of providing adequate protection from offensive material.

Ofcom noted that there were various challenging elements broadcast throughout this episode. In particular, the narrator told viewers that: *“from now on they will only have themselves and each other to rely on”*; *“the boys are finding it hard to survive...”*; and *“those who are able to cook have been cooking but only for themselves”*. This episode also included content such as: various examples of the girls arguing and screaming at each other, with certain girls ganging up on Lorna, who said at the end of day one *“I thought I could last but it is only one day and I am already crying”*; boys arguing, fighting, swearing and getting upset; Sophia upset after the older girls painted graffiti in a house; Sid and Matthew asking to leave; and Sid locking himself in the bathroom as a result of having to stay.

Ofcom also noted that the trailer for episode two, which featured at the end of episode one, included a montage of shots showing the children:

- engaged in a physical fight;
- missing home;
- upset;
- angry;
- smoking what appeared to be real cigarettes; and
- discussing an incident involving the threatening use of a knife.

This material was presented with no background information provided to viewers regarding the incidents. In addition, the narration over the shot of the children smoking asked the question *“is money the root of all evil?”* which, in Ofcom’s view, could have implied that the children were engaged in some wrongdoing. Ofcom considered that this had the potential to be misinterpreted by viewers and could have suggested that the children, who were between eight and twelve years of age, had been permitted to smoke real cigarettes as part of the programme.

Taking account of the editorial purpose and format of the programme, the age of the children involved, and the specific examples of editorial content throughout this episode, many of which showed the children unhappy and in distress, Ofcom considered that, overall, the episode included a significant amount of challenging material, and clearly had the potential to offend viewers.

Ofcom therefore next examined to what extent this potential offence had been justified by its context. In particular, Ofcom considered the nature and amount of information relating to the children’s welfare the broadcaster had provided to the audience during this episode as a means of avoiding or minimising any potential offence, in accordance with Rule 2.3 of the Code.

Ofcom noted that, after a series of challenging scenes at the opening of the programme, as set out above, the first reference to the protection of the children’s welfare occurred at approximately seven minutes into the programme. The narrator stated that: *“the boys and girls will be observed by their parents... they will also be monitored by trained chaperones who will only step in if a child’s safety is compromised”*. Viewers were also informed in the second half of the programme that *“the children can go home at any point with their parent’s agreement”*.

Ofcom noted that the information provided to viewers regarding the supervision of the children varied throughout the first episode. For example the narrator stated at various times that the children would be living without parents. However, the narrator also stated in episode one that *“ten boys and ten girls are discovering what life is like without **adult** supervision”* and said that they were experiencing *“life away from*

school and grown-ups...”. One of the children, Charley, also stated that *“there are **no adults** so we get to do what we want”* [emphases added].

Ofcom took into account that there were various examples throughout this episode of the chaperones or camera crew intervening with the children and shots of the children talking to adults when they were distressed. For example: an adult is heard asking Sid *“is there anything else you can eat?”* after he could not boil a kettle; viewers saw an adult take a rake off a child when a fight almost happened between two boys; Taisha and Charley were asked *“do you just let them go hungry?”* by an adult after they would not cook for the younger girls; Sid was shown talking to his mother after he asked to leave; Sophia was shown talking to an adult after she was scared by the graffiti; and at the end of the episode all the parents went into the ‘villages’ to talk to their children about their behaviour.

Other information about safeguards given to viewers in this episode included examples such as:

- viewers were informed that *“the villages have been stocked with a full range of food, both healthy and not so healthy”*;
- within the first 15 minutes of the episode parents were shown twice in the viewing room watching footage of their children;
- various parents were interviewed about how their children were coping, in particular Lorna and Taisha’s mothers were asked about their daughters after their arguments and Sophia’s mum talked about her daughter after she was upset by the graffiti; and
- Sid was shown leaving the village at the end of the episode.

Ofcom therefore considered that at times during the episode, viewers would have known that the children could talk to adults if they were upset or distressed and that trained chaperones would only intervene if a child’s safety was compromised. Viewers would also have understood that the children were being monitored by their parents and could leave with their parents’ agreement. However, at other times during episode one, there were several occasions when viewers were likely to have understood that the children were unsupervised by adults and were involved in potentially unsafe situations such as smoking and fighting.

As a result of these facts and circumstances, and in view of what the audience would have understood about the editorial purpose of the programme, it was Ofcom’s view that many viewers were likely to consider there to have been a fairly limited selection of measures to protect the children. In contrast, it was clear from Ofcom’s investigation that, in fact, numerous other safeguards had been put in place to protect the safety and welfare of the children. Having analysed carefully the content of this episode as broadcast (and summarised above), Ofcom was of the view that the audience would have been unaware of the majority of these safeguards, including:

Pre-production:

- consultation with various experts, who advised on the appropriate age range from which to select the children;
- selection process including contact with schools and children’s groups, interviews with the child and parents, and meetings with a clinical psychologist, who carried out checks and evaluations of the children to select those best suited for the series;

- appraisal by the clinical psychologist regarding the nature and format of the series and the demands it would have on the children;
- careful consideration of a selection criteria in order to select children with appropriate personalities;
- discussions between the programme-makers, the clinical psychologist and the families regarding the positive and negative consequences of taking part in the series; and
- consultation with an educational psychologist to create an appropriate environment for the children involved in the series.

During filming:

- the children were monitored 24 hours a day by chaperones and production crew or security - CCTV cameras were installed in every room (apart from bathrooms) and outside area;
- optional 24 hour monitoring and attendance by the parents;
- four members of the production crew were in each 'village' during the day and two overnight;
- 24 hour access to a clinical psychologist (the clinical psychologist spoke to the children every day);
- the use of experienced chaperones (a minimum of two per 'village' 24 hours a day), who were primarily responsible for the physical and emotional welfare of the children, and who had the right and power to stop filming immediately if it was in the best interests of the child;
- 24 hour paramedic/nurse cover;
- employment of scout leaders for the camping trip;
- employment of an experienced health and safety officer, who was contracted for the duration of pre-production and production;
- employment of a children's chef to assist the children with cooking;
- the use of detailed guidelines, protocols and intervention policies, which detailed how the children's welfare should be dealt with irrespective of the parents' wishes. All relevant personnel were obliged to read and follow these;
- daily reporting and referring-up procedures; and
- a 'down day' every fourth day, when no filming took place, the children were encouraged to relax and they were given three cooked meals.

Post-production:

- the families were offered further sessions with the psychologist if required;
- the families were invited to view relevant episodes prior to transmission and make editorial changes where appropriate;
- the programme-makers asked the families who took part in the series to contact their children's schools so they were made aware of when the series was being broadcast;
- Channel 4 offered support to the families to deal with press and publicity issues arising from the transmission of the programmes; and
- the broadcaster maintained regular follow-up contact with the families after the programmes were broadcast.

Ofcom accepts entirely that it would be disproportionate and unnecessary for broadcasters to give full details on air of each and every step taken behind-the-scenes to involve the children in a particular programme. However, it was clear to

Ofcom that viewers of episode one would not have been aware of the overall extent and level of protection provided to the children with regard to their physical and emotional welfare. In particular, Ofcom noted that the audience of this episode had no knowledge that the broadcaster had implemented a careful and thorough selection process, consulted with various experts, including child psychologists, at all stages of the production, and allowed the children to relax away from the cameras every fourth day.

Ofcom found no evidence that Channel 4's intention was to deceive viewers regarding the safety and welfare of the children in the programme, as evidence by the fact that some information had been included in the programme about the safeguards in place. However, Ofcom considered that by providing such limited details of the numerous safeguards in place to protect the children involved, viewers were not provided sufficient information – and so context - regarding the protections that the broadcaster had put in place.

As regards the trailer for episode two, Ofcom accepts that given the purpose and style of 'teasers' or trailers there may be a certain amount of audience expectation that such material is seen out of context and therefore does not provide all the facts. However, as noted above, this particular trailer included some challenging content, including children as young as eight years old apparently smoking and discussing a knife incident with no background information provided to viewers regarding the incidents. Ofcom did not accept Channel 4's argument that viewers were likely to have realised that the cigarettes were, in fact, fake. In Ofcom's opinion, taking into account that the shots in question were fairly brief and framed in a mid-shot therefore little detail of the cigarette was shown, many viewers were likely to have assumed that the cigarettes were real. Further, this trailer was shown at the end of the programme, after a significant amount of other challenging content, and some key pieces of information regarding the safety of the children had only been provided to the audience almost one hour previously at the beginning of the episode. Given this, and taking into account that viewers were told limited information regarding the extent of the safeguards in place, as noted above, Ofcom considered that the presentation of this trailer may have resulted in unnecessary offence being caused to some viewers.

Broadcasters are reminded that factual programmes involving children must be, where appropriate, carefully balanced against the need to make clear to the audience what measures were in place to protect those children. As stated above, Ofcom accepts that it would be disproportionate and unnecessary for broadcasters to provide full details of all the safeguards it had in place to protect the physical and emotional welfare of the children. Notwithstanding this, broadcasters must take account of Ofcom's published guidance on this point. In particular, in accordance with Rule 2.3, they should inform viewers adequately, through whatever means they consider to be most appropriate, about the measures they have put in place to ensure compliance with Rules 1.26 and 1.27, to help prevent or minimise unnecessary offence being caused to viewers. In some cases, for example, it may be sufficient to cross refer to programme websites for further details of measures in place to safeguard participants.

This is particularly the case for programmes involving young children who have been put in situations that appear to the audience to be unsafe. Broadcasters must balance the editorial narrative of the programme with providing adequate information so as to protect viewers from offensive material.

In this case, Ofcom concluded that, given the editorial purpose of the series and the context of this particular episode, the information provided to the audience by the broadcaster during the first episode about the welfare of the children was insufficient to reassure viewers that the children were being cared for and protected appropriately. In Ofcom's view, this resulted in the material having greater potential to offend viewers. Even taking into account Channel 4's remit to produce innovative and distinctive programmes, and the sometimes challenging and provocative style of its programmes, Ofcom considered that this episode would have exceeded the likely expectation of the majority of the audience. As such, Channel 4 did not apply generally accepted standards to ensure that this material was justified by context. Therefore adequate protection was not given to the audience of offensive material and this episode of the series was in breach of Rule 2.3 of the Code.

Episode one: Breach of Rule 2.3

Episodes two, three and four

Ofcom considered the editorial content of the remainder of the series. It noted that these episodes contained some content that caused offence to some viewers. In particular, this included a sequence in which Adetoro was said to have threatened TJ with a cutlery knife, and another sequence in which the girls smoked fake cigarettes and "gambled" at slot machines during their shopping trip.

However, Ofcom considered that in these episodes such potentially offensive material was appropriately contextualised and limited. For example, after TJ accused Adetoro of threatening him with a knife, the narrator explained to viewers that "*from ten feet away Adetoro has just harmlessly waved a cutlery knife in TJ's direction, but that's not how he [TJ] saw it*". In Ofcom's opinion, it was made clear to the audience that the children were not harmed at the time of the incident, that any potential harm was mitigated appropriately by the presence of the adults supervising off camera, and that the boys appeared calm when they later discussed the incident.

Likewise, during the sequence in which the girls were seen smoking and playing on slot machines, the narrator informed the audience that the cigarettes were fake and had been bought by the girls from a joke shop and, overall, the editorial purpose of the sequence was clear, namely reflecting exactly what the girls had chosen to do on their shopping trip and illustrating how some of the younger girls gave into peer pressure.

In addition, Ofcom noted that these three episodes showed less challenging material and greater resolution. The children were shown getting along with each other, forming friendships and learning to cope more independently without their parents. For example: in episode two the boys were shown becoming more confident and sharing the money they were given in this episode so they could all enjoy a day out together; in episode three the girls finally bonded on the camping trip and some of the girls apologised to Lorna for their previous behaviour towards her; and in episode four the parents and children reflected on the experience and what they had learnt about themselves and each other.

Ofcom also assessed the general information provided to viewers in these episodes. At the beginning of episodes two and four, the narrator stated that "*the children will be observed by chaperones who will step if their safety or welfare is compromised*." Other information was also provided to the audience, for example, when the children were away on a camping trip the narrator informed viewers that "*whilst they are away chaperones will report back on how the boys and girls are coping on their outward*

bound adventure". Likewise, after the sequence involving the knife incident, viewers were told that "after an emotional day Adetoro has taken some time out with his mum and dad". Ofcom took into account that such information provided viewers with more reassurance, specifically about how the welfare and well-being of the children were being protected, rather than just their physical safety.

In light of all the above factors, Ofcom considered that the information given to the audience of episodes two, three and four about the safeguards in place to protect the children was fairly limited compared to the extent of the safeguards that were, in fact, in place. However, given that the level of potentially offensive material was much less in these episodes and the greater contextualisation of the content that some viewers found challenging, Ofcom concluded that there was sufficient information provided in the broadcasts to reassure viewers that the children were being cared for and protected appropriately. Therefore, in Ofcom's view the material broadcast which caused offence to some viewers would not have exceeded the likely expectations of the majority of the audience and was justified by the context. Ofcom therefore concluded that Channel 4 had applied generally accepted standards and these episodes were not in breach of Rule 2.3 of the Code.

Episodes two, three and four: Not in breach of Rule 2.3

Conclusion

The Communications Act 2003 ("the 2003 Act") requires Ofcom to set standards to ensure that persons under the age of eighteen are protected⁷. In reaching a decision in this case, Ofcom was required to balance the right to freedom of expression of Channel 4 and its audience against the need to ensure appropriate restrictions on that right in order to comply with the standards set out in the Code. It is essential in Ofcom's opinion for Channel 4 and other broadcasters to continue to enjoy the editorial freedom to make factual programmes about issues involving children and for children to be able to take part. Ofcom's viewer research in this area has demonstrated how much children and their parents value children's right to have a voice, and the programmes reflect this. It must be balanced in turn however by the requirement to comply with the Code and in particular the need to ensure appropriate protection for the children participating.

Welfare of the child participants

Ofcom acknowledges that a number of viewers found this series challenging. Some were concerned that young children between eight and twelve years of age appeared to have been left largely to their own devices in a potentially dangerous environment without adequate adult supervision. Ofcom's detailed investigation has, however, concluded that this was not in fact the case.

It is a central duty for a broadcaster making any programme involving children to ensure that due care is taken of their welfare, irrespective of any consent given by the child or parent, and that the child is not caused unnecessary distress or anxiety. To supplement these rules, Ofcom has published detailed guidance to assist broadcasters. In Ofcom's opinion the broadcaster and programme-makers in this case employed an extensive range of measures and procedures to ensure compliance with the Code, and that the guidance was adhered to. On balance, it was Ofcom's view that, in these particular circumstances, Channel 4 implemented all the

⁷ Section 319(2(a)) Communications Act 2003

measures that could reasonably have been expected in producing such a programme to ensure due care for the children and protect them from unnecessary distress or anxiety. Therefore, having carefully assessed and considered all the evidence available to it, Ofcom has concluded that Rules 1.26 and 1.27 were not breached.

Audience offence

Ofcom acknowledges that a number of viewers were offended by some of the content broadcast in this series. This was particularly the case with the first episode, which led to the majority of complaints made about *Boys and Girls Alone*. The programme was presented as an observational documentary and therefore audiences would have understood that they were viewing material that reflected real events involving the children. It is clear from the complaints that a number of viewers believed children as young as eight years old were involved in potentially unsafe situations.

As stated above, Ofcom's investigation found that this was not in fact the case and the broadcaster did apply due care to the welfare to the children and they were not caused unnecessary distress or anxiety from their involvement in the programme or by its broadcast. In Ofcom's view, in this case the key issue in relation to whether the programme breached the rules on offence was the *manner* in which Channel 4 presented the challenging material in this series to the audience, taking into account its editorial purpose and the age of the children involved. Ofcom recognises the core importance of broadcasters' right to maintain editorial independence of the nature and content of their programmes, and that it would be disproportionate and unnecessary for broadcasters to give full details to viewers of all the safeguards it had in place. It is Ofcom's view, however, that Channel 4 - and all other broadcasters - should be particularly mindful of the sensitivities of viewers with regard to factual programming of this nature involving children. Therefore they must balance the editorial narrative of the programme with providing adequate information so as to protect viewers from offence that may result from withholding such information.

Ofcom found no evidence that Channel 4's intention was to deceive viewers regarding the safety and welfare of the children in the programme. However, Ofcom concluded that given the editorial purpose of the series and the context of episode one, the information in this specific episode about the safeguards in place was insufficient to reassure viewers about the welfare of the children who participated in the programme.

Episodes one, two, three and four: Not in breach of Rules 1.26 and 1.27

Episode one: Breach of Rule 2.3

Episodes two, three and four: Not in breach of Rule 2.3

In Breach

Specsavers sponsorship of 'Hawk-Eye' technology during Sky Sports coverage of Ashes cricket

Sky Sports 1, 8 July 2009 onwards, various times

Introduction

Ofcom received a complaint that Sky Sports was displaying a Specsavers logo when 'Hawk-Eye' technology was displayed during the coverage of the Ashes cricket series.

Hawk-Eye is a technical system that is used in cricket (and other sports) to capture information from play. For cricket this includes such things as the spread of shots around the wicket, the speed of the bowling, the spread of the bowling to the batsmen, and whether a 'leg before wicket' decision is likely to be correct (i.e. whether a ball hitting a batsman's pads would otherwise have struck the wicket). Various displays were used by Sky to illustrate the data graphically. When the Hawk-Eye displays were on screen, a Specsavers logo was also briefly displayed.

Ofcom sought Sky's comments on how the use of a company's name and logo in this way during a programme complied with Sections Nine (sponsorship) and Ten (commercial references) of the Broadcasting Code (the "Code"), and more specifically how such references complied with Rule 10.3 of the Code:

- Rule 10.3 – Products and services must not be promoted in programmes. This rule does not apply to programme-related material.

Response

Sky explained that broadcasters such as Sky Sports pay for Hawk-Eye, and while the costs involved are significant, Hawk-Eye contributes to viewers' enjoyment of the live coverage. In order to offset those costs Sky had provided for its use of Hawk-Eye in its coverage of the Ashes to be sponsored by Specsavers. Accordingly, the Specsavers logo appeared briefly each time Hawk-Eye information appeared on screen.

Sky said that it considered Hawk-Eye to be 'programme-related material' ("PRM") as it fell within the definition of PRM in Section Ten of the Code and, accordingly, may be sponsored (as allowed for under Rule 10.8 of the Code). [See Decision section below for an explanation of PRM and the attendant rules.]

The licensee considered that, although Hawk-Eye may not fall within the 'traditional' expectation of a product or service constituting programme-related material, the technology does allow the viewer to benefit more fully from the programme and is directly derived from the programme's content thereby, in Sky's view, fulfilling the definition of PRM.

In this respect Sky argued that the Hawk-Eye service is "derived from" the programme. The licensee considered there to be "a sufficient nexus" between Sky's own coverage of the cricket match, and the service provided by Hawk-Eye which is derived from the same match, to satisfy a definition of PRM.

Further, Sky said that it believed it to be at the very least arguable that Hawk-Eye is not intrinsically part of the programme, but is in fact a widely available service derived from the match that also forms the subject of part of the programme that is “intended to allow ... viewers to benefit fully from, or to interact with, that programme” [see explanation of PRM and its rules, in the Decision section below]. That Hawk-Eye is also used by commentators and shown on screen should not detract from its quality as PRM, Sky said.

The use of the additional information provided by Hawk-Eye was in Sky’s view clearly editorially justified within the coverage of the cricket match and therefore was compliant with Rule 10.6 of the Code (which requires that the promotion of PRM must be editorially justified). Sky maintained that the broadcaster retained responsibility for the programme-related material (a requirement of Rule 10.7 of the Code) as it is an editorial decision when to use the extra information service during the programme.

The licensee argued that the in-programme references to the sponsor of the Hawk-Eye service are permitted under Rule 10.8, which allows PRM to be sponsored, and references to the sponsor included when the material is referred to, provided that such sponsor credits are brief and secondary. Sky believed the references to Specsavers in the coverage had been brief, lasting only a few seconds of the period during which the Hawk-Eye material was on-screen, and secondary, to the extent that it was secondary to the coverage of the cricket (the main purpose of the programme).

In respect of the particular rules within Section 10 that Ofcom put to Sky, the licensee argued that: in relation to Rule 10.2, the sponsorship of the Hawk-Eye service by Specsavers was consistent with other similar arrangements in which technical services such as scoreboards and timing devices are sponsored; Rule 10.3 did not apply to PRM; Rule 10.4’s requirement to avoid undue prominence was achieved through the limited size of the logo and its brief appearance; and that as in its view Hawk-Eye was permissible PRM, Rule 10.5 (no product placement) could not apply without inherently contradicting Rule 10.8.

Sky further said that its approach to this sponsorship arrangement was consistent with the underlying principles of the Code, and would have been readily understood by viewers due to its consistency with the approach taken in other sports coverage.

Sky maintained that the arrangement it had entered into with Specsavers was compliant with the Code.

Decision

Ofcom recognises the enhancement of sports coverage that technical systems such as Hawk-Eye offer. We also acknowledge the cost to broadcasters of incorporating these innovations in their coverage and the commercial saturation of professional sports events. But the renting out of broadcast time to advertisers must comply with rules designed to protect programme integrity.

Programme-related material (PRM) is defined within the Code as:

“...products or services that are both directly derived from a specific programme and intended to allow listeners or viewers to benefit fully from, or to interact with, that programme.”

Such material is governed by the following rules:

- Rule 10.6 – Programme-related material may be promoted in programmes only where it is editorially justified.
- Rule 10.7 – The broadcaster must retain responsibility for all programme-related material.
- Rule 10.8 – Programme-related material may be sponsored, and the sponsor may be credited when details of how to obtain the material is given. Any credit must be brief and secondary, and must be separate from any credit for the programme sponsor.

The rules concerning the promotion of PRM within the Code (and its predecessor codes) constitute a limited exception to the general rule that programmes may not promote products or services. In that respect Rule 10.3 of the Code says:

“Products and services must not be promoted in programmes. This rule does not apply to programme-related material.”

Guidance to Section Ten emphasises the limited nature of this exception: “Broadcasters should bear in mind that the promotion of ‘programme-related material’ is permitted purely by way of exception to that prohibition and therefore should in no way compromise the principle of separation between advertising and programmes.”

Guidance to Section Ten also gives the legislative background, by reference to the TVWF Directive and its recitals:

“The meaning of ‘programme-related material’ in the Broadcasting Code has been derived from the wording of the Television Without Frontiers (‘TWF’) Directive.”

Article 18 of the TWF Directive sets out limits on the proportion of transmission time that may be devoted to advertising, and Article 18.3 states:

*“For the purposes of this Article, advertising does not include:
- announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes;...”*

The recitals to the Amending Directive state:

“(34) Whereas daily transmission time allotted to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from these, or to public service announcements and charity appeals broadcast free of charge, is not to be included in the maximum amounts of daily or hourly transmission time that may be allotted to advertising and teleshopping;

(35) Where, in order to avoid distortions of competition, this derogation is limited to announcements concerning products that fulfil the dual condition of being both ancillary to and directly derived from the programmes concerned; whereas the term ancillary refers to products intended specifically to allow the viewing public to benefit fully from or to interact with these programmes;...”

Recital 35 in particular makes clear the need for PRM to be both supplementary to a programme and directly derived from it: *“fulfil the dual condition of being both ancillary to and directly derived from the programmes concerned...”* PRM are therefore products and services of which the consumer derives a benefit outside of their viewing experience of the programme in which it is promoted (for instance, books and CDs derived from programmes, and podcasts and web pages that provide discussion or information further to the programme and that viewers can themselves sometimes contribute to).

Ofcom does not accept that Hawk-Eye qualifies as PRM. It cannot be considered to be a product or service “derived from a specific programme” of which the benefit is derived outside of the programme in which it is promoted. Rather it is a technology which enhances the viewing experience of the programme itself. Through its use it becomes part of the programme itself.

Were Sky’s argument to hold, it would become possible to attract in-programme ‘sponsorship’ for numerous production techniques including, presumably, slow-motion replays, cameras placed on the field of play or track etc, graphics of team formations and tactics, and any number of other aspects of production and presentation.

Ofcom concluded that the Specsavers sponsorship of Hawk-Eye was in breach of Rule 10.3 of the Code.

Breach of Rule 10.3

Note to Broadcasters

In September 2009 the Government declared publicly its view that product placement should be permissible on UK television in the future. A consultation on product placement by the Department for Culture, Media and Sport is planned. Because of this consultation Ofcom has extended its own review of the Broadcasting Code. The extended review will allow us to take into account not only the outcome of the Government’s forthcoming consultation on product placement, but also the wider implications of any change in this area on other rules relating to commercial references in television and radio programming, including the rules relating to sponsorship.

Until further notice licensees must continue to comply with all existing rules in this area.

Further information on the extended review of the Code can be found at <http://www.ofcom.org.uk/consult/condocs/bcode09/extension/>.

In Breach

Virgin Media set top box promotion in *Star Trek: Voyager*

Virgin1, 10 August 2009, 19:00

Introduction

During this episode of *Star Trek: Voyager*, a caption appeared across the bottom of the screen which stated "Never miss another *Star Trek* with the Virgin Media's V+ HD Box."

The V+ HD Box is a cable 'set-top box' that enables connection to a cable television network and the functions offered by the network. The V+ HD box allows subscribers easily to record programmes – including, where applicable, in high definition – and by setting it to record whole series. The Virgin cable network also offers an on-demand 'catch-up' service so that subscribers can watch some programmes at any time they wish.

One viewer complained that the caption referring to the V+ HD Box amounted to an advertisement for the box during the programme.

We asked Virgin Media for its comments in relation to Rule 10.3 (products and services must not be promoted in programmes).

Response

Virgin Media said it believed the reference to the V+ HD Box met the definition of programme-related material ("PRM").

PRM is an exception to the prohibition of the promotion of products and services created by Rule 10.3. [See Decision section below for an explanation of PRM and the attendant rules.]

Virgin 1 told us that for two years it has been showing four of the five *Star Trek* 'franchises'. Fans of the series who have missed episodes have asked the broadcaster when the missed episodes are to be repeated. Because of this, the broadcaster said, the promotion was used to let viewers know of a means by which they can ensure that they catch programmes they might otherwise miss. The V+ HD box allows Virgin cable subscribers to record programming easily or to watch missed programmes from the cable network's catch-up service.

The broadcaster felt that by informing those with a V+ HD Box they did not need to miss their favourite episodes, it was enabling viewers to both interact with, and benefit from, the service and therefore met the requirements of PRM.

However, after being alerted to this complaint, Virgin Media said that no similar material had been broadcast pending the outcome of Ofcom's investigation.

Decision

PRM is defined within the Code as:

“...products or services that are both directly derived from a specific programme and intended to allow listeners or viewers to benefit fully from, or to interact with, that programme.”

Such material is governed by the following rules:

- Rule 10.6 – Programme-related material may be promoted in programmes only where it is editorially justified;
- Rule 10.7 – The broadcaster must retain responsibility for all programme-related material; and
- Rule 10.8 – Programme-related material may be sponsored, and the sponsor may be credited when details of how to obtain the material is given. Any credit must be brief and secondary, and must be separate from any credit for the programme sponsor.

The rules concerning the promotion of PRM within the Code (and its predecessor codes) constitute a limited exception to the general rule that programmes may not promote products or services. In that respect Rule 10.3 of the Code says:

“Products and services must not be promoted in programmes. This rule does not apply to programme-related material.”

Guidance to Section Ten gives the legislative background, by reference to the TVWF Directive and its recitals:

“The meaning of ‘programme-related material’ in the Broadcasting Code has been derived from the wording of the Television Without Frontiers (‘TWF’) Directive.

Article 18 of the TWF Directive sets out limits on the proportion of transmission time that may be devoted to advertising, and Article 18.3 states:

*“For the purposes of this Article, advertising does not include:
- announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes;...”*

The recitals to the Amending Directive state:

“(34) Whereas daily transmission time allotted to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from these, or to public service announcements and charity appeals broadcast free of charge, is not to be included in the maximum amounts of daily or hourly transmission time that may be allotted to advertising and teleshopping;

(35) Where, in order to avoid distortions of competition, this derogation is limited to announcements concerning products that fulfil the dual condition of being both ancillary to and directly derived from the programmes concerned; whereas the term ancillary refers to products intended specifically to allow the viewing public to benefit fully from or to interact with these programmes;...”

Recital 35 in particular makes clear the need for PRM to be both supplementary to a programme and related to it: “*fulfil the dual condition of being both ancillary to and directly derived from the programmes concerned...*” PRM are therefore products and services of which the consumer derives a benefit outside of their viewing experience of the programme in which it is promoted (for instance, books and CDs derived from programmes, and podcasts and web pages that provide discussion or information further to the programme and that viewers can themselves sometimes contribute to). This also means that access to such products is controlled by the consumer (in other words, the consumer chooses whether to obtain the product or service).

In this case, we do not accept that the V+ HD Box was derived specifically from *Star Trek: Voyager*, or other series in the *Star Trek* franchise. Rather, the V+ HD Box enables any viewer with the facility to record (or catch up with) programmes on the service generally. It therefore did not satisfy the definition of PRM and its promotion within the programme was in breach of Rule 10.3.

Although the licensee sought to justify the promotion of the V+ HD box by reference to PRM, Ofcom also reminded the broadcaster that the limited freedoms available to cross-promote broadcasting-related services under Ofcom’s Cross-promotion Code could not apply in this case either. That is so because for the purposes of the Cross-promotion Code ‘broadcasting-related services’ do not include hardware such as personal video recorders (i.e digital hard-disc recorders). Where such equipment is inherently connected to qualifying ‘broadcast-related services’, such as HD transmissions and catch-up services, its presence must not be unduly prominent. In this case the hardware formed the entire subject matter of the promotion.

It follows from the previous paragraph that brief cross-promotions run during programmes, as here, rather than longer self-standing items within breaks, are much more likely to breach the undue prominence rule. This is because their brief nature means they have a limited ability to minimise the impact of the presence of necessary equipment in a promotion for a broadcast-based service.

Breach of Rule 10.3

In Breach

Bang Babes

Tease Me 3, 20 June 2009, 01:45 to 02:30 approximately

Bang Babes

Tease Me, 23 June 2009, 01:00 to 03:00 approximately

Introduction

Bang Babes is an adult sex chat service, available freely without access restrictions on the channel *Tease Me and Tease Me 3* (Sky channel numbers 912 and 959). Both channels are situated in the 'adult' section of the Sky electronic programme guide ("EPG"). The channels broadcast programmes after the 21:00 watershed based on interactive 'adult' sex chat services: viewers are invited to contact on-screen female presenters via premium rate telephony services ("PRS"). The female presenters dress and behave in a sexually provocative way.

Tease Me 3, 20 June 2009, 01:45 to 02:30 approximately

The complainant said the programme showed the presenter miming vaginal and anal masturbation, and that overall the sexual content was considered to be in excess of the material generally available on a channel without restricted access at 02:00.

Ofcom noted that between 01:45 and 02:30 the broadcast showed a presenter wearing a very short skirt and a black skimpy thong. She was also wearing a black top which she pulled down to expose her breasts. The presenter was shown a number of times lying on her back with her legs spread apart, heavily thrusting and gyrating in a sexual manner and simulating sex. At various intervals viewers were shown prolonged and close up shots between her legs, and anal and genital detail was revealed. During the broadcast the presenter bunched up her knickers to reveal outer genital detail and often mimed or simulated masturbation. The broadcast included images of the presenter spanking herself, licking her breasts and positioning her buttocks to the camera while she touched her anal and genital area. The presenter also said to viewers:

"Hello boys and girls, my name's Victoria and you can join me right now for some very naughty fun... that's right boys, you can have me any way you want me tonight boys so come on get right behind me [presenter shown thrusting buttocks to camera] and really start giving it to me."

Tease Me, 23 June 2009, 01:00 to 03:00 approximately

The complainant here was concerned that the presenter spanked her buttocks and close up shots of her vaginal and anal areas were shown while she was only wearing a thong. Overall the complainant believed the sexual content included in this programme was excessive.

Ofcom noted that between 01:02 and 01:16, and 02:49 and 02:59, the broadcast showed a female presenter wearing a red thong and no top. At various times the presenter positioned her buttocks to camera to reveal anal and genital detail and placed her fingers on her anal area. The broadcast showed the presenter spanking herself and pulling her buttocks apart to reveal her anus.

The presenter was also shown with her legs apart touching her genital area and simulating masturbation. On one occasion the presenter licked and dribbled saliva

over her naked breasts and rubbed saliva on her nipples. She also poured and massaged oil onto her breasts and buttocks.

Ofcom asked Bang Channels Limited (“Bang Channels”) – which owns and complies the Tease Me channels - for its comments on both broadcasts in respect of Rules 2.1 (generally accepted standards) and 2.3 (material which may cause offence must be justified by context) of the Code.

Response

The broadcaster said that it did not consider the content of either of the broadcasts to exceed generally accepted standards or cause offence. It said that the broadcasts were justified by factors such as the time of the broadcasts, the position of the channels in the ‘adult’ section of the EPG, and the context of the broadcasts.

Tease Me 3, 20 June 2009, 01:45 to 02:30 approximately

The broadcaster stated that the content included in this broadcast would not have exceeded viewer expectations and did not have “the potential to cause offence to the average viewer.”

It said that the presenter’s use of sexual language was mild and in keeping with the nature of the channel and the time of broadcast. It continued that the content broadcast, including close up shots of breasts and genitals at this time of night, “are justified by the context and nature of the broadcast” and that “previous guidance from Ofcom would also suggest that this is the case.”

Tease Me, 23 June 2009, 01:00 to 03:00 approximately

Although it denied any breach of generally accepted standards, as regards this broadcast Bang Channels stated that pouring oil over, and spitting on, breasts are unacceptable actions under its own internal guidelines. It continued that the female presenter in question has been warned that further such actions will result in suspension. It also said that “production staff have undergone further compliance training” with regard to this issue. The broadcaster argued that “with reference to close up shots of genital areas, we believe that these actions are justified by the context of the broadcast and the time of transmission, as per previous guidance from Ofcom.”

Decision

It is a requirement of the Code that content which is considered to be ‘adult-sex’ material must only be broadcast between 22:00 and 05:30 and have a mandatory PIN protection system, or other equivalent, in place (Rule 1.24). In this case, Ofcom carefully considered whether the content complained of in the two broadcasts was ‘adult-sex’ material. It concluded that on balance they were not. This decision was reached taking all the relevant circumstances into account, but was based primarily on the facts that: the presenter in each case was alone, and therefore did not engage in any inappropriate sexual acts (whether real or simulated) with others; and the shots of the presenters miming or simulating masturbation were either relatively brief or inexplicit, as were the sequences of the presenter spitting and putting oil on, and caressing, her breasts during *Tease Me*, 23 June 2009, 01:00 to 03:00. Ofcom therefore considered these two cases only under 2.1 and 2.3 of the Code.

Tease Me 3, 20 June 2009, 01:45 to 02:30 approximately

In terms of the content of this broadcast, Ofcom considered it to be sexually explicit. On a number of occasions the presenter positioned herself in front of the camera with her legs wide apart and heavily gyrated in a sexual manner for prolonged periods of time. Given the thong style underwear the presenter was wearing, and the close up nature of some shots, Ofcom was particularly concerned that there were occasions when her anal and labial areas were shown in intrusive detail. The presenter appeared to simulate masturbation at various points in the broadcast, as she was seen rubbing her anal and vaginal area, and she also used some sexually explicit language.

In Ofcom's view the actions of this particular presenter were highly sexualised and sexually provocative, and a number of the images were filmed in a prolonged and intrusive manner. Given the strength of the material, Ofcom considered that this content clearly had the potential to cause offence. Therefore its treatment by the broadcaster required justification by the context to provide adequate protection for viewers. Ofcom took into account all the relevant contextual factors including, for example, the explicit sexual content, the nature of the channel, and the time of broadcast. In Ofcom's opinion given the strength of the material shown, it would have exceeded the likely expectation of viewers watching a channel without access restrictions. Ofcom was also concerned by the degree of offence likely to be caused to viewers watching at this time and the significant effect this material would have had on those who may have come across it unawares. There was no sufficient editorial justification for the broadcast of these strong sexual images.

Also in Ofcom's view factors such as the channel being in the 'adult' sector of the EPG and the content being broadcast well after the watershed did not justify the broadcast of this material. This has been made repeatedly clear by Ofcom in various published decisions. Therefore Ofcom concluded that this content was not justified by the context and breached Rules 2.1 and 2.3.

Tease Me, 23 June 2009, 01:00 to 03:00 approximately

Ofcom also considered the content of this broadcast to be sexually graphic. The presenter, who was only wearing a skimpy red thong, engaged in a number of sexually explicit acts. At various times the presenter positioned her buttocks to camera so that her anal and labial areas were shown at close range and in intrusive detail. She also pulled her buttocks apart to reveal her anus and touched her anal area in an intimate way at various times in the broadcast.

Ofcom was concerned about the sexual explicitness of this material irrespective of the time at which it was broadcast. In Ofcom's view the actions of this particular presenter were highly sexualised and sexually provocative, and filmed in an intrusive manner. Given the strength of the material, Ofcom considered that this content clearly had the potential to cause offence. Therefore its broadcast needed to be justified by the context. In deciding this Ofcom took into account all the relevant circumstances concerning context, including the strong sexual content, the nature of the channel, and the time of broadcast. In Ofcom's opinion given the strength of the material, it would have exceeded the likely expectations of viewers watching a channel without access restrictions, especially those who may have come across it unawares. Further, the nature and location of the channel in the 'adult' section of the EPG and the time of broadcast are not sufficient in Ofcom's view to justify broadcast of such content. The broadcast was therefore not justified by the context and breached Rules 2.1 and 2.3.

This is the third occasion during the last twelve months on which Ofcom has recorded breaches of Rules 2.1 and 2.3 of the Code against the Licensee, Bang Channels, for the broadcast of offensive sexual material on adult sex chat channels it controls and complies¹. Ofcom is also investigating other complaints that raise potential issues under the Code with regard to this Licensee that may lead to the consideration of further and more serious regulatory action.

Breach of Rules 2.1 and 2.3

Note to Adult Sex Chat Broadcasters

Broadcasters of adult sex chat services without mandatory access restrictions must take care to ensure that intrusive or detailed shots of presenters' anal and genital areas are not broadcast.

¹ See *Bang Babes* findings published in October 2008 and July 2009 (www.ofcom.org.uk/tv/obb/prog_cb/obb120 and http://www.ofcom.org.uk/tv/obb/prog_cb/obb137/)

In Breach

Elite Days

Elite TV, 10 July 2009, 11:30

Introduction

Elite Days is a daytime chat programme broadcast without access restrictions. It is located in the 'adult' section of the Sky Electronic Programme Guide ("EPG") on the service Elite TV (Sky channel number 965). Viewers can call a premium rate telephone number and talk to an onscreen female presenter. Viewers see the female presenters engaged in conversation but cannot hear what is being said as music is played over the images. At certain intervals the presenters switch on a microphone and speak directly to viewers to encourage them to call into the premium rate telephony service ("PRS") number.

Ofcom received a complaint that the programme featured a promotional reference to the website, www.elitetvonline.com, and that this website included strong sexual material which was available without any protections. Ofcom accessed the website after the complaint was made and noted that it contained some strong sexual images equivalent to BBFC R18-rated material ("R18-rated equivalent material"). This material could be easily accessed by simply clicking to confirm that the user was over 18.

Although this R18-rated equivalent material was not broadcast on-air, Ofcom was concerned that it appeared on a website being promoted during a daytime interactive chat programme. Ofcom therefore requested comments from Prime Time TV Limited ("Prime Time TV"), which owns and is responsible for compliance at Elite TV, with reference to the following rules of the Code:

- Rule 1.2 – In the provision of services, broadcasters must take all reasonable steps to protect people under eighteen; and
- Rule 1.3 – Children must also be protected by appropriate scheduling from material that is unsuitable for them.
- Rule 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; and
- Rule 2.3 – In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context.

Response

The broadcaster stated that adult images were added to the website, www.elitetvonline.com, on 10 July 2009. It acknowledged that a promotion to the website was broadcast during *Elite Days* on 10 July 2009 and therefore accepted that it was possible that viewers could have accessed adult content without any prior registration. The broadcaster "sincerely apologised" for this error.

The broadcaster provided an explanation as to why the error occurred. It stated that

before 10 July all members of the production staff were briefed that no further references to the website were to be made either on screen or by the presenters. However, the producer of the 10 July 2009 broadcast was on annual leave when the internal announcement was made and therefore was unaware of the change of policy.

The broadcaster accepted that in this instance its internal compliance procedures were insufficient. It stated that there was no intent to promote the website/adult content on 10 July 2009, and this was “purely a result of human error, and contrary to [its] internal policy.” It informed Ofcom that it has decided to remove any adult material from the unregistered area of its website. It also said that it now has in place a new content compliance management system to ensure that an incident of this nature does not happen again in the future.

Decision

While the content of websites is not in itself broadcast material, and therefore not subject to the requirements of the Code, any on-air promotional references to websites are broadcast content. Such references must therefore comply with the Code.

In this case Elite TV broadcast during the late morning a promotional reference to its website, www.elitetvonline.com, that contained strong sexual images that Ofcom considered to be equivalent to R18-rated material. There were no protections on the website – for example prior registration before being able to view - and therefore this material could have been accessed easily by under-eighteens. The promotion on television of this website was therefore of concern to Ofcom.

Rules 1.2 and 1.3 require broadcasters to take reasonable steps to protect people under eighteen and ensure that children must be protected by appropriate scheduling from unsuitable material. Rules 2.1 and 2.3 require broadcasters to comply with generally accepted standards so as to provide adequate protection for members of the public from offensive material. It is Ofcom’s view that websites that contain unprotected R18-rated equivalent material must not be promoted on an Ofcom licensed service. This is to ensure adequate protection for the under-eighteens and compliance with generally accepted standards. Appropriate protection on a website would be, for example, the need to purchase access to the R18 material by using a credit card or similar means that allows an age check to be done. In this case no such protections were present on the website and therefore Rules 1.2 and 1.3, and 2.1 and 2.3 were contravened.

Ofcom notes that the website promotion was transmitted as a result of human error and that the broadcaster has improved compliance in response to this incident. Ofcom also notes the broadcaster’s co-operation and transparency over this incident and its apology. However, this error resulted in a breach of Rules 1.2, 1.3, 2.1 and 2.3.

Breach of Rules 1.2, 1.3, 2.1 and 2.3

In Breach

Live 960

Live 960, 11 September 2009, 21:00

Introduction

Live 960 is a daytime chat and adult sex chat channel service whose licence is held by Hopprr Entertainment Limited (“Hopprr Entertainment”). A viewer complained about explicit adult content allegedly shown on this channel. Ofcom asked Hopprr Entertainment to provide a recording of the programme that was complained about.

Response

Hopprr Entertainment said it was unable to obtain the recordings. It forwarded comments from Payout247, the company it had contracted to make studio recordings for compliance purposes. These comments explained that compliance recording for Live 960 was tested and confirmed as operational when the channel had launched, but when Payout247 subsequently began compliance recording for three new channels, a technical error caused the Live 960 feed to stop recording.

Payout247 explained the situation had been rectified when discovered on 14 September 2009. However the output relating to this complaint had not been recorded.

Hopprr Entertainment confirmed it had taken measures to create its own backup in addition to Payout247 recordings to safeguard against similar failure to record material in future.

Decision

It is a condition of each Television Licensable Content Service licence that recordings of all output are retained for 60 days after transmission and that Ofcom is provided “forthwith” with any material on request. The failure by Live 960 to supply the recording in this instance is a serious and significant breach of Condition 11 (Retention and production of recordings) of its licence to broadcast. This breach will be held on record.

Breach of Licence Condition 11 (Retention and production of recordings)

Other cases

In Breach

Radio Hampshire Limited

28 May to 04 July 2009 (inclusive)

Introduction

Ofcom has a statutory duty to ensure “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.” In local commercial radio, Ofcom secures this by the use of Formats, which form part of the station’s broadcast licence. Each station’s Format includes a description of the output which the licensee is required to provide, based on the promises made in its original application to win the licence. Formats may be varied over time only with the approval of Ofcom.

Radio Hampshire Limited (“Radio Hampshire”) was formerly the holder of two local commercial radio licences, for the Southampton and Winchester areas, both broadcasting as ‘Radio Hampshire’.

The Format for the Southampton licence requires the licensee to deliver: “A Southampton centred service of local news, views, information and entertainment, mixed with hits from the last four decades.” The Format for the Winchester licence requires the licensee to deliver: “A locally oriented, broad music and information station for Winchester and the surrounding area.”

Following Radio Hampshire going into administration, from 28 May 2009 Radio Hampshire ceased broadcasting both licensed services.

Accordingly, Ofcom wrote immediately to Radio Hampshire about the two radio stations’ compliance with two conditions in the licences relating to Format delivery. The first is condition 2(1) contained in Part 2 of the Schedule to the licences, which states that:

“The Licensee shall provide the Licensed Service specified in the Annex for the licence period and shall secure that the Licensed Service serves so much of the licensed area as is for the time being reasonably practicable.” (Section 106(2) of the Broadcasting Act 1990).

The second is licence condition 2(4), contained in Part 2 of the Schedule to the licences, which states that:

“The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period.” (Section 106(1) of the Broadcasting Act 1990).

Response

In a letter dated 9 June 2009, the administrators of Radio Hampshire (acting on its behalf) confirmed that both stations had ceased broadcasting on 28 May 2009. They did not challenge the grounds on which it was alleged that those breaches had occurred. The administrators also informed us that the two licences had been

purchased from Radio Hampshire by Play Radio Limited (“Play Radio”), which was keen to re-launch the stations and return them to Format compliance as soon as practicable.

Ofcom could not, however, approve the transfer of the licences to Play Radio at this stage because no Licensed Service was being provided under either licence: Play Radio would have been in breach of the Licences as soon as any transfer were effected (rather than being in a position to comply with the licences for their duration).

So, we wrote further to the administrators of Radio Hampshire, and to Play Radio, saying that they would need to provide us with:

- a specific date by which both stations would return to the air and Format compliance; and
- other information that we require in order to make decisions on licence transfers, such as evidence of ability to maintain the service,

in order for Ofcom to be able to grant the licence transfers.

Having provided Ofcom with further representations including a timetable for the resumption of broadcasting (and other information that we required), Ofcom decided on 29 June 2009 to consent to the transfer of the licences to Play Radio with effect from 4 July 2009, on the understanding that both services would relaunch (under the name of ‘Play Radio’) at 10.00 on that date “with full adherence to the terms of the licences”.

Monitoring

Notwithstanding that we approved the licences’ transfer as set out above, Ofcom also decided, because listeners in Southampton and Winchester had not received the local services for around six weeks, to undertake monitoring of the services provided by Play Radio. We therefore requested recordings of Play Radio’s output (for each of the Southampton and Winchester services) from 24, 25 and 27 July 2009.

Having listened to these recordings, we concluded that the two Play Radio services were compliant with the requirements set out in their respective Formats. This means, therefore, that we did not consider either station to be in breach of their licence. The full Content Sampling Report for Play Radio can be found at: <http://www.ofcom.org.uk/radio/ifi/contentsampling/>.

Decision

By ceasing to broadcast any output at all from 28 May 2009, Radio Hampshire clearly breached two conditions in its licences requiring it to comply with the requirements of its Format: licence conditions 2(1) and 2(4) contained in Part 2 of the Schedule to its Southampton and Winchester licences. Ofcom has therefore formally recorded those breaches by Radio Hampshire.

However, because Radio Hampshire is in administration (and by virtue of the licence transfers no longer holds the licences), Ofcom believes it is not appropriate to move the case to sanctions or take any further regulatory action against Radio Hampshire (in respect of the relevant breaches¹).

¹ though they may be taken into account in any future regulatory matters concerning the company and those associated with it

We also find, as set out above, that having had the licences transferred to it, Play Radio is complying with the relevant Format requirements. It has not breached the licences and is not liable for the breaches by Radio Hampshire.

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the Southampton and Winchester commercial radio licences by Radio Hampshire Limited

Fairness and Privacy cases

Upheld

Complaint by Ms K

The Breakfast Show, Vibe 105.3 FM, 15 June 2008

The Lights Out Show, Vibe 105.3 FM, 17 June 2008

Summary: Ofcom has upheld this complaint of unwarranted infringement of privacy in the programmes as broadcast.

Vibe FM broadcast two programmes in which the presenter dedicated two songs to someone he referred to by their first name and the initial of their last name and the initials of both their first name and last name. In the programme broadcast on 15 June 2008, the presenter said:

“Phil Collins, moonlighting from Genesis...going to dedicate that song to [first name and initial of last name]...It’s a song called ‘I Don’t Care Any More’...get a life”.

In the programme broadcast on 17 June 2008, the presenter said:

“Right, I’m going to do a dedication especially for a person who goes by the name of [initials of first and last names] – you know who you are – and I would like to dedicate this song especially for you. These words are so, so...apt...let’s say. This is Queen, ‘Death On Two Legs’ and...well, the words say it all. [Initials of first and last names], you know who you are.”

After the song was played, the presenter said:

“Yeah... that’s ‘Death On Two Legs’ by Queen, especially for [initials of first and last names]...the late, great Freddie Mercury wrote that song about management that let him down. I will just dedicate that to someone else who is just as nasty and conniving...”

Ms K complained to Ofcom that her privacy had been unwarrantably infringed in the broadcast of both programmes in that the presenter had been referring to her.

Ofcom found as follows:

- Ofcom considered that the use of Ms K’s initials and her first name (which identified her), along with the context of the presenter’s direct and personal remarks about her, was such that she did have a legitimate expectation of privacy.
- Ofcom considered that the disclosure of private information alluding to Ms K’s character and the nature of the relationship between herself and the presenter, in combination with the use of her initials and her first name in the programmes did infringe her privacy.
- Ofcom found that the inclusion of this material was not warranted by the context and content of the programmes, namely music and dedication programmes for the local community. Nor was there any issue of public interest relating to the

information. Ofcom found that there was no justification to warrant the inclusion of the presenter's remarks about Ms K in the programmes.

Introduction

On 15 and 17 June 2008, Vibe 105.3 FM ("Vibe FM"), a community radio station which broadcasts to the Enniskillen and Fermanagh areas of Northern Ireland, broadcast an edition of *The Breakfast Show* and an edition of *The Lights Out Show*. Both programmes were presented by Mr Michael Byrne who was a volunteer presenter and producer for the station at the time.

During *The Breakfast Show* broadcast on 15 June 2008, Mr Byrne played a song by Phil Collins entitled, "I Don't Care Anymore". After the song, Mr Byrne said:

"Phil Collins, moonlighting from Genesis...going to dedicate that song to [first name and initial of last name]...It's a song called 'I Don't Care Any More'...get a life".

During the broadcast of *The Lights Out Show* on 17 June 2008, Mr Byrne said:

"Right, I'm going to do a dedication especially for a person who goes by the name of [initials of first and last names] – you know who you are – and I would like to dedicate this song especially for you. These words are so, so...apt...let's say. This is Queen, 'Death On Two Legs' and...well, the words say it all. [Initials of first and last names], you know who you are."

After the song was played, Mr Byrne said:

"Yeah... that's 'Death On Two Legs' by Queen, especially for [initials of first and last names]...the late, great Freddie Mercury wrote that song about management that let him down. I will just dedicate that to someone else who is just as nasty and conniving..."

Ms K, Mr Byrne's former partner, complained to Ofcom that her privacy was unwarrantably infringed in the broadcast of both programmes.

The Complaint

Ms K's case

In summary, Ms K complained that her privacy had been unwarrantably infringed in the programmes as broadcast in that she was referred to by the presenter. In particular, Ms K complained that:

- On 15 June 2008, Mr Byrne played "I Don't Care Anymore" by Phil Collins and dedicated it to her. Ms K said that Mr Byrne commented that *"I don't care anymore...get a life"*; and
- On 17 June 2008, Mr Byrne played "Death On Two Legs" by Queen and dedicated it to her. Ms K said that Mr Byrne stated *"[initials of first and last names] you know who you are..."* and *"I will just dedicate that to someone else who is just as nasty and conniving"*.

Ms K said that she had been recognised in her local community as a result of remarks made by Mr Byrne.

Vibe FM's case

In summary, Vibe FM responded to Ms K's complaint of unwarranted infringement of privacy in the programme as broadcast as follows:

- Vibe FM stated that it was contacted by Ms K's legal representatives shortly after the broadcasts on 15 and 17 June 2008. In accordance with its strict procedures, Vibe FM said that it suspended Mr Byrne while a full investigation was carried out. The station said that it was established that Mr Byrne was an ex-partner of Ms K and that bad feelings existed between them.

Vibe FM said that Mr Byrne had worked with the station from its beginning in 2008 and had held a senior role at the station and had an exemplary record. Following the station's investigation, Vibe FM said that Mr Byrne received full training on Ofcom's rules and procedures. However, following this, Mr Byrne decided to resign from his position as a volunteer with Vibe FM.

In relation to the remark made by Mr Byrne in the programme broadcast on 15 June 2008, Vibe FM said that it was not intended to upset or infringe the privacy of Ms K. It stated that as Ms K's full name was not disclosed, there was doubt as to whether the remark actually related to her. Nevertheless, Vibe FM said that it understood that it was possible for volunteers to make personal comments live on air and that it would include appropriate guidance in all future training.

- In relation to the programme broadcast on 17 June 2008, Vibe FM accepted that the remarks made by Mr Byrne as set out in Ms K's complaint were indeed made. However, Vibe FM said that only the initials of her first and last names were disclosed and no clear name was given. It also said that Mr Byrne had referred to the management of the song's performer, Queen, and that it was to this that Mr Byrne maintained that he had been referring to.

Vibe FM said that it believed that it had taken all appropriate action in regard to Ms K's complaint and had included details from it for future training. Vibe FM said that it did not believe that there was any intent to cause deliberate upset to Ms K and that it had tried to defuse the situation. Vibe FM said that Mr Byrne had sacrificed his position with the station (in which he was held in the highest regard) in an effort to end the matter.

Decision

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

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

Ms K's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programmes as broadcast and

the parties' written submissions. In its considerations, Ofcom took account of the Code.

Ofcom considered Ms K's complaint that, as she was referred to by the presenter in the programmes as broadcast, her privacy was unwarrantably infringed.

Ofcom's recognises that the line between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted? (Rule 8.1 of the Code).

In addressing the first of these questions, Ofcom considered whether or not Ms K had a legitimate expectation of privacy concerning her complaint that she was referred to in the programmes.

Ofcom first considered whether or not the person referred to by their first name and the initial of their last name and the initials of their first name and last name by Mr Byrne in both programmes was, in fact, the complainant Ms K or if listeners would have been reasonably likely to have concluded that it was Ms K to whom Mr Byrne referred.

Ofcom acknowledged that there was a conflict of evidence between the complainant and the broadcaster about the identity of the person referred to in the programmes. In this particular case, Ofcom noted that the broadcaster said that it had been unable to determine whether or not it was Ms K to whom Mr Byrne had referred in the programmes. Ofcom also took note that Ms K stated that, due to the nature and tone of the remarks made by Mr Byrne, she and other people had understood that it was she to whom he had referred. Ofcom also noted that the initials referred to by Mr Byrne were the same as Ms K's initials and that he had also used her first name. It took note that both Ms K and Mr Byrne had had a close relationship with each other and that, according to Ms K's complaint, people in the community in which she lived had recognised her from his comments. In these circumstances, and after consideration of all the material submitted to it by the parties, Ofcom was satisfied that some listeners were reasonably likely to have understood that the references made by Mr Byrne in the programmes related to Ms K.

Ofcom then went on to consider the character of the information included in the programmes and the context in which it was disclosed. In Ofcom's view, a person's name or identity is not in itself information that necessarily attracts a significant expectation of privacy, though the context in which a person is named or identified could afford them a legitimate expectation of privacy. In this particular case, Ofcom acknowledged that Ms K's full name was not referred to in the programmes and that only her initials and her first name were disclosed. However, Ofcom took the view that the personal and potentially sensitive information about her character and her relationship with Mr Byrne alluded to in his comments, and his choice of songs to dedicate to her, was private information which she did not intend to be imparted to the general public. Ofcom took the view that in relation to this information, she had a reasonable expectation that this would remain private.

Ofcom also considered that Ms K was not an individual who was in the public eye and that the personal and potentially sensitive comments about her character and information about the nature of her relationship with Mr Byrne revealed in the programmes was not information that had, to Ofcom's knowledge, already been disclosed into the public domain. In these circumstances, Ofcom considered that the

use of her initials and her first name (which identified her), along with the context of Mr Byrne's direct and personal remarks about her was such that she did have a legitimate expectation of privacy.

Having concluded that Ms K had a legitimate expectation of privacy in relation to this information, Ofcom then considered whether or not Ms K's privacy was infringed in the broadcast of the two programmes complained about.

Ofcom considered that the broadcast by Vibe FM of information alluding to Ms K's character and the nature of the relationship between herself and the presenter, in combination with the use of her initials and her first name in the programmes was disclosure of private information to a public audience. Ofcom concluded therefore that the disclosure of this personal information in the programmes did infringe her privacy.

Ofcom finally considered whether this infringement of Ms K's privacy was warranted. Taking into account Ofcom's conclusion that Ms K had a legitimate expectation of privacy in relation to the information disclosed and that her privacy was infringed by its disclosure, it found that the inclusion of this material was not warranted by the context and content of the programmes, namely music and dedication programmes for the local community. Nor was there any issue of public interest relating to the information. Ofcom found that there was no justification to warrant the inclusion of Mr Byrne's remarks about Ms K in the programmes. Ofcom concluded therefore that Ms K's privacy was unwarrantably infringed in both programmes as broadcast.

Accordingly, Ofcom has upheld Ms K's complaint of unwarranted infringement of privacy in the programmes as broadcast. The broadcaster was found in breach of Rule 8.1 of the Code.

Not Upheld

Complaint by Murlands Solicitors on behalf of Miss Pearl Gamble's family

Last Man Hanging, BBC1 Northern Ireland, 8 September 2008

Summary: Ofcom has not upheld this complaint of unjust or unfair treatment and unwarranted infringement of privacy in both the making and broadcast of the programme.

This programme examined the trial, conviction and execution of Mr Robert McGladdery (the last man to be hanged in Northern Ireland) for the murder of Miss Pearl Gamble in 1961. It included extracts from the report of the autopsy carried out on Miss Gamble's body along with footage of an interview with the pathologist who carried out the autopsy. Also shown in the programme were photographs of the crime scene with Miss Gamble's blood-stained clothing. The programme included dramatised reconstructions in which Miss Gamble and Mr McGladdery were depicted by actors. One of the reconstructed scenes also depicted the discovery of Miss Gamble's body, again featuring images of blood-stained clothing.

Murlands Solicitors complained on behalf of Miss Gamble's family ("the family") that they were treated unfairly and that their privacy was unwarrantably infringed in the making and broadcast of the programme.

Ofcom found as follows:

- In the absence of any evidence that guarantees or assurances were made to the family that they would be given an opportunity to preview the programme, or that these assurances were subsequently reneged upon, Ofcom found no unfairness to the family in this regard.
- Ofcom considered that viewers would have been able to distinguish between the actress in the dramatic reconstruction (which was not intended to be a factual depiction) and the photographs of Miss Gamble, which would have left them in no doubt as to her actual appearance. Ofcom was satisfied that the programme did not portray Miss Gamble in a way that was either misleading or unfair to the complainants.
- Ofcom considered that the programme makers were not obliged to ask for the family's consent to make the programme. It also considered that the programme makers had not obtained any material of a personal or sensitive nature in connection with their research requests to the Public Records Office Northern Ireland for the release of post mortem photographs. In these circumstances, Ofcom found that the family did not have a legitimate expectation of privacy.
- Ofcom considered that although the post mortem photographs themselves may not have already been in the public domain, the information disclosed by those photographs did not reveal anything more about the condition of Miss Gamble's body that was not already in the public domain. In these circumstances, Ofcom considered that the family did not have a legitimate expectation of privacy.
- Ofcom considered that the information disclosed in the dramatic reconstructions of the crime scene, including the depiction of Miss Gamble's discarded clothing,

was already in the public domain and that no personal information about the family was revealed. Ofcom, therefore, considered that the family had no legitimate expectation privacy in this regard.

- Ofcom considered that the information disclosed about Miss Gamble being naked and “mud-soiled” and about the wounds to her body was information already in the public domain and that no personal information about the family was revealed by its disclosure. Ofcom, therefore, considered that the family had no legitimate expectation privacy in this regard.

Introduction

On 8 December 2008, BBC1 Northern Ireland broadcast *Last Man Hanging*, a documentary programme that revisited the trial, conviction and execution of Mr Robert McGladdery for the murder of Miss Pearl Gamble in 1961. Mr McGladdery was the last man to be hanged in Northern Ireland. The programme examined the circumstances surrounding the case and the public debate about capital punishment that the programme said the case had sparked in Northern Ireland at the time.

The programme contained material including police evidence, photographs and court papers that the programme makers had obtained from the Public Records Office Northern Ireland (“the PRONI”). Included in this material was the report of the autopsy carried out on Miss Gamble’s body. Detailed extracts from the autopsy report were shown in the programme along with interview footage of Dr Tom Marshall, the pathologist who conducted the autopsy.

The programme included dramatised reconstructions in which Miss Gamble and Mr McGladdery were depicted by actors. The reconstructions included scenes of Miss Gamble and Mr McGladdery at a dance hall on the night of her murder and of Miss Gamble being confronted by her killer later that night. Dramatised reconstructed images of discarded and blood-stained clothing were also shown.

Murlands Solicitors complained on behalf of Miss Gamble’s family (“the family”) that they were treated unfairly and that their privacy was unwarrantably infringed in the making and broadcast of the programme.

The Complaint

Murlands Solicitors’ case made on behalf of the family

In summary, Murlands Solicitors complained on behalf of the family that they were treated unfairly in the programme in that:

- a) The programme was broadcast without giving the family an advance viewing of it or the opportunity to correct the distortions and inaccuracies contained in it.
- b) The programme was inaccurate and misleading in that the portrayal of Miss Gamble in the dramatised reconstruction wearing heavy make-up and a headscarf was inaccurate as she would not have gone out “painted”. The wearing of such heavy make up at the time was the preserve of “street girls”.

In summary, Murlands Solicitors complained on behalf of the family that their privacy had been unwarrantably infringed in the making of the programme in that:

- c) The programme makers did not obtain the consent of the family before making the programme.

In particular, the programme makers implied in correspondence to the PRONI that they had the consent of the family to request material relating to the case. This was incorrect.

- d) The programme makers obtained and viewed post mortem images of Miss Gamble in the research stage of the programme making process despite these images being deemed unsuitable for release by the PRONI. This was a violation of the privacy of the family.

In summary, Murlands Solicitors complained on behalf of the family that their privacy had been unwarrantably infringed in the broadcast of the programme in that:

- e) The programme included a dramatised reconstruction of the crime scene which caused distress to the family. In particular, it was distressing to one of Miss Gamble's sisters who had discovered her discarded clothes.
- f) Excerpts of the autopsy report were shown and references to Miss Gamble being naked and to her "*mud-soiled buttocks*" were visible. Also, Dr Marshall said in interview that one of the puncture wounds on her body was above the "*left breast*" and he recounted what he understood to be Miss Gamble's last moments.

The BBC's case

In summary, the BBC responded to the complaint made on behalf of the family that they had been treated unfairly in the programme as follows:

- a) The BBC said that neither Ofcom's Broadcasting Code ("the Code") nor the BBC's Editorial Guidelines require, as a matter of fairness, that interested parties must be given advance viewing of programmes about which they have expressed concern. It said that agreements by broadcasters to give an advance viewing were the exception rather than the rule.
- b) The BBC said that conveying a false impression to viewers that a deceased family member had been a "street girl" might be regarded as being unfair to surviving relatives. However, it believed that the programme did not convey any such impression.

The BBC said that the complaint rested entirely on the appearance of the actress representing Miss Gamble in the reconstructed scenes. However, the BBC said that it did not believe that her make-up would have struck most viewers as being conspicuously heavy.

The BBC said that the programme contrasted the relaxed attitudes thought to be typical of the "swinging 60s" and the more conservative moral attitude which prevailed in Northern Ireland at the time of Miss Gamble's murder. Other than the alleged inappropriateness of the make-up in the reconstructed scenes, the BBC said that there was no suggestion that Miss Gamble's attitudes and behaviour were at odds with those of what a contributor described early on in the programme as "*still essentially a God-fearing, rural, Christian society*". On the contrary, the BBC said that the programme had presented her as a normal, young member of her community, whose murder was the more shocking on that account. The BBC said that the programme also featured photographs of Miss

Gamble herself, in a way which would have left viewers in no doubt as to her actual appearance. The BBC said that it saw no realistic possibility of the depiction resulting in unfairness to the family.

In summary, the BBC responded to the complaint made on behalf of the family that their privacy had been unwarrantably infringed in the making of the programme as follows:

- c) The BBC said that it was not a requirement of the Code that the consent of relatives be obtained before the making of a programme, and so no breach of the Code could arise out of the fact that consent was not obtained from the family in this case. The BBC said that the issue, irrespective of consent, was whether the privacy of the family was unwarrantably infringed in, or in connection with obtaining material included in, the programme.

The BBC said that it had acknowledged in a letter to Murlands Solicitors dated 15 January 2009 that the programme makers had been incorrect in stating to the PRONI, when in the early process of making the programme, that they had made approaches to the family¹. However, it said that the statement made to the PRONI had not been to the effect that the programme makers “had the consent of the family to request material relating to the case”.

The BBC said that this statement, though it reflected the programme makers’ understanding at the time, was not in fact accurate. It was not a statement that the family had consented to the release of material. The BBC said that the PRONI had requested contact details for the family in connection with the BBC’s application for release of post mortem photographs, a request which demonstrated that the PRONI could not have been operating on the presumption that the family’s consent had already been obtained. The BBC said that if the point of this aspect of the complaint was that inaccurate representations by the BBC led to the release of material which infringed the privacy of the family, it was based on a false premise.

- d) The BBC said that it was unaware of any material included in the programme which the viewing of post mortem photographs could be said to be “in connection with the obtaining of”. The BBC said that even if there was a connection with material in the programme such as to bring the viewing of post mortem photographs within the scope of a complaint of unwarranted infringement of privacy in the making of a programme, it did not see how any resulting infringement could be of the complainants’ privacy. The BBC also said that the statement that the photographs were “deemed unsuitable for release by the PRONI” went beyond what the BBC or Ofcom were able to know. It said that it knew that the PRONI had wished to contact members of Miss Gamble’s family before deciding whether to release the photographs, and that the BBC had withdrawn its request. The BBC said that it may be assumed that, had those personal details been provided to a third party, the PRONI would have sought and taken account of any representations from the complainants. It could not, however, be assumed that this would have resulted in a decision that the photographs were unsuitable for release.

¹ Miss Gamble’s brother and one of her sisters were contacted by the programme makers several months after they had contacted the PRONI.

In summary, the BBC responded to the complaint made on behalf of the family that their privacy had been unwarrantably infringed in the broadcast of the programme as follows:

- e) The BBC said that the programme makers had been aware from the outset that revisiting the murder of Miss Gamble had the potential to cause distress to her surviving relatives, which was why steps were taken to inform family members of the programme. The BBC said that it was difficult at first to trace Miss Gamble's surviving sisters because their names had changed. However, the programme makers managed to trace her surviving brother. In a telephone conversation with the programme's director, Miss Gamble's brother made it clear that he wanted nothing to do with the programme and that he wanted the programme makers to stay away from his family. Following that conversation, the BBC said that the programme makers had written to him with more details about the style and content of the programme and an assurance that they would make every effort to include contributions from members of the family should they choose to take part. The BBC said that Mr Gamble did not respond, but it was clear from the pre-transmission correspondence between the programme makers and the family's legal representatives that all the complainants were aware of the BBC's intention to broadcast the programme and of the date on which it was to be broadcast.

As to the content of the programme, the BBC said that it was difficult to see what aspect of the family's privacy was directly engaged, as they were not identified or depicted and no personal information about them was included. The BBC said that the crime scene reconstructions included no information which was not already in the public domain and Miss Gamble's murder was, as the programme showed, the subject of widespread reporting at the time. The BBC said that the reconstructions of the crime scene did not re-enact or refer to Miss Gamble's sister's involvement, namely finding Miss Gamble's discarded clothing. The BBC said that it appeared, therefore, that the issue of privacy, if any, could only arise in connection with the feelings of distress reported by the complainants. As the family were aware of the programme and its transmission date, the BBC said that they had a choice about whether to watch it or not. If they elected to watch it, the BBC said that any distress they may have experienced was a result of that choice and could not be laid at the BBC's door. If they did not, the BBC said that the only remaining basis for a complaint of infringement of the family's privacy was any distress they may have felt at the programme being seen by others. The BBC said that the potential for causing distress, or even actually causing distress, was not necessarily in the nature of an infringement of privacy; and, in the absence of anything in the programme's content which directly engaged the complainants' privacy, a complaint based on an objection to the programme being seen by others seemed remote from the issue of privacy.

Nevertheless, the BBC said that if Ofcom considered that the family's privacy was engaged by this aspect of the complaint, it would rely on the public interest in revisiting a trial and conviction which, as the programme made clear, had a significant impact on the development of the debate about capital punishment in Northern Ireland at the time and on broadcasters' rights to freedom of expression, which Ofcom recognises as a balancing consideration in questions of infringement of privacy.

- f) The BBC said that learning new and sensitive information in an inappropriate manner might be thought to engage an issue of the complainants' privacy, but the first question in this instance was whether the information was new. The BBC said that the trial of Mr McGladdery was the subject of intense press interest in

Northern Ireland and the evidence of the pathologist, Dr Marshall, as to the sequence of Miss Gamble's last movements was widely reported (as this was a case in which there was no eye-witness evidence of the crime, Dr Marshall's findings were crucial to the case for the prosecution).

The BBC said that in relation to the specific quotations from the autopsy report complained of, the 14 October 1961 edition of the Belfast News Letter had, for example, reported Dr Marshall's evidence that Miss Gamble had suffered "stab wounds on the head, body and in the area of the left breast", while the 19 October 1961 edition reported her as being found "face downwards and except for her stockings completely naked" and said that "her face was bloodstained and she had several stab wounds behind the ear and on her body".

The BBC said that the only specific information which may have been previously unreported was that Miss Gamble's buttocks were "*mud-soiled*". The BBC said that while it understood the distress caused to the family by the circumstances of Miss Gamble's death, it did not see that the unsurprising detail that a body found naked in a field in January was mud-soiled added significantly to the picture of what was already known to them. The BBC said that it was, in any case, a detail which could only be gleaned by close attention to the shot of the relevant page of Dr Marshall's report as it appeared on screen. The BBC said that it did not see that it was the BBC's responsibility if offence had been taken at the sight of material which the complainants were in a position to choose not to see. However, the BBC said that if Ofcom took the view that there was an infringement of the complainants' privacy in this respect, it would rely on the public interest served by the programme and broadcasters' rights to freedom of expression.

Decision

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

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

The complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and the parties' written submissions and supporting material. In its considerations, Ofcom took account of the Code.

Ofcom found the following:

Unfair treatment

- a) Ofcom first considered the complaint that the programme as broadcast without giving the family an advance viewing of it so that they could have an opportunity to correct any distortions or inaccuracies in it.

Ofcom had particular regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Code, and whether or not guarantees were given by the programme makers and whether or not they were honoured (as set out in Practice 7.7 of the Code).

Ofcom noted that there was no obligation on a broadcaster to provide those contributing to or potentially directly affected by the content of a programme a preview of the programme to be broadcast unless a guarantee or an assurance had been made by the programme makers. Ofcom noted that the programme makers had contacted Miss Gamble's brother during the making of the programme and had asked whether members of the family would be willing to meet with them to answer any questions the family had or to listen to their concerns. Mr Gamble had made it clear to them that he did not wish to be involved with the making of it.

Ofcom also noted from the material submitted by the parties that there was no evidence to suggest that the family or their legal representatives were given any assurances or guarantee by the programme makers that they would be given the opportunity to view the programme prior to its broadcast. Therefore, in the absence of any evidence that such assurances were given or reneged upon Ofcom found no unfairness to the family in this regard.

- b) Ofcom then considered the complaint that the programme's dramatic reconstructions unfairly portrayed Miss Gamble wearing "heavy make-up" and a head scarf. In considering this particular element of the complaint, Ofcom had particular regard to whether the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to an individual or organisation (as outlined in Practice 7.9 of the Code).

Ofcom considered whether or not the broadcaster had taken reasonable care to satisfy itself that material facts were presented fairly in the programme. In doing so, Ofcom first examined the contextual basis for the inclusion of the dramatic reconstruction footage of Miss Gamble. It then considered whether the programme's presentation of her could have resulted in unfairness to the family.

Ofcom noted that the dramatic reconstruction of Miss Gamble at the dance on the night of her murder was included in the programme to illustrate the events of that evening as recounted by witness testimony. It noted that the actress playing Miss Gamble was shown only briefly in each the sections of footage in which she appeared and that the footage itself was dark and of a "grainy" quality. Ofcom noted that these brief images of the actress showed her laughing with friends and dancing.

Ofcom also took note that the programme's commentary stated that:

"Pearl Gamble lived at home with her parents on the edge of Newry. Like most teenage girls if the time she enjoyed dancing at the weekends. On Friday January 28, she had gone to a dance in a local Orange Hall with two of her girlfriends".

Ofcom also noted that one of the contributors to the programme referred to her as *"a beautiful young girl killed...coming home from a dance, an ordinary night*

out...” and that another contributor commented that the community she came from was “...essentially a God-fearing, rural, Christian society”.

Ofcom also noted from the programme that actual photographs of Miss Gamble were featured in the programme.

In these circumstances, Ofcom took the view that the presentation of Miss Gamble in the programme, and the reconstruction footage in particular, formed part of the factual narrative to the events surrounding her murder but did not seek to make reference to her character other than that she was a seemingly ordinary teenage girl who had attended a local dance with her friends.

Ofcom went on to consider whether or not this presentation in the programme of Miss Gamble resulted in unfairness. Again, Ofcom examined the dramatised reconstruction footage and the statements made by the programme’s commentary and two of its contributors (as set out above). Ofcom was satisfied that the dramatised reconstructions of Miss Gamble as portrayed by an actress who wore make-up and a head scarf would not have materially affected viewers understanding of Miss Gamble’s appearance. It considered that viewers would have been able to distinguish between the actress in the dramatic reconstruction (which was not intended to be a factual depiction of her) and the photographs of Miss Gamble which would have left them in no doubt as to her actual appearance. It considered that these photographs along with the programme’s commentary about Miss Gamble (as set out above) would have left viewers in no doubt that she had been a typical young member of her community.

Ofcom recognises that revisiting these tragic past events has caused distress to the family. However, taking all of the factors referred to above into account, Ofcom was satisfied that the programme did not portray Miss Gamble in a way that was either misleading or unfair to them and that the broadcaster took reasonable care to satisfy itself that it presented Miss Gamble fairly in the programme. Ofcom therefore found no unfairness in this regard.

Privacy

- c) Ofcom considered the complaint that the programme makers did not obtain the consent of the family before making the programme.

Ofcom’s recognises that the line to be drawn between the public’s right to information and the citizen’s right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted? (Rule 8.1 of the Code).

In considering this particular element of the complaint of unwarranted infringement of privacy, Ofcom also took into account Practice 8.5 which states that any infringement of privacy in the making of a programme should be with the person’s and/or organisation’s consent or be otherwise warranted. It also considered Practice 8.19 which states that broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes (i.e. dramatic reconstructions and factual dramas, as well as factual programmes) intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. Practice 8.19 goes on to state that immediate families of those whose experience is to feature in a

programme should be informed of the plans for the programme and its intended broadcast even if the events or the material to be broadcast have been in the public domain in the past.

Ofcom was required to consider whether the actions of the programme makers unwarrantably infringed the family's privacy by failing to obtain their consent before making the programme. Ofcom noted with some concern that the programme makers had inaccurately informed the PRONI that they had made "approaches" to the family. However, it took the view that this did not amount to the programme makers having asserted that they had the "consent" of the family for the PRONI to release the material relating to the case that they had requested.

Ofcom also noted that despite the programme makers' request to the PRONI for the release of post mortem photographs of Miss Gamble, the PRONI had asked the programme makers for the contact details of the family. These details were not given by the programme makers and their application for the release of the post mortem photographs was not pursued further with the PRONI. In Ofcom's view, the fact that the PRONI requested the contact details of the family suggested that it did not presume that the programme makers had the family's consent to release the photographs.

In any event, Ofcom considered that the issue of whether or not the programme makers had misled the PRONI about the family's consent to the programme being made was immaterial to the question of whether the lack of consent could have infringed their privacy. In deciding this, Ofcom considered whether the family had a legitimate expectation of privacy in relation to the programme makers' request to the PRONI for the release of the post mortem photographs.

Ofcom recognised the personal distress the family continued to suffer as a result of their sister's murder in 1961. However, in the absence of material of a personal or sensitive nature being obtained by the programme makers in connection with their request to the PRONI for the release of post mortem photographs (which, were not in fact released by the PRONI), Ofcom took the view that the family did not have a legitimate expectation of privacy in these circumstances.

Ofcom was also satisfied that there was no obligation on the part of the programme makers to obtain the family's consent before making the programme.

Having concluded that the family did not have a legitimate expectation of privacy in this regard, Ofcom found that their privacy was not infringed in the making of the programme and that it was therefore not necessary for it to further consider whether any infringement of privacy was warranted or not.

- d) Ofcom considered the complaint that the programme makers viewed post mortem photographs of Miss Gamble in the programme making process despite these being deemed unsuitable for release by the PRONI.

Ofcom took account of Practice 8.5 (as set out above) and considered whether the family had a legitimate expectation of privacy in relation to the obtaining of material included in the programme. The Code explains that "legitimate expectations of privacy will vary to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and where the individual concerned is already in the public eye".

Ofcom recognised that the nature of the information disclosed by participants in the making of a programme of this nature may be understood to be personal and sensitive and may therefore attract an expectation of privacy. Ofcom noted that although the programme makers had originally made a request to the PRONI for the release of post mortem photographs of Miss Gamble, they had decided not to pursue it. However, the programme makers were given access to the photographs by Dr Marshall, the pathologist who had conducted the autopsy.

Ofcom acknowledged the distress that may have been caused by the programme makers being given access to post mortem photographs of Miss Gamble in the programme making process. However, Ofcom took the view that although the photographs themselves may not have already been in the public domain, the information disclosed by those photographs, (namely the nature of the injuries that had been inflicted on Miss Gamble's body), did not reveal anything more about the condition of her body that was not already in the public domain. Ofcom considered that Dr Marshall's autopsy report, which detailed the wounds and condition of Miss Gamble's body, had been widely reported in the newspapers at the time and had been led in open court. Taking these factors into account, Ofcom was satisfied that the programme makers gaining access to the information contained in the photographs was such that any expectation the family had was considerably diminished by the fact that the photographs did not, in themselves, reveal information that could not be gleaned from information that was already in the public domain. In these circumstances, Ofcom considered that the family did not have a legitimate expectation.

Having concluded that that the family did not have a legitimate expectation of privacy in this regard, Ofcom found that their privacy was not infringed in the making of the programme and that it was therefore not necessary for it to further consider whether any infringement of privacy was warranted or not.

- e) Ofcom considered the complaint that the programme included a dramatised reconstruction of the crime scene which caused distress to the family. Ofcom considered the complaint that the programme infringed the family's privacy by including a dramatised reconstruction of the crime scene which caused distress to the family.

In considering this complaint, Ofcom took account of Practice 8.19 as already set out above.

Ofcom recognised that the nature of the information disclosed by participants and included in a programme of this nature may be understood to be personal and sensitive. In relation to the inclusion of the dramatic reconstruction of the crime scene and, in particular, Miss Gamble's discarded clothing, Ofcom acknowledged that the distressing nature of this detail to the close relatives of Miss Gamble could attract an expectation of privacy.

However, it noted that no other member of the family was named or otherwise rendered identifiable and no personal information about them was included or disclosed. Ofcom also noted that the information disclosed in the presentation of the dramatic reconstructions of the crime scene and Miss Gamble's discarded clothing had been subject to widespread newspaper coverage at the time. In light of these factors, Ofcom considered that any expectation of privacy the family might have had was significantly diminished by the fact that the information disclosed about the crime scene was already in the public domain and that no

personal information about them was revealed. Ofcom, therefore, considered that the family had no legitimate expectation privacy in this regard.

Having concluded that that the family did not have a legitimate expectation of privacy in this regard, Ofcom found that their privacy was not infringed in the programme as broadcast and that it was therefore not necessary for it to further consider whether any infringement of privacy was warranted or not.

- f) Ofcom finally considered the complaint that the programme had shown excerpts from the autopsy report which referred to Miss Gamble being naked and having *"mud-soiled buttocks"*. Also, Dr Marshall said in interview that one of the puncture wounds on her body was above the *"left breast"* and he recounted what he understood to be Miss Gamble's last moments.

In considering this complaint, Ofcom took account of Practice 8.19 as already set out above.

Ofcom recognised that the nature of the information disclosed by participants and included in a programme of this nature may be understood to be personal and sensitive. Ofcom acknowledged the distress caused to the family upon hearing the details of the wounds inflicted on Miss Gamble's and, in particular Dr Marshall's reference to puncture wounds to Miss Gamble's *"left breast"*, and that the revelation of this detail could attract an expectation of privacy.

However, Ofcom noted that no other member of the family was named or rendered identifiable and no personal information about them was included or disclosed. Ofcom noted that Dr Marshall's evidence, as the pathologist who had carried out the autopsy on Miss Gamble, had been delivered in open court during Mr McGladdery's trial and had been widely reported, nearly verbatim, in the newspapers at the time. In light of this, Ofcom considered that any expectation of privacy the family might have had was significantly diminished by the fact that the information disclosed (about Miss Gamble being naked and about the wounds to her body) was already in the public domain and that no personal information about the family was revealed. Ofcom, therefore, considered that the family had no legitimate expectation privacy in this regard.

In relation to the inclusion in the programme of the autopsy report in which reference was made to Miss Gamble having *"mud-soiled buttocks"*, Ofcom acknowledged that this information had not been previously reported. It considered that such information could be understood to be personal or sensitive and may therefore attract a legitimate expectation of privacy. However, Ofcom noted that the shot of this particular reference in the autopsy report was brief and was incidental. It took the view that although this specific piece of information was not already in the public domain, the information disclosed, (namely that Miss Gamble's buttocks had been *"mud-soiled"*), did not reveal anything more about the condition of her body that was not already in the public domain; namely that her body was found naked in a field in January (when it was more than likely that there would be a quantity of mud around). Taking these factors into account, Ofcom was satisfied that the brief inclusion of the reference *"mud-soiled buttocks"* was such that any expectation the family had was considerably diminished by the fact that it did not, in itself, reveal information that could not be gleaned from information that was already in the public domain. In these circumstances, Ofcom considered that the family did not have a legitimate expectation.

Having concluded that that the family did not have a legitimate expectation of privacy in this regard, Ofcom found that their privacy was not infringed in the programme as broadcast and that it was therefore not necessary for it to further consider whether any infringement of privacy was warranted or not.

Accordingly, the complaint of unfair treatment and unwarranted infringement of privacy in both the making and broadcast of the programme has not been upheld.

Other Programmes Not in Breach

Up to 12 October 2009

Programme	Transmission Date	Broadcaster	Categories	Number of Complaints
Bang Babes	09/09/2009	Friendly TV	Sex/Nudity	1
BBC News update	08/10/2009	BBC 1	Generally Accepted Standards	1
BBC Wales Today	24/09/2009	BBC 1 Wales	Violence	1
Benidorm	09/10/2009	ITV1	Generally Accepted Standards	3
Boogie in the Morning	01/10/2009	Forth One	Sex/Nudity	1
Coronation Street	05/10/2009	ITV1	Sex/Nudity	1
Coronation Street	05/10/2009	ITV1	Inaccuracy/Misleading	1
Doc Martin	04/10/2009	ITV1	Generally Accepted Standards	11
Doc Martin	20/09/2009	ITV1	Animal Welfare	1
Don't Tell the Bride	09/10/2009	BBC 3	Animal Welfare	1
EastEnders	28/09/2009	BBC 1	Religious Offence	2
Face of Flaunt	n/a	Flaunt	Use of Premium Rate Numbers	1
GMTV	06/10/2009	ITV1	Generally Accepted Standards	1
Hollyoaks Later	30/09/2009	E4	Generally Accepted Standards	1
ITV News	17/09/2009	ITV1	Inaccuracy/Misleading	1
ITV News	05/10/2009	ITV1	Generally Accepted Standards	1
Jason Anderson - Tunes to Chew To	25/09/2009	Radio Hartlepool	Generally Accepted Standards	1
Jez Welham	15/09/2009	Kiss 100	Competitions	1
Katy Brand's Big Ass Show	01/10/2009	ITV2	Generally Accepted Standards	1
Katy Brand's Big Ass Show	08/10/2009	ITV2	Generally Accepted Standards	2
Katy Brand's Big Ass Show	11/10/2009	ITV2	Generally Accepted Standards	1
KNTV Sex	07/10/2009	Channel 4	Sex/Nudity	2
KNTV Sex	08/10/2009	Channel 4	Sex/Nudity	15
Major League Soccer	31/08/2009	ESPN	Undue Prominence	1
News at Ten	06/10/2009	ITV1	Commercial References	1
Newsround	08/10/2009	BBC 1	Crime (incite/encourage)	1
Radio Ramadhan Luton	13/09/2009	Radio Ramadhan Luton	Religious Issues	1
Sky News	07/10/2009	Sky News	Generally Accepted Standards	1
Sky News	07/10/2009	Sky News	Crime (incite/encourage)	1
Sky Sports News	06/10/2009	Sky Sports News	Sex/Nudity	1
Spotlight	30/09/2009	BBC 1 (South West)	Generally Accepted Standards	1

The Fixer	06/10/2009	ITV1	Violence	1
The Jeremy Kyle Show	28/09/2009	ITV1	Inaccuracy/Misleading	1
The Paul O'Grady Show	05/10/2009	Channel 4	Sex/Nudity	1
The Secret Millionaire	30/09/2009	Channel 4	Inaccuracy/Misleading	1
The Trisha Goddard Show	06/10/2009	Five	Dangerous Behaviour	1
The Unbelievable Truth	05/10/2009	BBC Radio 4	Generally Accepted Standards	1
The Wright Stuff	09/10/2009	Five	Due Impartiality/Bias	1
The Wright Stuff	09/10/2009	Five	Generally Accepted Standards	3
The X Factor	04/10/2009	ITV1	Generally Accepted Standards	6
Toonattik	04/10/2009	ITV1	Violence	1
True Blood	07/10/2009	Channel 4	Generally Accepted Standards	2
True Blood	07/10/2009	Channel 4	Offensive Language	2
Watchdog	08/10/2009	BBC 1	Generally Accepted Standards	1
Watchdog	01/10/2009	BBC 1	Generally Accepted Standards	1